HIGHWAY CARE – SPECIAL CONDITIONS OF HIRE

1 INTERPRETATION

1.1 The following definitions and rules of interpretation apply to these Conditions.

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

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.3.

Debris: has the meaning given in clause 6.5

Delivery: the transfer of physical possession of the Equipment from Highway Care to the Hirer.

Equipment: the items of equipment listed in the Hire Schedule including Vehicles and Temporary Vehicle Restraint Systems, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions.

Force Majeure Event: an event beyond the reasonable control of a party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), interruption or failure of a utility service or transport network, act of God, acts of war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent, accident, breakdown of plant or machinery, fire, flood, storm, or default or non-performance of suppliers or subcontractors.

Highway Care: Highway Care Limited a company registered in England and Wales with company number 2506334 whose registered office is at Trinity House 3 Bullace Lane, Dartford, Kent, DA1 1BB.

Hirer: the hirer of the Equipment as set out in the Hire Schedule.

Hire Contract: the contract between Highway Care and the Hirer for the hiring of Equipment as set out in the Hire Schedule and in accordance with these Conditions.

Hire Payments: the payments made by or on behalf of the Hirer for hire of the Equipment.

Hire Period: the period of hire as set out in clause 4.

Hire Schedule: the Equipment order form which includes details of the Equipment to be hired, the Hire Payments, the hire start and end dates, the delivery location and any other applicable information.

Minimum Hire Period: the period of 14 days (which includes both the day of Delivery and the day the Equipment is physically returned to Highway Care) or such other period set out in the Hire Schedule and in each case subject to clause 6.5.

Temporary Vehicle Restraint Systems: the barriers, crash cushions and other equipment used for controlling passage of vehicles, made available by Highway Care and as set out in a Hire Schedule.

Total Loss: whilst in the Hirer's possession or control the Equipment is, in Highway Care's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

VAT: value added tax chargeable under the Value Added Tax Act 1994.

Vehicles: the vehicles made available by Highway Care and as set out in a Hire Schedule.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

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

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.5 A reference to **writing** or **written** includes fax and e-mail.

1.6 References to clauses and schedules are to the clauses and schedules of these Conditions and references to paragraphs are to paragraphs of the relevant schedule.

1.7 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 BASIS OF CONTRACT

2.1 The Hire Schedule constitutes an offer by the Hirer to hire the Equipment from Highway Care in accordance with these Conditions.

2.2 The Hire Schedule shall only be deemed to be accepted when Highway Care issues written acceptance of the Hire Schedule at which point and on which date the Hire Contract shall come into existence or, if earlier, Highway Care delivers the Equipment to the Hirer.

2.3 Highway Care shall be under no obligation to accept, and shall not be liable for any loss or damage to the Hirer as a result of not accepting, a Hire Schedule.

2.4 The Hire Contract constitutes the entire agreement between the parties. The Hirer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Highway Care which is not set out in the Hire Contract.

2.5 These Conditions apply to the Hire Contract to the exclusion of any other terms that the Hirer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing whether historic or otherwise.

2.6 Any quotation given by Highway Care shall not constitute an offer and, unless stated otherwise in Highway Care's quotation, is only valid for such period indicated in the quote or, in the absence of such indication, for 10 Business Days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both Vehicles and Equipment other than clause 10 which is specific to Vehicles.

3 EQUIPMENT HIRE

3.1 Highway Care shall hire the Equipment to the Hirer subject to the Conditions.

3.2 Highway Care shall not, other than in the exercise of its rights under the Hire Contract or applicable law, interfere with the Hirer's quiet possession of the Equipment.

4 HIRE PERIOD

The Hire Period starts on Delivery and shall continue until the return of physical possession of the Equipment to Highway Care from the Hirer unless the Hire Contract is terminated earlier in accordance with the Conditions.

5 HIRE PAYMENTS

5.1 The Hirer shall pay the Hire Payments to Highway Care as set out in the Hire Schedule, or if no payments are quoted, the payments set out in Highway Care's published prices list as at Delivery.

5.2 If Highway Care requires the Hirer to pay a deposit, the amount of such deposit will be indicated in the Hire Schedule and shall be due and payable on the issuing of written acceptance of the Hire Schedule by Highway Care pursuant to clause 2.2.

5.3 The Hire Payments will always (subject to the Minimum Hire Period) be charged for the duration of the actual Hire Period notwithstanding any expected hire start and end dates specified in the Hire Schedule. If the Hirer returns the Equipment within the Minimum Hire Period, the Hirer will be charged for the duration of Minimum Hire Period.

5.4 The Hire Payments are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.

5.5 All amounts due under the Hire Contract 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).

5.6 The Hirer shall pay each invoice submitted by Highway Care:

5.6.1 as provided for in the Hire Contract or, in the absence of such provision within 30 days of the date of the invoice; and

5.6.2 in full and in cleared funds by way of electronic transfer only to a bank account nominated in writing by Highway Care, and

time for payment shall be of the essence of the Hire Contract.

5.7 Without limiting any other right or remedy of Highway Care, if the Hirer fails to make any payment due to Highway Care under the Hire Contract by the due date for payment (**Due Date**), Highway Care shall have the right to:

5.7.1 charge interest on the overdue amount in accordance with the Late Payment of Commercial Debts Regulations 2013. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after the judgement. The Hirer shall pay the interest together with the overdue amount; or

5.7.2 at its discretion, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located, without liability to the Hirer for its removal.

5.8 The Hirer shall pay all amounts due under the Hire Contract in full without any deduction or withholding except as required by law and the Hirer shall not be entitled to assert any credit, set-off or counterclaim against Highway Care in order to justify withholding payment of any such amount in whole or in part. Highway Care may, without limiting its other rights or remedies, set off any amount owing to it by the Hirer against any amount payable by Highway Care to the Hirer and/or any deposit obtained pursuant to clause 5.2.

6 DELIVERY & RETURN

6.1 Delivery shall be on the earlier of the:

6.1.1 the Hirer taking possession of the Equipment; or

6.1.2 if Highway Care is to deliver and collect the Equipment, the time the Equipment is delivered to the location specified in the Hire Schedule.

6.2 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at Delivery and, if applicable, installation of the Equipment, and shall, at its cost, provide all requisite materials, facilities, access and suitable working conditions to enable Delivery and such installation to be carried out safely and expeditiously.

6.3 In respect of clause 6.2, acceptance of Delivery by such representative shall constitute conclusive evidence that the Hirer has used its own skill and judgement in selecting the Equipment, 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, and in respect of the Equipment, installed in the correct position. If required by Highway Care, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance. Subject to clause 12.1, Highway Care makes no representations and gives no guarantee or warranty that the Equipment is suitable for the intended purpose of the Hirer.

6.4 Notwithstanding clause 7.2, the Hirer shall be responsible for the unobstructed access and egress and, unless otherwise agreed in the Hire Schedule, for unloading and loading of the Equipment at the location specified in the Hire Schedule; and any personnel supplied by Highway Care for such unloading and / or loading shall be deemed to be under the direction and control of the Hirer. The Hirer shall be solely responsible for, and Highway Care shall have no liability for, any and all claims or losses arising in connection with unloading and / or loading of the Equipment by, or with the assistance of, such personnel.

6.5 The Hirer shall be responsible for the removal of all and any dirt, rubble, waste materials or debris ("**Debris**") that may accumulate in, under or on the Equipment during the Hire Period. Should any such Debris impact, interfere with or introduce any risks to the removal of the Equipment then Highway Care may, at its sole discretion, delay or abort and reschedule the removal (thereby lengthening the Hire Period and increasing the Hire Charges) until all such Debris have been removed, at the Hirer's cost.

7 TITLE, RISK AND INSURANCE

7.1 The Equipment shall at all times remain the property of Highway Care, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these Conditions).

7.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery. The Equipment shall remain at the sole risk of the Hirer during the Hire Period and any further term during which the Equipment is in the possession, custody or control of the Hirer (**Risk Period**) until physical possession is transferred to Highway Care. During the Hire Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:

7.2.1 insurance of the Equipment to the insurance value stated on the Hire Schedule, or if no value is stated, 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 Highway Care may from time to time nominate in writing;

7.2.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as Highway Care 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

7.2.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as Highway Care may from time to time consider reasonably necessary and advise to the Hirer.

7.3 All insurance policies procured by the Hirer shall be endorsed to provide Highway Care with at least twenty (20) Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon Highway Care's reasonable request name Highway Care on the insurance policies as a loss payee in relation to any claim relating to the Equipment. The Hirer shall be responsible for paying any deductibles due on any claims under such insurance policies.

7.4 The Hirer shall give immediate written notice to Highway Care in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Hirer's possession or use of the Equipment.

7.5 If the Hirer fails to effect or maintain any of the insurances required under these Conditions, Highway Care shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.

7.6 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Highway Care and proof of premium payment to Highway Care to confirm the insurance arrangements.

8 HIRER'S RESPONSIBILITIES

8.1 The Hirer shall during the term of the Hire Contract:

8.1.1 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, suitably qualified, licenced and competent staff in accordance with all applicable laws and any operating instructions provided by Highway Care or the manufacturer;

8.1.2 take such steps (including compliance with all safety and usage instructions provided by Highway Care) 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;

8.1.3 make no alteration to the Equipment and shall not remove any existing component(s) from the Equipment without the prior written consent of Highway Care;

8.1.4 keep Highway Care fully informed of all material matters relating to the Equipment;

8.1.5 at all times keep the Equipment in the possession or control of the Hirer and keep Highway Care informed of its location;

8.1.6 permit Highway Care or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter upon any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;

8.1.7 maintain operating and maintenance records of the Equipment and make copies of such records readily available to Highway Care, together with such additional information as Highway Care may reasonably require;

8.1.8 not, without the prior written consent of Highway Care, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, re-hire or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

8.1.9 not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of Highway Care in the Equipment and, where the Equipment has become affixed to any land or building, the Hirer must take all necessary steps to ensure that Highway Care may enter such land or building and recover the Equipment both during the term of the Hire Contract 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 Highway Care of any rights such person may have or acquire in the Equipment and a right for

Highway Care to enter onto such land or building to remove the Equipment;

8.1.10 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Hirer shall notify Highway Care and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify Highway Care on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

8.1.11 not use the Equipment for any unlawful purpose;

8.1.12 at its cost, ensure that at all times the Equipment remains clean and identifiable as being Highway Care's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;

8.1.13 return the Equipment at such address as Highway Care requires; and

8.1.14 not do or permit to be done anything which could invalidate the insurances referred to in clause 7.

8.2 The Hirer acknowledges that Highway Care 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 Hirer or its officers, employees, agents and contractors, and the Hirer undertakes to indemnify Highway Care on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of the Hire Contract.

9 BREAK DOWN

9.1 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period the Hirer must:

9.1.1 immediately stop using the Equipment;

9.1.2 notify Highway Care by the end of the first Business Day after the breakdown or the Equipment becoming unsafe to use;

9.1.3 take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;

9.1.4 take all steps necessary to prevent any further damage to the Equipment itself; and

9.1.5 not repair or attempt to repair the Equipment without the written consent of Highway Care.

9.2 Except if clause 9.3 applies, upon receiving notice from the Hirer under clause 9.1.2 Highway Care will:

9.2.1 take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Hirer; and

9.2.2 not impose a Hire Payment for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

9.3 If the Equipment has broken down or become unsafe to use as a result of the acts or omissions of the Hirer (or its employees or contractors) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, the Hirer will be liable for:

9.3.1 any costs incurred by Highway Care to recover and repair or replace the Equipment; and

9.3.2 the Hire Payment for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.

9.4 Provided that the Hirer pays the costs and charges described in clause 9.3, Highway Care will return or replace the Equipment, and the Hirer must continue to pay the Hire Payments for the remainder of the Hire Period.

10 VEHICLES

10.1 This clause 10 shall only apply in respect of Vehicles.

10.2 The Hirer shall, during the term of the Hire Contract:

10.2.1 undertake daily checks of the Vehicles in respect of all fluids, tyres (pressures and damage), lights, wipers, horn(s) and, if applicable, the correct operation of the crash cushion, signboard and auto impact brake system;

10.2.2 complete a daily Vehicle and Operator Services Agency compliant checklist of the Vehicles and make such checklists

available on Highway Care's reasonable request;

10.2.3 store the Vehicles safely and securely;

10.2.4 return the Vehicles at such address as Highway Care requires and with a full tank of fuel;

10.2.5 ensure that any person that drives or operates the Vehicles:

10.2.5.1 is sufficiently qualified and holds the appropriate licence for that type and class of vehicle; and

10.2.5.2 is not under the influence of, drugs and/or alcohol;

10.2.6 keep a record of all relevant details of any driver of the Vehicle including: name, licence details, date and time that the driver used the Vehicle;

10.2.7 promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of its use of the Vehicle during the Hire Period. Highway Care shall invoice the Hirer for such charges and administration fees in the event Highway Care pays them on behalf of the Hirer;

10.2.8 in the event of an accident occurring to the Vehicle during the Hire Period, record the circumstances of the accident, notify Highway Care as soon as reasonably practical after the event, not make any admission of liability, and fully co-operate with Highway Care and the insurer; and

10.2.9 not load the Vehicle in excess of the Vehicle's gross vehicle mass at any time.

10.3 The Hirer will be responsible, at its cost, for basic repairs, maintenance and replacements to the Vehicles including consumables, flat or damaged tyres, damaged windscreen wipers and damaged windscreens.

10.4 Highway Care is responsible for essential maintenance and repairs. The Hirer must return the Vehicle to Highway Care for such repairs. Highway Care shall use reasonable endeavours to provide an alternative Vehicle or a similar type for the duration of the repairs. If such alternative is not accepted by the Hirer, the Hirer may terminate the Hire Contract on written notice to Highway Care.

11 EQUIPMENT

11.1 Highway Care shall, at the Hirer's cost, install the Equipment in accordance with the Hirer's instructions for positioning of the Equipment.

11.2 The Hirer shall ensure the site of installation is safe, including without limitation, implementing reasonable measures for the observation of safe speed limits by drivers, for the installation, removal and repair of the Equipment and obtain all necessary approvals from any relevant authority or government body for such installation.

11.3 The Hirer must provide traffic control, adequate lighting and sufficient room for the safe unloading, positioning, removal and repair of the Equipment.

11.4 If the Equipment require anchoring to the road surface the Hirer must perform a survey to check for obstructions, cables, underground utilities and bridges to ensure the road surface is suitable for installation of the Equipment. A written report of the survey ("**Survey Report**") must be sent to Highway Care at least 10 Business Days prior to the scheduled installation to confirm no services will be affected by, and that the road surface is suitable for, the installation of the Equipment. Where the Hirer operates a permit system at the installation location, the Hirer shall issue to Highway Care such permits as Highway Care requires at least 10 Business Days prior to the scheduled installation to allow the installation of the Equipment. The Hirer shall indemnify and keep indemnified Highway Care against all losses, costs, charges, damages and expenses incurred as a result of claims made by third parties due to the installation or positioning of the Equipment.

11.5 Highway Care shall not be responsible for any delays in the installation of the Equipment if such delays are due to:

11.5.1 the acts or omissions of the Hirer;

11.5.2 a Force Majeure Event;

11.5.3 inclement weather;

11.5.4 a failure by the Hirer to provide the Survey Report within the timescale set out in clause 11.4; or

11.5.5 a lack of appropriate Hirer personnel or equipment present at the installation site.

11.6 The Hirer shall not move the Equipment , without the prior written consent of Highway Care and if such consent to move is provided ensure the safe loading, handling, securing and transporting of all Equipment in accordance

with all laws and manufacturer's guidelines, and any safety directions advised by Highway Care from time to time.

11.7 The Hirer shall allow Highway Care or its representatives access to the premises where the Equipment are located for the purpose of collecting the Equipment at the end of the Hire Period or on termination of the Hire Contract.

11.8 Highway Care shall repair and make good any superficial damage caused by the affixation or removal of the Equipment from any land or building but Highway Care accepts no other liability for damage to the carriageway nor will Highway Care clear or clean any accumulated debris that have collected under, near or on the Equipment or Systems.

12 WARRANTY

12.1 Highway Care warrants that the Equipment shall be of satisfactory quality and fit for any purpose set out in any Highway Care specifications. Highway Care shall use reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within 12 months from Delivery, provided that:

12.1.1 the Hirer notifies Highway Care of any defect in writing within ten (10) Business Days of the defect occurring;

12.1.2 Highway Care is permitted to make a full examination of the alleged defect;

12.1.3 the Hirer has not attempted to fix or repair the Equipment itself;

12.1.4 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than Highway Care's authorised personnel;

12.1.5 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Hirer or on its behalf; and

12.1.6 the defect is directly attributable to defective material, workmanship or design.

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

12.3 If Highway Care fails to remedy any material defect in the Equipment in accordance with clause 12.1, Highway Care shall, at the Hirer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Hire Payments payable during the remaining term of the Hire Contract.

13 LIABILITY

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

13.1.1 for death or personal injury caused by its own negligence; or

13.1.2 for fraud or fraudulent misrepresentation.

13.2 Subject to clause 13.1, Highway Care shall not be liable to the Hirer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of customers, loss of anticipated savings, loss of opportunity, loss or damage to goodwill, or for any indirect or consequential loss arising under or in connection with the Hire Contract in each case, however caused, even if foreseeable.

13.3 Subject to clause 13.1, Highway Care's maximum aggregate liability in respect of all other losses arising under or in connection with the Hire Contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed 100% of the Hire Payments made by the Hirer as applicable under the Hire Contract.

13.4 These Conditions set forth the full extent of Highway Care's obligations and liabilities in respect of the Equipment and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on Highway Care except as specifically stated in these Conditions. Any condition, warranty or other term concerning the Equipment which might otherwise be implied or incorporated into the Hire Contract, whether by statute, common law or otherwise, is expressly excluded.

13.5 The parties agree that in the business to business context of the Hire Contract between them that these limitations are reasonable and an appropriate apportionment of risk between the parties.

14 TERMINATION

14.1 Without affecting any other right or remedy available to it, either party may terminate the

Hire Contract on 14 days written notice to the other party.

14.2 Without affecting any other right or remedy available to it, either party may terminate the Hire Contract with immediate effect by giving written notice to the other party if:

14.2.1 the other party commits a material breach of any term of the Hire Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do;

14.2.2 the other party has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or the other party enters into or proposes any composition or arrangement with its creditors generally, or is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent or bankrupt or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction).

14.3 Without affecting any other right or remedy available to it, Highway Care may terminate the Hire Contract with immediate effect and repossess the Equipment in accordance with clause 15.1.1 by giving written notice to the Hirer if:

14.3.1 the Hirer fails to pay any amount due under the Hire Contract on the Due Date and remains in default not less than 7 days after being notified in writing to make such payment; or

14.3.2 the Hirer alters, modifies, tampers with, damages or repairs the Equipment without the prior written consent of Highway Care.

14.4 The Hire Contract shall automatically terminate if a Total Loss occurs in relation to the Equipment.

15 CONSEQUENCES OF TERMINATION

15.1 Upon termination of the Hire Contract, for any reason:

15.1.1 Highway Care's consent to the Hirer's possession of the Equipment shall terminate and Highway Care may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located; and

15.1.2 without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to Highway Care on demand:

15.1.2.1 all Hire Payments and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.7;

15.1.2.2 any costs and expenses incurred by Highway Care in recovering the Equipment and/or in collecting any sums due under the Hire Contract (including any storage, insurance, repair, transport, legal and remarketing costs) or otherwise enforcing any term of the Hire Contract.

15.2 Termination or expiry of the Hire Contract 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 Hire Contract which existed at or before the date of termination or expiry.

16 CONFIDENTIAL INFORMATION

16.1 Each party undertakes that it shall not at any time during the Hire Contract, and for a period of five years after termination 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 16.2.

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

16.2.1 with the prior written consent of the other party;

16.2.2 to its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under these Conditions. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 16;

16.2.3 if it can evidence to the satisfaction of the other party that the confidential

information was already in its possession;

16.2.4 if it can evidence to the satisfaction of the other party that the confidential information was disclosed by a third party and not in breach of any conditions of confidentiality;

16.2.5 is or becomes generally available to the public through no act or default on the part of the other party, its agents, employees or group companies; or

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

16.3 No party shall use any other party's confidential information for any purpose other than to perform its obligations under the Hire Contract.

17 GENERAL

17.1 **Force majeure:**

17.1.1 Subject to clause 17.1.2, neither party shall be liable to the other party as a result of any delay or failure to perform its obligations under the Hire Contract as a result of a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for more than 4 weeks, the party not affected may terminate the Hire Contract by giving 7 days written notice to the affected party.

17.1.2 Nothing in clause 17.1.1 will limit or exclude the Hirer's responsibility and liability under the Hire Contract for Equipment that is lost, stolen, damaged or worn beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of the acts or omissions of the Hirer.

17.2 **Assignment:**

17.2.1 Highway Care may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under the Hire Contract, provided that it gives prior written notice of such dealing to the Hirer.

17.2.2 The Hirer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Hire Contract without the prior written consent of Highway Care.

17.3 **Variation:** Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Hire Contract shall only be binding when agreed in writing and signed by Highway Care.

17.4 **No Partnership or Agency:** Nothing in the Hire Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

17.5 **Further Assurance:** Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to the Hire Contract.

17.6 **Third party rights:** Unless it expressly states otherwise, the Hire Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Hire Contract.

17.7 **Notices**

17.7.1 Any notice or other communication required to be given to a party under or in connection with the Hire Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first- class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, sent by fax to the other party's main fax number, or sent my email to the email addresses set out on the Hire Schedule.

17.7.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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 email, on the next Business Day after transmission.

17.7.3 This clause 17.7 shall not apply to the service of any proceedings or other documents in any legal action. For the

purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under the Hire Contract shall not be validly served if sent by e-mail.

17.8 **Waiver and cumulative remedies:** A waiver of any right under the Hire Contract 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 under the Hire Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

17.9 **Severance:**

17.9.1 If any provision or part-provision of the Hire 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 this the Hire Contract.

17.9.2 If provision or part-provision of the Hire 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.

17.10 **Governing Law & Jurisdiction**: This Hire 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.