

TERMS AND CONDITIONS OF HIRE

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 agreed by the Parties for their respective obligations to start running under this agreement.

Delivery: the transfer of physical possession of the Equipment to the Lessee.

Equipment: the items of equipment listed on the Lessor's website from time to time and required by the Lessee, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

Lessee: the party which has agreed to lease the Equipment.

Lessor: El-Björn UK Limited (Company registration No.07866497) of Unit 2 Oyster Park, 109 Chertsey Road, West Byfleet, Surrey, KT14 7AX

Parties: the Lessee and Lessor.

Rental Payments: the payments made by or on behalf of Lessee for hire of the Equipment.

Rental Period: the period of hire as set out in clause 3.

Risk Period: the period during which the Equipment is at the sole of the risk of the Lessee as set out in clause 6.2.

Site: the Lessee's premises.

Total Loss: due to the Lessee's default the Equipment is, in the Lessor's reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.

VAT: value added tax chargeable in the UK.

1.2 Clause 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).

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.9 A reference to **writing** or **written** includes fax and email.

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

1.11 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.

1.12 References to clauses are to the clauses of this agreement.

1.13 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 The Lessor shall hire the Equipment to the Lessee for use at the Site subject to the terms and conditions of this agreement.
- 2.2 The Lessor 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 period to be agreed between the Parties unless this agreement is terminated earlier in accordance with its terms.

4. Rental Payments

- 4.1 The Lessee shall pay the Rental Payments to the Lessor within thirty days of the end of each month. The Rental Payments shall be paid in UK pound and shall be made by bank transfer.
- 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 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 Lessee fails to make a payment due to the Lessor under this agreement by the due date, then, without limiting the Lessor's remedies under clause 10, the Lessee shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.
- 4.5 Interest under this clause 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%.

5. Delivery

- 5.1 Delivery of the Equipment shall be made by the Lessor. The Lessor shall use all reasonable endeavours to effect Delivery by the Delivery Date. Risk shall transfer in accordance with [clause 6](#) of this agreement.
- 5.2 The Lessee shall procure that a duly authorised representative of the Lessee shall be present at the Delivery of the Equipment. Acceptance of Delivery by such representative 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 (save as regards any latent defects not reasonably apparent on inspection). If required by the Lessor, the Lessee's duly authorised representative shall sign a receipt confirming such acceptance.
- 5.3 To facilitate Delivery, the Lessee 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 Lessee fails to accept delivery of the Equipment on Delivery, then, except where such failure is caused by the Lessor's failure to comply with its obligations under this agreement:
- (a) the Equipment shall be deemed to have been delivered at 9.00 am on the day that Delivery is effected; and
 - (b) the Lessor shall store the Equipment until Delivery takes place, and charge the Lessee 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 the Lessor, 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 the Lessor.

EL-BJÖRN UK LTD

Unit 2, Oyster Business Park,
109 Chertsey Road, West Byfleet,
GB-Surrey, KT14 7AX
Phone: (+44) 01483 729 348
E-mail: info@elbjorn.com

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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 the Lessor 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 the Lessor 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 the Lessor 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 the Lessor 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 the Lessor's request name the Lessor 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 the Lessor 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, the Lessor 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 the Lessor and proof of premium payment to the Lessor 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 Lessor;
- (b) take such steps (including compliance with all safety and usage instructions provided by the Lessor) 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;
- (d) make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of the Lessor unless the component (or components) is (or are) replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved or advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Lessor immediately on installation;
- (e) keep the Lessor fully informed of all material matters relating to the Equipment;

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- (f) permit the Lessor 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;
 - (g) maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Lessor, together with such additional information as the Lessor may reasonably require;
 - (h) not, without the prior written consent of the Lessor, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - (i) not without the prior written consent of the Lessor, 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 the Lessor against all losses, costs or expenses incurred as a result of such affixation or removal;
 - (j) not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Lessor 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 the Lessor 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 the Lessor of any rights such person may have or acquire in the Equipment and a right for the Lessor to enter onto such land or building to remove the Equipment;
 - (k) 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 the Lessor and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Lessor on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - (l) not use the Equipment for any unlawful purpose;
 - (m) ensure that at all times the Equipment remains identifiable as being the Lessor's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
 - (n) deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as the Lessor requires, or if necessary allow the Lessor or its representatives access to the Site or any premises where the Equipment is located for the purpose of removing the Equipment; and
 - (o) not do or permit to be done anything which could invalidate the insurances referred to in [clause 6](#).
- 7.2 The Lessee acknowledges that the Lessor 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 shall indemnify the Lessor in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Lessor arising out of, or in connection with any failure by the Lessee to comply with the terms of this agreement.

EL-BJÖRN UK LTD

Unit 2, Oyster Business Park,
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8. Warranty

8.1 The Lessor warrants that the Equipment shall substantially conform to its specification (as made available by the Lessor), be of satisfactory quality and fit for any purpose held out by the Lessor. The Lessor shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within twelve months from Delivery, provided that:

- (a) the Lessee notifies the Lessor of any defect in writing within five Business Days of the defect occurring;
- (b) the Lessor 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 the Lessor'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.

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

8.3 If the Lessor fails to remedy any material defect in the Equipment in accordance with clause 8.1, the Lessor shall, at the Lessee'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.

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:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 7 of the Supply of Goods and Services Act
- (d) 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, the Lessor's total liability to the Lessee shall not exceed £1,000.00.

9.4 Subject to clause 9.2, the Lessor shall not be liable under this agreement for any:

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

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, the Lessor may terminate this agreement with immediate effect by giving written notice to the Lessee if:

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- (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 three days after being notified in writing to make such payment;
 - (b) the Lessee 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 five days after being notified in writing 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 (**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;
 - (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) the Lessee applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
 - (g) 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, limited liability partnership or partnership) 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;
 - (h) 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 Lessee (being a company);
 - (i) 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;
 - (j) a person becomes entitled to appoint a receiver over all or any of the assets of the Lessee or a receiver is appointed over all or any of the assets of the Lessee;
 - (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 days;
 - (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 10.1(d) to clause 10.1(k) (inclusive);
 - (m) the Lessee'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;
 - (n) the Lessee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 10.2 For the purposes of clause 10.1(b), **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 the Lessor would otherwise derive from:
- (a) a substantial portion of this agreement; or

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- (b) any of the obligations set out in clause 6,
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:
- (a) the Lessor's consent to the Lessee's possession of the Equipment shall terminate;
 - (b) the Lessor 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
 - (c) without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Lessor 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 4.4; and
 - (ii) any costs and expenses incurred by the Lessor 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 Lessee which is accepted by the Lessor or pursuant to clause 10.3, without prejudice to any other rights or remedies of the Lessor, the Lessee shall pay to the Lessor 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:
- (a) a discount for accelerated payment at the percentage rate set by the Parties; and
 - (b) the Lessor'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 the Lessor's loss and shall be payable in addition to the sums payable pursuant to clause 11.1(c).
- 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 if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such 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 five days' written notice to the affected party.
- 13. Confidential information**
- 13.1 Each party undertakes that it shall not at any time 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.

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Unit 2, Oyster Business Park,
109 Chertsey Road, West Byfleet,
GB-Surrey, KT14 7AX
Phone: (+44) 01483 729 348
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- 13.2 Each party may disclose the other party's confidential information:
- (a) 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
 - (b) 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 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**
- 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. Third party rights**
- 19.1 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.
- 19.2 The rights of the Parties to rescind or vary this agreement are not subject to the consent of any other person.
- 20. Notices**
- 20.1 Any notice or other communication given to a party under or in connection with this agreement 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);
- 20.2 Any notice or communication shall be deemed to have been received:

EL-BJÖRN UK LTD

Unit 2, Oyster Business Park,
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GB-Surrey, KT14 7AX
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- (a) if delivered by hand, at the time the notice is left at the proper address;
- (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;

20.3 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.

20.4 A notice given under this agreement is not valid if sent by email.

21. 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.

22. 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.

23. Severance

23.1 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.

23.2 If any provision or part-provision of this agreement is deemed deleted under clause 23.1 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.

24. 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 law of England and Wales.

25. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales 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.

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