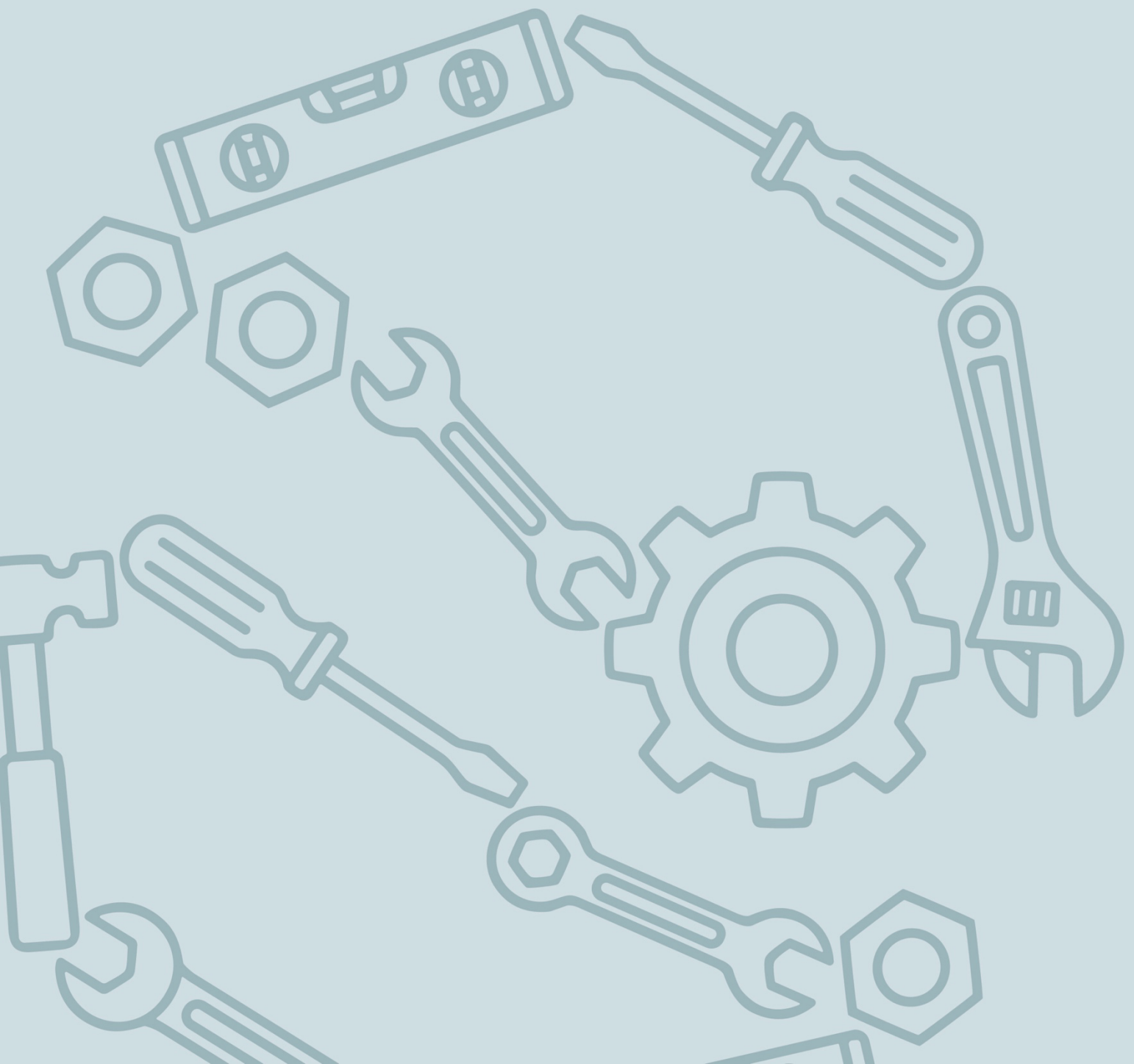




TERMS & CONDITIONS OF RENTAL



1 Interpretation

1.1 In addition to the items defined in the Order Form, the following definitions and rules of interpretation apply in this Agreement.

Agreement:	the Order Form together with these terms and conditions of Equipment Hire.
Business Day:	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Delivery:	the transfer of physical possession of the Equipment to the Hirer at the Site, which for locations: (a) within the UK shall be on a Delivery Duty Paid (DDP - Incoterms 2020) basis; and (b) outside the UK shall be on a Delivery At Place (DAP - Incoterms 2020) basis.
Deposit:	the deposit amount set out in the Order Form.
Equipment:	means the equipment specified on the Order Form and includes any third-party software licensed to the Hirer to support such equipment. The Hirer agrees to comply with the terms of any such third-party software licence for the benefit of RS Aqua and the licensor.
Order Form:	the order form setting out the key details of the Equipment Hire.
Payment Schedule:	a schedule appended to this Agreement which sets out the sums payable under this Agreement as referred to in the Order Form.
Rental Payments:	the payments made by or on behalf of Hirer for hire of the Equipment.
Rental Period:	the period of hire as set out in clause 3.
Return of the Equipment:	means the return of the Equipment (and removal of the software from the Hirer's IT systems) to RS Aqua, within ten Business Days of the end of the Rental Period, such return to be by insured and priority tracked shipping at the Hirer's cost.
Risk Period:	the period during which the Equipment is at the sole of the risk of the Hirer as set out in clause 6.2.
Total Loss:	the Equipment is, in RS Aqua's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.
VAT:	value added tax or any equivalent tax chargeable in the UK or elsewhere.

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, if any, 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 in the plural shall include the singular.

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 email.

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

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 RS Aqua shall hire the Equipment to the Hirer for use strictly at the Site only, subject to the terms and conditions of this Agreement.

2.2 RS Aqua shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Hirer's quiet possession of the Equipment.

2.3 The Hirer shall have no right to purchase the Equipment, which must be returned to RS Aqua at the end of the Rental Period in accordance with clause 7.1.15.

3 **Rental Period.** The Rental Period starts on the Commencement Date and shall continue for a period of the Rental Period on the Order Form unless this Agreement is terminated earlier in accordance with its terms or extended by RS Aqua's prior written approval.

4 Rental Payments and Deposit

- 4.1 The Hirer shall pay the Rental Payments to RS Aqua in accordance with the Order Form (or the Payment Schedule) as indicated. The Rental Payments shall be paid in the Currency and shall be made by direct bank transfer into RS Aqua's nominated bank account from time to time, unless the Rental Period is equal to, or exceeds six (6) months, in which case the Hirer agrees to enter into a Direct Debit agreement with RS Aqua, for the duration of the Agreement, to make the Rental Payments.
- 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 Hirer at the rate and in the manner from time to time prescribed by law.
- 4.3 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).
- 4.4 If the Hirer fails to make a payment due to RS Aqua under this Agreement by the due date, then, without limiting RS Aqua's remedies under clause 10:
- 4.4.1 the Hirer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment; and
- 4.4.2 RS Aqua is entitled to suspend and/or withdraw any of the Equipment (including access to: (a) any supporting software whether under the third-party software licence or otherwise; (b) third-party services including telemetry; or (c) third-party equipment) until such time as all outstanding payment due to RS Aqua have been cleared.
- 4.5 Interest under this clause 4 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%.
- 4.6 The Deposit is a deposit against default by the Hirer of payment of any Rental Payments or any loss of or damage caused to the Equipment as determined to be deducted by RS Aqua. The Hirer may not use the Deposit to be offset against outstanding Rental Payments.
- 4.7 The Hirer shall, on the date of this Agreement, pay a deposit of the amount indicated on the Order Form to RS Aqua. If the Hirer fails to make any Rental Payments in accordance with the Order Form, or causes any loss or damage to the Equipment (in whole or in part), RS Aqua shall be entitled (but not obliged) to apply the Deposit against such default, loss or damage. The Hirer shall pay to RS Aqua any sums deducted from the Deposit within five Business Days of a demand for the same otherwise RS Aqua shall be entitled to suspend and/or withdraw any of the Equipment (as set out in clause 4.4.2).
- 4.8 The Deposit (or balance thereof) shall be refundable within one calendar month of RS Aqua confirming receipt of the Return of

the Equipment in writing and subject to any deductions from the Deposit by RS Aqua pursuant to clause 4.6, following assessment of the condition of the Equipment by RS Aqua.

- 4.9 If the Hirer does not return the Equipment to RS Aqua at the end of the Rental Period in accordance with clause 7.1.15, then Rental Payments shall continue to accrue until such time as the Equipment has been returned.
- 4.10 If there is a change of control of the Hirer (within the meaning of section 1124 of the Corporation Tax Act 2010), or there is a change of ownership or control of any of the assets of the Hirer which includes any land, building or structure (including but not limited to any cages, barges, pontoons or similar items) to which the Equipment is affixed; then without prejudice to any other rights or remedies of RS Aqua, the Hirer shall pay to RS Aqua on demand a sum equal to the whole of the Rental Payments that would (but for the change of control described in this clause 4.10) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period, otherwise RS Aqua shall be entitled to suspend and/or withdraw any of the Equipment (as set out in clause 4.4.2).

5 Delivery

- 5.1 Delivery of the Equipment shall be made by RS Aqua. RS Aqua shall use all reasonable endeavours to effect Delivery by the Delivery Date. Risk shall transfer in accordance with clause 5.4 of this Agreement.
- 5.2 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Hirer 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 (save as regards any latent defects not reasonably apparent on inspection). If required by RS Aqua, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance.
- 5.3 To facilitate Delivery, the Hirer shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable Delivery to be carried out safely and expeditiously.
- 5.4 If the Hirer fails to accept delivery of the Equipment on the Delivery Date, then, except where such failure is caused by RS Aqua's failure to comply with its obligations under this Agreement:
- 5.4.1 the Equipment shall be deemed to have been delivered at 9.00 am on the Delivery Date; and
- 5.4.2 RS Aqua shall store the Equipment until delivery takes place, and charge the Hirer 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 RS Aqua, and the Hirer 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 Hirer on Delivery and the Hirer shall indemnify RS Aqua and keep RS Aqua indemnified, on demand against all losses, costs, charges, damages and expenses incurred as a result of any such loss, theft, damage to, or destruction of the Equipment (including while in transit from the Hirer to RS Aqua for any reason), on a full replacement basis for new replacement equipment of an equivalent or greater specification. The Equipment shall remain at the sole risk of the Hirer during the Rental Period and any further term during which the Equipment is in the possession, custody or control (including while in transit from the Hirer to RS Aqua for any reason) of the Hirer (Risk Period) until such time as the Equipment is redelivered to RS Aqua. During the Rental Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:
- 6.2.1 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 RS Aqua may from time to time nominate in writing;
- 6.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as RS Aqua 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
- 6.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as RS Aqua may from time to time consider reasonably necessary and advise to the Hirer.
- 6.3 All insurance policies procured by the Hirer shall be endorsed to provide RS Aqua with at least twenty Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall on RS Aqua's request name RS Aqua on the policies as a loss payee in relation to any claim relating to the Equipment. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 6.4 The Hirer shall give immediate written notice to RS Aqua in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Hirer's possession or use of the Equipment.
- 6.5 If the Hirer fails to effect or maintain any of the insurances required under this Agreement, RS Aqua 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 Hirer.
- 6.6 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to RS Aqua and proof of premium payment to RS Aqua to confirm the insurance arrangements.
- 7 Hirer's responsibilities**
- 7.1 The Hirer shall during the term of this Agreement:
- 7.1.1 ensure that the Equipment is kept and operated in a suitable environment and 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, conditions, guidance or specifications notified to the Hirer by RS Aqua in writing from time to time;
- 7.1.2 take such steps (including compliance with all safety and usage instructions provided by RS Aqua) 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;
- 7.1.3 maintain at its own expense the Equipment (only with RS Aqua or a provider reasonably approved by RS Aqua in the event that RS Aqua are unable to provide such services) in good and substantial repair in accordance with the Equipment Maintenance Schedule 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;
- 7.1.4 make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of RS Aqua. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in RS Aqua immediately on installation;
- 7.1.5 keep RS Aqua fully informed of all material matters relating to the Equipment;
- 7.1.6 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 RS Aqua's prior written consent;
- 7.1.7 permit RS Aqua 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;
- 7.1.8 maintain operating and maintenance records of the Equipment and make copies of such records readily

available to RS Aqua, together with such additional information as RS Aqua may reasonably require;

- 7.1.9 not, without the prior written consent of RS Aqua, part with control of or give access to (including for the purposes of repair or maintenance), sell or offer for sale, hire, sublet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- 7.1.10 not without the prior written consent of RS Aqua, attach the Equipment to any land, building or structure so as to cause the Equipment to become a permanent or immovable fixture on such land, building or structure. If the Equipment does become affixed to any land, building or structure then the Equipment must be capable of being removed without material injury to such land, building or structure and the Hirer shall repair and make good any damage caused by the affixation or removal of the Equipment from any land, building or structure and indemnify RS Aqua against all losses, costs or expenses incurred as a result of such affixation or removal;
- 7.1.11 not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of RS Aqua in the Equipment and, where the Equipment has become affixed to any land, building or structure, the Hirer must take all necessary steps to ensure that RS Aqua may enter and/or access such land, building or structure 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, building or structure, a waiver in writing and in favour of RS Aqua of any rights such person may have or acquire in the Equipment and a right for RS Aqua to enter onto and/or access such land, building or structure to remove the Equipment;
- 7.1.12 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 Hirer shall notify RS Aqua and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify RS Aqua on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- 7.1.13 not use the Equipment for any unlawful purpose;
- 7.1.14 ensure that at all times the Equipment remains identifiable as being RS Aqua's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- 7.1.15 deliver up the Equipment at the end of the Rental Period or on earlier termination of this Agreement at such address as RS Aqua requires, or if necessary, allow RS

Aqua or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and

- 7.1.16 not do or permit to be done anything which could invalidate the insurances referred to in clause 6.
- 7.2 The Hirer acknowledges that RS Aqua shall not be responsible for:
 - 7.2.1 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 Hirer or its officers, employees, agents and contractors; or
 - 7.2.2 any issues regarding non-availability or malfunction of any third-party: (a) software (whether through planned or unplanned downtime, loss of or corruption to data or telemetry, or otherwise); (b) services; (c) telemetry services; or (d) equipment;

and the Hirer shall indemnify RS Aqua 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 professional costs and expenses) suffered or incurred by RS Aqua arising out of, or in connection with any failure by the Hirer to comply with the terms of this Agreement.

- 7.3 The Hirer acknowledges that RS Aqua shall not be responsible for deployment, installation, maintenance, servicing or support of the Equipment unless separately agreed with RS Aqua in writing. RS Aqua shall be entitled to charge for such deployment, installation, maintenance, servicing or support of the Equipment at its standard rates in force from time to time and shall be entitled to deliver the same at its sole discretion whether: directly or indirectly; onsite or remotely; or using any third-party sub-contractor.

8 Warranty

- 8.1 RS Aqua warrants that the Equipment (which under no circumstances shall include any consumables of any nature) shall substantially conform to its specification (as made available by RS Aqua), be of satisfactory quality and fit for any purpose held out by RS Aqua. RS Aqua shall use reasonable commercial endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period, provided that:
 - 8.1.1 the Hirer notifies RS Aqua of any defect in writing within five Business Days of the defect occurring;
 - 8.1.2 RS Aqua is permitted to make a full examination of the alleged defect at its discretion either: (a) on Site; or (b) by requiring the Hirer to send the Equipment (or relevant part of it) at the Hirer's cost to RS Aqua;
 - 8.1.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised

manipulation by any person other than RS Aqua's authorised personnel;

- 8.1.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Hirer or on its behalf; and
- 8.1.5 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 RS Aqua, the Hirer shall be entitled only to such warranty or other benefit as RS Aqua has received from the manufacturer.
- 8.3 RS Aqua shall have the right at any time during the Rental Period, at its own cost, to substitute, update and/or replace any of the Equipment, for any reason, with equipment equivalent (in functionality only) to the Equipment, regardless of the age of any such replacement.
- 8.4 If RS Aqua fails to remedy any material defect in the Equipment in accordance with clause 8.1, RS Aqua shall, at the Hirer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rental Payments payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).

9 Limitation of liability

- 9.1 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with this Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2 Nothing in this Agreement limits any liability which cannot legally be limited including liability for:
 - 9.2.1 death or personal injury caused by negligence;
 - 9.2.2 fraud or fraudulent misrepresentation;
 - 9.2.3 breach of the terms implied by section 7 of the Supply of Goods and Services Act or section 8 of the Supply of Goods (Implied Terms) Act 1973;
 - 9.2.4 any matter in respect of which it would be unlawful for the parties to exclude or restrict liability.
- 9.3 Subject to clause 9.2, RS Aqua's total liability to the Hirer shall not exceed the total of all Rental Payments.
- 9.4 Subject to clause 9.2, RS Aqua shall not be liable under this Agreement for any:
 - 9.4.1 loss of profits;
 - 9.4.2 loss of sales or business;
 - 9.4.3 loss of agreements or contracts;
 - 9.4.4 loss of anticipated savings;
 - 9.4.5 loss of use or corruption of software, data or information;

9.4.6 loss of or damage to goodwill; and

9.4.7 indirect or consequential loss.

- 9.5 Subject to clause 9.2, all implied terms and conditions as to the quality or performance of the Equipment and any other goods or services provided under this Agreement are, to the fullest extent permitted by law, excluded from this Agreement.

10 Termination

- 10.1 Without affecting any other right or remedy available to it, RS Aqua may terminate this Agreement with immediate effect by giving written notice to the Hirer if:
 - 10.1.1 the Hirer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
 - 10.1.2 the Hirer commits a material 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 days after being notified in writing to do so;
 - 10.1.3 the Hirer 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;
 - 10.1.4 the Hirer 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 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 10.1.5 the Hirer 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 Hirer with one or more other companies or the solvent reconstruction of the Hirer;
 - 10.1.6 the Hirer applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - 10.1.7 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 Hirer (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the

Hirer with one or more other companies or the solvent reconstruction of the Hirer;

- 10.1.8 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 Hirer (being a company);
- 10.1.9 the holder of a qualifying floating charge over the assets of the Hirer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 10.1.10 a person becomes entitled to appoint a receiver over all or any of the assets of the Hirer or a receiver is appointed over all or any of the assets of the Hirer;
- 10.1.11 a creditor or encumbrancer of the Hirer 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 Hirer's assets and such attachment or process is not discharged within fourteen days;
- 10.1.12 any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.4 to clause 10.1.11 (inclusive);
- 10.1.13 the Hirer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy; or
- 10.1.14 the Hirer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 10.1.15 there is a change of control of the Hirer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 10.2 For the purposes of clause 10.1.2, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which RS Aqua would otherwise derive from:

- 10.2.1 a substantial portion of this Agreement; or
- 10.2.2 any of the obligations set out in clause 7,

over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

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

11 Consequences of termination

- 11.1 On termination of this Agreement, however caused:

- 11.1.1 RS Aqua's consent to the Hirer's possession of the Equipment and the Hirer's right to access or use the Equipment (including the Hirer's access to any third-party software and associated functionality) shall terminate;
- 11.1.2 RS Aqua may, by its authorised representatives, without notice and at the Hirer'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
- 11.1.3 without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to RS Aqua on demand:
- 11.1.3.1 all Rental Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 4.4; and
- 11.1.3.2 any costs and expenses incurred by RS Aqua in recovering the Equipment or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

- 11.2 On termination of this Agreement pursuant to clause 10.1, any other repudiation of this Agreement by the Hirer which is accepted by RS Aqua or pursuant to clause 10.3, without prejudice to any other rights or remedies of RS Aqua, the Hirer shall pay to RS Aqua on demand a sum equal to the whole of the Rental Payments that would (but for the termination) have been payable if the agreement had continued from the date of such demand to the end of the Rental Period, less:

- 11.2.1 a discount for accelerated payment at a percentage rate determined by RS Aqua acting reasonably; and
- 11.2.2 RS Aqua's reasonable assessment of the market value of the Equipment on sale.

- 11.3 The sums payable pursuant to clause 11.2 shall be agreed compensation for RS Aqua's loss and shall be payable in addition to the sums payable pursuant to clause 11.1.3. Such sums may be partly or wholly recovered from any Deposit.

- 11.4 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.

- 11.5 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.

- 12 **Force majeure.** Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement (excluding payment of money), 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. If the period of delay or non-performance continues for four weeks, the party not affected may terminate this Agreement by giving seven days' written notice to the affected party.

13 Confidential information

13.1 Each party undertakes that it shall not at any time during this Agreement, and for a period of two years after termination or expiry of this Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.

13.2 Each party may disclose the other party's confidential information:

13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with clause 13; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

13.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

14 **Assignment and other dealings.** This Agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

15 Entire agreement

15.1 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.

15.2 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. 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 **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17 No partnership or agency

17.1 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.

17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18 **Further assurance.** At its own expense, each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

19 Counterparts

19.1 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.

19.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If such method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

19.3 No counterpart shall be effective until each party has delivered to the other at least one executed counterpart.

20 Third party rights

20.1 Unless it expressly states otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

21 Notices

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

21.1.1 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

21.1.2 sent by email to the address specified in the Order Form.

21.2 Any notice or communication shall be deemed to have been received:

- 21.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 21.2.2 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
- 21.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, where business hours resume. In this clause 21.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 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 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.
- 24 **Severance**
- 24.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 24.2 If any provision or part-provision of this Agreement is deemed deleted under clause 24.1 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.
- 25 **Governing law.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
- 26 **Jurisdiction.** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.