

# PRESTEIGNE BROADCAST HIRE - 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 2% per month 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 PBH's 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 PBH in writing; "**Hire Period**" means the period during which Equipment or Services will be provided specified in any schedule or attachment, or such other period as agreed by PBH in writing; "**Hirer**" means the person, firm or company identified as such in this Agreement; "**Party**" means PBH or Hirer; "**PBH**" means Presteigne Broadcast (2016) Limited "**Services**" means the services or any of them which PBH 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 PBH and Hirer.

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

1.3. Any typographical or clerical error or omission in documents issued by PBH shall be subject to correction without liability on the part of PBH.

1.4. References to consent, agreement or approval of PBH and similar or equivalent expressions refer to the written consent, agreement or approval of PBH acting by a duly authorised officer.

## 2. Equipment Hire and Services

2.1. PBH 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 PBH and Hirer.

2.2. Unless otherwise agreed in writing by PBH, all Equipment supplied by PBH is supplied on hire in accordance with these Terms. As between the parties, ownership of Equipment shall remain at all times with PBH. 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 PBH otherwise agrees, Equipment will be collected from the offices of PBH 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 PBH and only on terms that Hirer indemnifies PBH in full against all loss (including loss of profit and reimbursement of all costs) incurred by PBH 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 PBH except as specifically contained in this Agreement.

2.6. PBH will use reasonable efforts to ensure Equipment is in good working order on delivery and of satisfactory quality and that any Services supplied by PBH will be provided using reasonable care and skill by persons of appropriate competence and training and in accordance with this Agreement. PBH 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 defect or deficiency is caused exclusively by PBH's negligence or breach of this Agreement. PBH 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 PBH 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 PBH 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 PBH'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 PBH and, if Equipment is lost, stolen, damaged or destroyed, until the Equipment has been replaced or repaired or PBH has been compensated in full.

3.3. PBH reserves right to appropriate any payments made (notwithstanding express appropriation by Hirer) to any sums payable to PBH 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 PBH, 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 PBH of any defect, loss or damage at any time;

4.1.3. ensure Equipment is only used in a safe manner by competent and appropriately trained persons without risk to health; in accordance with good practice and any instructions of the manufacturer or PBH 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 PBH, not attempt to modify or repair the Equipment, open the outer case (unless required in normal use) or remove any notices, serial numbers or other identifying marks on the Equipment;

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

4.1.6. if transit of Equipment is arranged by Hirer and subject to Clause 4.1.9, 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 PBH's personnel while on-site and conduct and provide PBH 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 PBH'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 PBH or its legal owner;

4.1.9. not take or allow any of the Equipment to be taken out of the United Kingdom without receiving prior written authority of PBH and, in the event that such authority is given, only on such terms as PBH deems fit;

4.1.10. where PBH'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, experience and training using reasonable care and skill.

4.2. Hirer hereby (notwithstanding termination of the Hire) indemnifies PBH against all claims, demands, liabilities, losses, damages, proceedings, costs and expenses whatsoever arising out of the possession, operation or use of Equipment (including, but not limited to, any loss or damage to the Equipment or any part of it) by or on behalf of Hirer provided that such indemnity shall not extend to liability caused by PBH's misconduct or negligent performance of its obligations under this Agreement or for death or personal injury caused by PBH's negligence.

## 5. Risk and Insurance

5.1. Equipment shall be at the risk of Hirer from time of delivery to Hirer or its carrier until its inspection and confirmation of receipt undamaged following return to PBH's premises. Hirer shall ensure Equipment is safely, securely and adequately packed for return transit to PBH. Hirer shall, unless proven otherwise, be liable for all loss or damage during transit to and/or from PBH even if transit is by PBH. PBH's driver or carrier is not able or authorised to inspect Equipment on collection. Hirer acknowledges that PBH is not bound by any receipt or confirmation signed on its behalf by PBH's driver or carrier in relation to the quantity or condition of Equipment returned.

5.2. Hirer shall at its expense insure with a reputable insurance company (naming PBH 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 PBH the insurance policy and receipt for current premium. If Hirer fails to provide evidence of insurance to PBH's satisfaction, PBH 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 PBH's 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 may be invalidated.

5.5. In event of loss of or damage to Equipment, Hirer shall immediately notify PBH, assist in making any appropriate insurance claim and, except with PBH's consent, not settle or compromise any claim against the insurer or any third party. Hirer hereby irrevocably authorises PBH 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. PBH accepts no responsibility for loss or damage to any equipment or materials of the Hirer or any third party, which PBH 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 for fraud.

6.2. Hirer acknowledges that electronic equipment may suffer breakdown or malfunction from time to time without fault and that consequences to Hirer of breach of this Agreement by PBH may be disproportionate to PBH's Hire Charges. Therefore, Hirer agrees that PBH'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 PBH's employees, agents and sub-contractors) shall be limited as follows:

6.2.1. PBH's total liability in respect of this Agreement shall not exceed the total Hire Charges payable by the Hirer except that in the case of recorded material, PBH's liability shall be limited to the cost of replacing blank media only and in the case of loss of or damage to physical property caused by PBH's negligence, PBH's liability shall be limited to £1,000,000.

6.2.2. except as provided in these terms, all conditions, warranties and representations concerning the Equipment, their state, quality, description, fitness for purpose or otherwise are excluded to the fullest extent permitted by law;

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

6.4. 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.

## 7. Termination

7.1. PBH 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 Hirer if: Hirer makes any voluntary arrangement with its creditors; Hirer (being an individual or firm) becomes bankrupt; (being a company) Hirer passes a resolution for its winding-up or a court of competent jurisdiction makes an order for the winding-up or the dissolution of Hirer; any steps are taken for the making of an administration order or the appointment of an administrator under the out-of-court procedure under the Enterprise Act 2002 or notice is given of an intention to appoint an administrator in relation to Hirer or any steps are taken for the appointment of a receiver or administrative receiver; Hirer goes into liquidation (other than for purposes of amalgamation or reconstruction); or an encumbrancer takes possession or receiver is appointed of any property or assets of Hirer; or Hirer ceases or threatens to cease to carry on business or causes or permits to be done any act or thing whereby PBH's rights in Equipment are prejudiced; or anything analogous under laws of any relevant jurisdiction; or PBH reasonably believes that any of the above is about to occur; or Hirer fails to pay any sums payable hereunder in full on the due date; or Hirer is in breach of this Agreement and (if capable of remedy) fails to remedy such breach within 7 days of notice by PBH.

7.2. 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 PBH of Hire Charges. Upon termination:

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

7.2.2. Hirer shall become immediately liable to pay to PBH 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 PBH in locating, repossessing or restoring Equipment and in collecting any sums due or otherwise in obtaining due performance of Hirer's obligations hereunder.

## 8. Force Majeure

8.1. PBH shall not be liable to Hirer for delay or failure due to any cause beyond PBH's 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 PBH 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.

## 9. Anti-Corruption

9.1. Each Party warrants and represents to the other that it has complied and will comply with all applicable laws relating to anti-bribery and anti-corruption and will promptly report to the other any request or demand for or offer of any undue financial or other advantage of any kind received by it in connection with this Agreement.

## 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 PBH and Hirer) or entitle any third party to enforce any provision of this Agreement.

10.4. Delay shall not prevent PBH 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 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 PBH 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 English law. The parties agree to submit to the non-exclusive jurisdiction of the English Courts