Gravity Media (Germany) GmbH trading as Gravity Media ("Gravity") - Hire Agreement

1. Interpretation

1.1. In this Agreement unless the context otherwise requires: "Agreement" means collectively this agreement, any schedule(s) overleaf or attached and the Terms; "Default Rate" means 10%-points above the basic interest rate per year calculated on a daily basis (as well after as before any judgement); "Equipment" means the equipment and goods listed in this Agreement, all parts, accessories, additions and replacements(or any of them); "Hire" means hire of the Equipment subject to the terms of this Agreement; "Hire Charges" means Gravity charges for the provision of Equipment and Services as shown on its current rate card for the time being or such other charges as agreed by Gravity in writing; "Hire Period" means the period during which Equipment or Services will be provided specified in the Schedule or such other period as agreed by Gravity in writing; "Hirer" means the person, firm or company identified as such in this Agreement; "Party" means Gravity or Hirer; " Gravity " means Gravity Media (Germany) GmbH trading as Gravity Media; "Services" means the services or any of them which Gravity agrees to supply in accordance with this Agreement; "Terms" means the terms and conditions set out in and to which this Agreement is subject and any amendments expressly agreed in writing between Gravity and Supplier.

1.2. Headings are for convenience only and shall not affect interpretation.

2. Equipment Hire and Services

2.1. Gravity agrees to supply, and Hirer agrees to accept Equipment and Services subject to these Terms which shall govern the Agreement to the exclusion of any other terms and conditions contained in any document or implied by course of dealing and shall not be varied except in writing signed by Gravity and Hirer.

2.2. Unless otherwise agreed in writing by Gravity, all Equipment supplied by Gravity is supplied on hire in accordance with these Terms. As between the parties, ownership of Equipment shall remain at all times with Gravity. Hirer shall have no rights in Equipment other than as set out in this Agreement.

2.3. Hire shall commence on the first day and end on last day of Hire Period subject to the provisions of this Agreement for earlier termination. Unless Gravity otherwise agrees, Equipment will be collected from the offices of Gravity and returned to the same address by Hirer during normal working hours.

2.4. This Agreement may not be cancelled by Hirer, in whole or in part, without consent of Gravity and only on terms that Hirer indemnifies Gravity in full against all loss (including loss of profit and reimbursement of all costs) incurred by Gravity prior to or as a result of cancellation.

2.5. Hirer acknowledges that Equipment was selected by Hirer as suitable for its purpose and Hirer has not been induced to enter into this Agreement by any prior representation by Gravity except as specifically contained in this Agreement.

2.6. Gravity shall ensure Equipment is in good working order on delivery and of satisfactory quality and that any Services supplied by Gravity will be provided using reasonable care and skill by persons of appropriate competence and training and in accordance with this Agreement.

2.7. Gravity will at its discretion use reasonable endeavours to repair or replace any defective Equipment or remedy any deficient Services or will provide a pro rata credit of the Hire Charge provided that the Equipment was defective when handed over to the Hirer. Gravity shall not be liable to provide on-site support unless contracted as part of the Services.

3. Hire Charges and Other Payments

3.1. Hire Charges shall be paid by Hirer in full in cleared funds on or before the commencement of the Hire or on such other date(s) as Gravity may agree in writing. Hire Charges are subject to any applicable VAT, which shall be paid in addition and on the same date. Time shall be of the essence in respect of all payments due under this Agreement. Hire Charges shall be treated as paid on the date Gravity obtains value, shall bear interest at the Default Rate from the date due until payment and shall be paid without any deduction, set-off or counterclaim whatsoever. Any discounts quoted or agreed may be forfeited at Gravity's discretion if payment is received after the due date.

3.2. Hirer shall remain liable for Hire Charges at the same rate as provided in this Agreement until end of Hire Period or, if later, date of return of Equipment to Gravity and, if Equipment is lost, stolen, damaged or destroyed, until the Equipment has been replaced or repaired or Gravity has been compensated in full.

3.3. Gravity reserves right to appropriate any payments made (notwithstanding express appropriation by Hirer) to any sums payable to Gravity under this or any other agreement between the Parties.

4. Hirer's Obligations

4.1. Hirer undertakes that, at all times during the Hire Period and until return of Equipment to Gravity, Hirer shall:

4.1.1. take all reasonable care of Equipment to ensure its safety and security;

4.1.2. check Equipment on delivery and before taking into use and immediately notify Gravity of any defect, loss or damage at any time;

4.1.3. ensure Equipment is only used in a safe manner by competent persons without risk to health; in accordance with good practice and any instructions of the manufacturer or Gravity and not contrary to any law or for any purpose for which Equipment is not designed or reasonably suitable;

4.1.4. unless authorised by Gravity, not attempt to modify or repair the Equipment, open the outer case (unless required in normal use) or remove any notices or serial numbers on the Equipment;

4.1.5. upon request inform Gravity of the location of Equipment and permit or procure access for Gravity or its agents to the Equipment for inspection, repair or otherwise as Gravity may require;

4.1.6. if transit of Equipment is arranged by Hirer, obtain all necessary customs clearances, comply with all applicable import/export regulations and pay all charges, taxes and duties;

4.1.7. take all reasonable steps to safeguard the health, safety and welfare of Gravity personnel while onsite and conduct and provide Gravity with copies of all relevant risk assessments and other health and safety documentation;

4.1.8. not sell, sub-rent or otherwise dispose of or part with possession of Equipment or any interest therein or do or permit to be done any act or thing which may jeopardise Gravity's rights therein but keep Equipment in Hirer's possession and control free from lien, charge or encumbrance so that Equipment shall at all times remain property of Gravity or its legal owner;

4.1.9. where Gravity's Services are dependent on provision of other equipment or services arranged by Hirer, ensure that all such equipment and services are provided on time when required; the equipment is of adequate quality and specification and in good working order; and the services are provided by persons of adequate competence and experience using reasonable care and skill.

4.2. Hirer undertakes (notwithstanding termination of the Hire) to indemnify Gravity against all liabilities whatsoever arising out of the possession, operation or use of Equipment by or on behalf of Hirer provided that such indemnity shall not extend to liability for death or personal injury caused by Gravity negligence. Such indemnification shall not apply if Hirer can prove that liabilities have not been caused by Hirer's negligence.

5. Risk and Insurance

5.1. The Equipment shall be at the risk of the Hirer from the time of delivery to Hirer or its carrier, until its return to Gravity premises or, if earlier, possession is taken by Gravity carrier.

5.2. Hirer shall at its expense insure with a reputable insurance company (naming Gravity as an additional insured) against: all loss or damage to Equipment in an amount equal to its replacement cost new; any on-going Hire Charges under Clause 3.2; and third party liability.

5.3. Hirer will on request at any time produce to Gravity the insurance policy and receipt for current premium. If Hirer fails to provide evidence of insurance to Gravity satisfaction, Gravity may (but shall not be obliged to) terminate this Agreement without liability to Hirer or agree to insure Equipment itself, in which case Hirer will pay Gravity charges for provision of insurance and, in event of a claim, the amount of the insurance policy excess or deductible.

5.4. Hirer shall not do or allow to be done any act or thing whereby insurance of Equipment maybe invalidated.

5.5. In event of loss of or damage to Equipment, Hirer shall immediately notify Gravity, assist in making any appropriate insurance claim and, except with Gravity's consent, not settle or compromise any claim against the insurer or any third party. Hirer hereby irrevocably authorises Gravity in name and on behalf of Hirer to make any claims under the insurance in respect of the Equipment; to settle or compromise such claims; and to receive and give good discharge to insurers for any moneys payable.

5.6. If any Equipment is declared a total loss, the Hire shall terminate. In such event Gravity shall apply any proceeds of insurance received by it at its option:

5.6.1. towards a replacement of equivalent value which replacement shall be deemed to be included in these Terms for all purposes and the Hirer shall continue to be liable to any Hire Charges as if such loss had not taken place, or

5.6.2. in or towards payment to Gravity of the sum necessary to compensate Gravity for the loss suffered as a result of the loss of that Equipment.

5.7. Gravity shall have the right itself to repair or have repaired any Equipment which suffers damage. If Gravity does not choose to do so Hirer shall be liable to reinstate or repair (subject to clause 5.6.1) at its own expense any of the Equipment which has not become a total loss. In any event, in the case of any damage to the Equipment the Hirer shall continue to pay Hire Charges in respect of such Equipment during reinstatement or repair whether by Gravity or the Hirer.

5.8. The Hirer shall be liable to pay to Gravity any amount deducted by the insurers in respect of the damage caused to the Equipment and shall indemnify Gravity against all and any loss suffered by it in consequence of the total loss of all or any part of the Equipment unless the damage to or loss of he Equipment was caused without Hirer's negligence.

5.9. Gravity accepts no responsibility for loss ofor damage to any equipment or materials of the Hirer or any third party, which Gravity may agree to store or transport, and any such equipment or materials shall at all times be at the Hirer's risk.

6. Exclusion and Limitation of Liability

6.1. Nothing in these Terms shall limit or exclude the liability of either Party in respect of death or personal injury resulting from its negligence or from fraud.

6.2. The Hirer shall be solely responsible for and keep Gravity fully indemnified against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses suffered or incurred by Gravity as a result of any culpable breach or culpable default on the part of the Hirer in the discharge of its obligations under these conditions.

6.3. Subject to clause 6.1, Hirer agrees that Gravity's entire liability to the Hirer in respect of this Agreement and any breach or negligent act or omission (including liability for acts or omissions of Gravity employees, agents and sub-contractors) shall be limited as follows:

6.3.1. Gravity's total liability in respect of this Agreement shall not exceed the total Hire Charges payable by the Hirer;.

6.4. Hirer shall give Gravity reasonable details in writing of any claim against Gravity without delay and no later than 30 days from occurrence of the matter giving rise to the claim;

6.5. Except as this Agreement may otherwise expressly provide, neither Party will be liable, in contract, tort (including negligence) or for breach of statutory duty or pursuant to any indemnity or in any other way for any indirect or consequential losses or, whether arising directly or indirectly, for any loss of profits, loss of information, data or media content, loss of business, loss of goodwill or damage to reputation or anticipated savings.

6.6. If so requested by Hirer, Gravity may consider accepting higher limits of liability subject to payment by Hirer of an additional charge.

7. Sale of Goods

7.1. Any goods agreed to be sold by Gravity to Hirer are sold by Gravity as beneficial owner free of any lien, charge or encumbrance but subject thereto: are sold "as is", no intellectual property rights are assigned or licensed and the Hirer shall be responsible for obtaining its own licence of any software included with the goods. Notwithstanding delivery or passing of risk, title to the goods shall not pass until Gravity has received payment of the price in full in cleared funds.

8. Termination

8.1. Gravity may (without prejudice to any other right or remedy) forthwith by notice terminate or suspend performance of this Agreement in whole or part without liability to Supplier if: Hirer causes or permits to be done any act or thing whereby Gravity's rights in Equipment are prejudiced; or Hirer fails to pay any sums payable hereunder in full on the due date or is in breach of this Agreement and (if capable of remedy) fails to remedy such breach within 7 days of notice by Gravity.

8.2. Termination or cancellation of this Agreement, in whole or in part, shall not limit any other right or remedy of either Party against the other under these Terms or at law and shall be effective notwithstanding subsequent acceptance by Gravity of Hire Charges. Upon termination:

8.2.1. Hirer shall at Hirer's expense forthwith return Equipment to Gravity in good working condition (fair wear and tear excepted) and in default Gravity may without notice repossess Equipment and for this purpose freely enter any premises where Equipment is believed to be located;

8.2.2. Hirer shall become immediately liable to pay to Gravity all and any unpaid balance and arrears of Hire Charges and other sums payable under this Agreement including, without limitation, all costs and expenses (including any legal costs and expenses) incurred by Gravity in locating, repossessing or restoring Equipment and in collecting any sums due or otherwise in obtaining due performance of Hirer's obligations hereunder.

9. Force Majeure

9.1. Gravity shall not be liable to Hirer for delay or failure due to any cause beyond Gravity reasonable control (including, without limitation, due to fire, flood, material adverse weather, epidemic, quarantine restriction, trade disputes or industrial actions, actual or threatened act of war, terrorism, civil disturbance, act or omission of government) and in such circumstances Gravity reserves right to suspend further performance of all or part of Hire or to terminate this Agreement. In such event, Hirer shall be liable for Hire Charges, apportioned to date of such termination.

10. General

10.1. If Hirer is more than one person, they shall be liable both individually and together.

10.2. Each Party shall treat as it does its own confidential information all information obtained from the other pursuant to this Agreement which is marked "confidential" or the equivalent or has the necessary quality of confidence about it.

10.3. Nothing in this Agreement will be deemed to grant any right or benefit to any person (other than Gravity and Hirer) or entitle any third party to enforce any provision of this Agreement.

10.4. Delay shall not prevent Gravity enforcing any provision of this Agreement. Any waiver of a breach of this Agreement shall not operate as a waiver of a later breach of the same or any other provision.

10.5. If any provision of this Agreement is held to be void, invalid or unenforceable in whole or in part, the validity of the remaining provisions shall not be affected.

10.6. Neither Party shall assign or otherwise transfer any of its rights or obligations under this Agreement except that Gravity may sub-contract all or any of its obligations to a competent third party.

10.7. Any notice under this Agreement shall be in writing and may be served by hand, pre-paid first class post or airmail, electronic mail or facsimile to its address or facsimile number set out in this Agreement or such other address as is notified for the purpose. A confirming copy of any notice served by electronic mail or facsimile shall be sent by post within 24 hours of transmission.

10.8. This Agreement shall be governed and construed in accordance with German law. The parties agree to submit to the non-exclusive jurisdiction of the Regional Court (Landgericht) of Frankfurt am Main.