



# Terms & Conditions



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**Schedule 1 Conditions**

**The Customer's attention is particularly drawn to the provisions of clause 8.**

**1. INTERPRETATION**

1.1 **Definitions.** In these Conditions, the following definitions apply:

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

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 6.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 12.7.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions, including Orders accepted in accordance with clause 2.2 and Quotations.

**Customer:** the person or firm who purchases Services from the Supplier.

**Customer's Equipment:** the Customer's materials, equipment, systems or facilities.

**Location:** the Customer's premises, office accommodation and other facilities or such other location(s) for the provision for Services set out in the Quotation.

**Location Recce Report:** means the report that is produced by the Supplier following a physical survey of the intended Location by the Supplier to ensure suitable access to and egress from the intended Location and to establish so far as possible that the Location is safe and fit for purpose so far as the provision of the Services by the Supplier is concerned.

**Order:** the Customer's order for Services as set out in the Customer's Order Confirmation overleaf or the Customer's written communication of the Quotation, as the case may be.

**Production:** the tasks that are to take place during the filming or shooting by the Customer at the Location.

**Quotation:** the description or specification of the Services provided in writing by the Supplier to the Customer and agreed by the Customer in writing to the Supplier.

**Services:** the services, including the supply of the Supplier Equipment, supplied by the Supplier to the Customer during the Services Period as set out in the Quotation together with any other services and equipment which the Supplier provides or agrees to provide to the Customer.

**Services Period:** the period during which Services are to be provided to the Customer as set out in the Quotation or any other period during which the Supplier provides or agrees to provide the Services to the Customer.

**Start Date:** the date on which the Services are to start as set out in the Quotation.

**Supplier:** CAD Services Limited t/a Facilities by ADF a company registered in England and Wales with company number 04533535.

**Supplier Equipment:** any vehicles, equipment, property or other facilities provided by the Supplier and used directly or indirectly in the supply of Services.

**Supplier Personnel:** the employees, agents or other representatives of the Supplier whose services are employed or engaged by the Supplier in connection with the provision of Services.

1.2 **Construction.** In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

## 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order or, if no written acceptance is issued, the date on which the Supplier starts to provide the Services, at which point and on which date the Contract shall come into existence (**Commencement Date**). The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.3 Any descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website, are issued or published for the sole purpose of giving an approximate idea of the Supplier Equipment and Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any Quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue. The provision of a Quotation by the Supplier does not guarantee the availability of the Supplier Equipment and/or the Services whether at the time the Quotation is made or at the time the Customer places an Order.

**3. SUPPLY OF SERVICES**

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Quotation in all material respects.
- 3.2 The Supplier shall use its reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Supplier Equipment and/or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. If the Supplier requests a change to the scope of the Supplier Equipment or Services for any other reasons, the Customer shall not unreasonably, withhold or delay consent to it.
- 3.4 The Supplier:
- (a) warrants to the Customer that the Services will be provided using reasonable care and skill;
  - (b) shall (and shall use its reasonable endeavours to procure that the Supplier Personnel shall) take all precautions necessary to ensure that the Services are performed safely and without risk to persons or property;
  - (c) shall, and shall use its reasonable endeavours to procure that all Supplier Personnel shall, consult with the Customer and its authorised representatives, and comply with any relevant Customer's policies notified to them;
  - (d) confirms that the relationship between Customer and Supplier will be that of independent contractor and nothing in this Contract shall render Supplier or Supplier Personnel as employees, agents or partners of the Customer.
- 3.5 For the avoidance of doubt the Supplier Equipment shall at all times remain the property of the Supplier, and the Customer shall have no right, title or interest in or to the Supplier Equipment (save the right to possession and use of the Supplier Equipment subject to these Conditions).
- 3.6 The Supplier shall supply and use its own Supplier Personnel to carry out the Services required by the Quotation. The Supplier will use its reasonable endeavours to procure that the Supplier Personnel act in accordance with the reasonable directions of the Customer and its authorised representatives when providing the Services and comply with all applicable laws.
- 3.7 Rights
- (a) The Supplier irrevocably grants to the Customer permission to photograph, film and record the Supplier Equipment for the purpose of "behind-the-scenes" and similar EPK filming.
  - (b) The Supplier acknowledges and agrees that the Customer shall be the sole and exclusive owner of the entire copyright and all other rights of every kind in and to the products of the Customer's photography, filming and recording of the Supplier Equipment pursuant to clause 3.7(a) above ("Material"), including the perpetual and irrevocable right to, and to license others to, use and re-use all or part of the Material in connection with any film and/or television production and advertising,

publicising, exhibiting and exploiting the same or any related subsidiary or ancillary rights, by any manner or means (whether now known or hereafter devised) in any and all media throughout the universe for the full period of copyright and of all other rights in the Material, including all extensions, revivals and renewals of such rights and thereafter (insofar as is or may become possible) in perpetuity.

#### **4. CUSTOMER'S OBLIGATIONS**

##### **4.1 The Customer shall:**

- (a) ensure that the terms of the Order are complete and accurate (providing all details required);
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier with such information as the Supplier may reasonably require in good time in order to supply the Services and ensure that such information is accurate in all material respects;
- (d) ensure that the Supplier Personnel are informed of and given access to the Location at least 48-hours' prior to day of arrival;
- (e) ensure that the Supplier and/or the Supplier Personnel and/or the Supplier Equipment have suitable and safe routes and access to the Location and be responsible for preparing and maintaining the Location for the supply of the Supplier Equipment and the Services. The Supplier Personnel shall however exercise their own judgment with regard to the safety and suitability of routes and access to Locations and if they deem routes and access to be unsafe or unsuitable, the Customer shall find alternative routes and access. The Supplier shall use such rights of access for the purpose of providing the Services only, and the Supplier's right of access will terminate upon termination of this Contract. Such right of access is conditional upon the Supplier and the Supplier Personnel complying with the Customer's policies notified to them, and the Customer reserves the right to exclude any person from the Location in the event of any actual or threatened breach of such policies;
- (f) without prejudice to the generality of clause 4.1(c) above, ensure that it complies (at its own cost) with any requirements set out in the Location Recce Report. Without prejudice to any other right or remedy of the Supplier, in the event the Customer fails to comply with any requirements set out in the Location Recce Report the Customer shall, except to the extent caused by the breach, negligence or wilful misconduct of Supplier, be liable for and shall indemnify the Supplier against any and all damage caused to the Supplier Equipment and/or the Location as a direct result of such failure, together with any increased labour costs incurred by the Supplier as a direct result of such failure, provided that the Customer's liability shall in no event exceed £5,000,000;
- (g) keep and maintain all Supplier Equipment at the Location in safe and secure custody and protected from interference from third parties. The Supplier Personnel shall however exercise their own judgment with regard to the safety and security of the Location and if they reasonably deem the Location not to be sufficiently safe or secure to leave the Supplier Equipment then the Customer shall find an alternative Location;
- (h) while the Supplier Equipment is at the Location, maintain the Supplier Equipment in the same condition as when such Supplier Equipment was provided to the Customer (reasonable wear and tear excepted) and free from damage until returned to the Supplier;

- (i) while the Supplier Equipment is at the Location, ensure that the Supplier Equipment is used and/or operated only by suitably qualified and experienced personnel;
- (j) not dispose of or use the Supplier Equipment other than in accordance with the Supplier's written instructions or authorisation. For the avoidance of doubt only Supplier Personnel may be transported in any vehicle of the Supplier;
- (k) ensure that the Customer's Equipment used directly or indirectly in connection with the Services are in good working order, suitable for the purposes for which they are used and conform to all relevant standards and requirements in the United Kingdom (including Portable Appliance Testing);
- (l) ensure that a suitable and hygienic water supply is provided for the trailers that form part of the Supplier Equipment;
- (m) immediately inform the Supplier if at any time during the Contract any damage is caused to the Supplier Equipment or if any part of it requires adjustment or repair or if there are any accidents or incidents involving the Supplier Equipment;
- (n) at all reasonable times during the Contract provide the Supplier and/or the Supplier Personnel with access to the Supplier Equipment/Supplier Personnel on the Location to inspect, test, adjust, alter or replace the same; this may include unannounced visits to the Location to carry out inspections/audits on Supplier Personnel (e.g. Drug & Alcohol testing) and/or Supplier Equipment (e.g. Tachograph checks) to ensure the Supplier fulfils compliance and legal obligations;
- (o) obtain and maintain all necessary licences, permissions and consents which may be required before the Start Date in relation to the Supplier Equipment being affixed to the Location;
- (p) inform the Supplier and/or the Supplier Personnel of all health and safety rules and regulations and any other security requirements that apply at the Location (to the extent the Customer is aware of the same);
- (q) notify the Supplier as soon as it becomes aware of any health and safety hazards or issues at the Location and/or which may relate to the provision of Services;
- (r) comply at all times with any and all health and safety rules and regulations as they apply to the use of the Supplier Equipment;
- (s) during the Contract and for a period of one year afterwards, maintain in force with a reputable insurance company:
  - (i) public liability insurance of at least £5,000,000 per claim; and
  - (ii) adequate production insurance cover for the Customer's Equipment; and
  - (iii) comprehensive insurance of the Supplier Equipment to a value not less than its full replacement value against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing, to apply solely whilst the same are under the sole custody, care and control of the Customer, but excluding coverage for any loss or damage due to the negligence or wilful misconduct of or breach hereof by the Supplier, the Supplier's agents and/or employees or caused by the Supplier, the Supplier's agents and/or employees while providing services to the Customer;

and in each case notify the Supplier if such policy is (or will be) cancelled or its terms are (or will be) subject to any material change. On the Supplier's written request, the Customer shall provide the Supplier with copies of insurance policy certificates;

- (t) not do or authorise to be done anything which could invalidate the insurances referred to in clause 4.1(s);
- (u) ensure that it consults with the Supplier any proposed changes to the planned filming schedule (excluding minor on-the-ground changes) that may impact upon the Services prior to implementing the same.

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer, its officers, employees, sub-contractors or agents or failure by the Customer to perform any obligation under the Contract (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2.

4.3 Except with respect to:

- (a) matters constituting any breach, non-performance or non-observance by the Supplier of any of the provisions of this Contract; and/or
- (b) negligence or wilful misconduct on the Supplier's part,

the Customer shall be liable to pay to the Supplier any loss, cost or damage (including reasonable legal fees), sustained or incurred by the Supplier howsoever arising, including under statute or common law, in respect of any loss of or damage to the Supplier Equipment or Supplier Personnel directly resulting from any negligent act or omission of the Customer, its employees, agents or sub-contractors, subject to the provisions of clause 8.2(a) provided that the Customer's liability shall not exceed the £5,000,000..

## 5. CHANGE TO SERVICES

5.1 If the Customer wishes to change the scope of execution of the Services, it shall submit details of the requested change to the Supplier in writing.

5.2 The Supplier shall within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any necessary variation to the Charges (any discount applied to facility vehicles as part of the main package in the Quotation is not applicable to additional facility vehicles/Supplier Equipment and/or Services); and

(c) any other impact of the change on the Quotation or the provision of Services.

5.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed the necessary variations to the Charges and Services.

5.4 For the avoidance of doubt, where the Customer has requested the Supplier to supply additional equipment or a unit move on less than 24-hours' notice the Supplier shall use reasonable endeavours to supply such service but the Supplier is under no obligation to do so.

## **6. CHARGES, PAYMENT AND CANCELLATION**

6.1 The Charges for the Services shall be the amounts(s) set out in the Quotation, as amended from time to time in accordance with clause 5. Any discount applied to facility vehicles as part of the main package in the Quotation is not applicable to additional facility vehicles/Supplier Equipment and/or Services outside of the main package.

6.2 The Customer shall provide the Supplier with a written Order within 7 days of the Supplier's written request. The Supplier shall invoice the Customer for the Services either on completion of the Services or weekly/monthly in arrears, as set out in the Quotation, regardless of whether a written Order has been received by the Supplier.

6.3 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 14 days of receipt of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract; and
- (c) in accordance to the Quotation.

6.4 In the event that the Supplier has, in its absolute discretion, agreed a discount for the Charges, should the Customer fail to pay any sum due to the Supplier, the Supplier has the right to waive such discount.

6.5 The following cancellation charges shall apply for the cancellation of any Services:

- (a) If the Service Period of the Contract is less than 4 weeks, the Customer shall pay to the Supplier on demand 100% of the total Charges for cancellation at any time;
- (b) If the Service Period of the Contract is 4 – 12 weeks, the Customer shall pay to the Supplier within 14 days of receipt by the Customer of a valid invoice therefor:
  - (i) 50% of the total Charges for cancellation at any time before the Start Date; and
  - (ii) 100% of total Charges for cancellation at any time after the Start Date;
- (c) If the Service Period of the Contract is in excess of 12 weeks:
  - (i) there will be no cancellation charge for cancellation before the Start Date provided that the Supplier can re-allocate the Supplier Equipment to another customer or customer for the Service Period;



(ii) for cancellation after the Start Date, the Customer shall pay to the Supplier within 14 days of receipt by the Customer of a valid invoice therefore 100% of the total Charges;

(d) Without prejudice to the preceding provisions of this clause 6.5, where the Customer has requested and the Supplier has agreed to supply additional Supplier Equipment (being items over and above those specified in the Quotation) on a daily hire basis, in the event the Customer cancels such Supplier Equipment on less than 24-hours' notice the Customer shall pay to the Supplier on demand 100% of the total Charges for the said vehicles and/or equipment together with any associated costs on providing the aforementioned, including but not limited to, staff wages and any additional resources required in providing said equipment and/or hire vehicles.

6.6 For any cancellation of the Services by the Customer to be effective, the Customer must address the cancellation request in writing to the Supplier's Account Manager assigned to manage the Customer's account and the Customer must pay all applicable cancellation charges as set out at clause 6.5 above.

6.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per cent per annum above Royal Banks of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

6.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 7. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive expiry and / or termination of the Contract.

The Supplier shall not, and shall procure that each member of the Supplier Personnel shall not, at any time, disseminate, publish, state or in any manner disclose (including without limitation to single or multiple recipients, onto the internet or via other technological means including without limitation all social media, social networking, blogs, multimedia messages, and the like) any information of any kind in respect of the business or affairs of the Customer; any information used in connection with the Production; any information regarding the cast and/or crew (including, without limitation, names, aliases, identities, locations, amenities); any information on the Production itself.

The Supplier shall not, and shall procure that each member of the Supplier Personnel shall not, at any time take any unauthorised photographs, audio or video recordings nor give to any third party any information, photographs or other items or material coming into their possession or control by reason of Customer's use of Supplier and/or Supplier Personnel.

## **8. SUPPLIER'S OBLIGATIONS AND LIMITATION OF LIABILITY OF SUPPLIER AND CUSTOMER**

8.1 Nothing in these Conditions shall limit or exclude either party's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

8.2 Subject to clause 8.1:

- (a) neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
  - (i) loss of profits;
  - (ii) loss of sales or business;
  - (iii) loss of agreements or contracts;
  - (iv) loss of anticipated savings;
  - (v) loss of use or corruption of software, data or information;
  - (vi) loss of damage to goodwill; and
  - (vii) any indirect or consequential loss.
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £5,000,000.00 (five million pounds).

8.3 The Supplier shall not be liable to the Customer for any losses caused by damage to the Customer's Equipment except where such damage arises as a direct result of the Supplier's negligence or wilful misconduct.

8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 8.5 This clause 8 shall survive expiry and / or termination of the Contract.
- 8.6 Subject to clauses 8.2 to 8.4 (inclusive), in addition to the Supplier's statutory and common law obligations, the Supplier warrants and represents to the Customer that:-
- (a) the Supplier has carried out all statutory and/or regulatory testing and examination with respect to the Supplier Equipment and the Services;
  - (b) (without prejudice to all the Customer's rights and remedies) where conditions exist in relation to the Supplier Equipment or the Services under which there will or may be any risk to health or safety, Supplier shall immediately on the Commencement Date, or immediately Supplier becomes aware of such conditions after the Commencement Date, bring such conditions to the attention of the Customer in writing and shall provide free of cost adequate information about such conditions and the safeguards which are necessary to eliminate the risk;
  - (c) all Supplier Equipment supplied hereunder conforms to all applicable regulatory requirements;
  - (d) the Supplier is entitled to enter into this Contract (and give all assurances, confirmations, waivers and agreements set out herein); and
  - (e) Supplier will take all precautions reasonably necessary to ensure that the Services are performed safely and without risk to persons or property and shall provide and bear the cost of all insurances necessary to indemnify and hold harmless the Customer in respect of any negligence or act or omission on the part of Supplier, its employees, sub-contractors or agents.
- 8.7 The Supplier will do nothing, and shall use it's reasonable endeavours to ensure that the Supplier Personnel shall do nothing, which might directly or indirectly cause any breach of the terms of any lease or other terms under which the Customer is entitled to occupy the Location and, subject to clauses 8.2 to 8.4 (inclusive) the Supplier shall indemnify the Customer against all costs, claims, damages and expenses directly arising from any such breach. Subject to clauses 8.2 to 8.4 (inclusive) the Supplier hereby indemnifies the Customer against any and all damage to the Location and its contents to the extent the same is directly caused by the negligence or wilful misconduct of Supplier and/or any of the Supplier Personnel.
- 8.8 Supplier shall maintain in force (and keep payment of all premiums up to date) at all times when providing the Services the following insurance policies:
- (a) Public Liability Insurance Policy - limit £5 million per claim;
  - (b) Employers' Liability Insurance Policy – limit £10 million per claim; and
  - (c) Professional Indemnity Insurance Policy - limit £5 million per claim,
  - (d) Motor Liability Insurance Policy – unlimited liability for injury to third parties and property limit of £5million per claim;
- and shall, at the Customer's request, ensure that the Customer's interest has been recorded on the policies as Principal to Indemnity and shall provide the Customer with evidence of the same.
- 8.9 Supplier shall, during the term of this Contract, and for a period of one year thereafter:

- (a) administer the insurance policies and Supplier's relationship with its insurers at all times to preserve the benefits for the Customer set out in this Contract;
- (b) do nothing to invalidate any such insurance policy or to prejudice the Customer's entitlement thereunder; and
- (c) procure that the terms of such policies shall not be altered in such a way as to diminish the benefit to the Customer of the policies.

**9. TERMINATION**

9.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (h) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(b) to clause 9.1(i) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date if the Customer fails to remedy that breach within 14 days after being notified in writing to do so.

9.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment and fails to remedy that breach within 14 days of the Customer being notified in writing to do so.

## **10. CONSEQUENCES OF TERMINATION**

On expiry and / or termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer within 14 days of on receipt;
- (b) the Customer shall permit the Supplier access to the Location or such other place as the Supplier Equipment is located to take possession of them. Until the Supplier Equipment has been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive expiry and/or termination shall continue in full force and effect.

**11. FORCE MAJEURE**

- 11.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of either party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of either party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, outbreak of disease, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 11.2 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event save and to the extent that the party who is delayed or fails to perform its obligations (**Affected Party**) is indemnified by insurance in which case the Affected Party shall be liable to the other for any direct loss or damage suffered as a result of the Force Majeure Event, to the extent that the same is recoverable from the Affected Party's insurance policy and subject always to the limitations on liability set out in these Conditions.
- 11.3 If the Force Majeure Event prevents either party performing its obligations under this Contract for more than 4 weeks, either party shall, without limiting its other rights or remedies and without prejudice to clause 11.2, have the right to terminate this Contract immediately by giving written notice to the other.

**12. COMPLIANCE**

- 12.1 **Compliance Obligations.** The Supplier shall abide by all laws, statutes, rules and regulations of any applicable regulatory agencies governing the rendering of Services in the location where the Services are provided; obtaining any and all applicable licences and permits in connection with the Services to be rendered.
- 12.2 **Health and Safety.** The Supplier will ensure appropriate compliance with all industry health and safety legislation and standards, including all driver licensing/ operator's license or equivalent, as may be required in respect of the secure transport and operation of the commercial vehicles or equipment in the UK and Europe. The Supplier will provide safe, secure and industry-compliant commercial vehicles, trucks and towing unit suitable for holding and transporting Customer assets.
- 12.3 **Anti-Bribery.** Supplier (on behalf of itself and the Supplier Personnel) and Customer shall comply with the anti-corruption laws of the UK (including the Bribery Act 2010, as amended from time to time "Bribery Act") and any other applicable anti-corruption laws and legislation anywhere in the world.
- 12.4 **Data Protection.** Supplier (on behalf of itself and the Supplier Personnel) hereby acknowledges it's commitment to protecting personal data, in line with current legislation, as detailed in the Supplier's Privacy Policy (available via website or upon request). The Supplier and Customer will comply with all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation; the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002 and the Privacy Electronic Communications Regulations 2003.

**13. GENERAL****13.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. The Supplier will consult with the Customer should this be necessary.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

**13.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**13.3 Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 13.4 Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its 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.

- 13.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 13.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.
- 13.8 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 13.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).