

# EQUIPMENT RENTAL AGREEMENT

## TERMS AND CONDITIONS OF HIRE

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this document, unless the context otherwise requires:

**Agreement** has the meaning provided in the Schedule.

**Australian Consumer Law** means:

- (a) Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* as applied as a law of the Commonwealth under section 131 of that Act; and
- (b) the Australian Consumer Law (WA) as defined in and applied as a law of Western Australia under section 19 of the *Fair Trading Act 2010 (WA)*.

**Dispute** means any dispute, question or difference of opinion between the parties arising out of or in connection with this Agreement.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, Security Interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or agreement in favour of any person, whether registered or unregistered.

**End Date** means the date specified as such in the Schedule or the date of return of the Equipment (as determined by the Owner), whichever is later.

**Equipment** means the equipment specified in the Schedule and any other equipment hired by the Hirer from the Owner, and includes any replaced, altered or substituted items.

**Fair Wear and Tear** means:

- (a) fading and discolouring of paint work;
- (b) metal oxidation,

strictly subject to the Equipment being operated and maintained in accordance with:

- (c) this Agreement;
- (d) the OEM guidelines and specifications for the Equipment; and
- (e) industry best practice,

as determined by the Owner in its sole and absolute discretion.

**Hirer** means the party specified in the Schedule and, as the context requires, includes its officers, employees, agents and contractors.

**Hire Period** means the period commencing on the Start Date and ending on the date the Equipment is returned to the Point of Hire, or an alternative location agreed between the parties.

**Hire Rate** means the rate stated as such in the Schedule.

**Hour Meter** means the hour meter of the Equipment.

**Law** means any Act, regulation, treaty, decree, convention, statute, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, including the rules or regulations of any recognised exchange.

**Manufacturer** means the manufacturer of the Equipment or an item of the Equipment, as the context requires.

**Owner** means Silvergate Holdings Pty Ltd (ACN 056 497 922) ATF The Power Equipment Unit Trust trading as EPE Cable Haul and includes, as the context requires, its officers, employees, agents and contractors.

**Owner's Wrongful Act** means a wilful default or fraudulent act of the Owner.

**Part** means any and all appliances, parts, instruments, appurtenances, accessories and other equipment of whatever nature constituting part of the Equipment or which may from time to time be incorporated or installed in, or attached to, the Equipment.

**Point of Hire** means the place specified as such in the Schedule.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*.

**PPS Register** means the Personal Property Securities Register established under the PPSA.

**Schedule** means the document entitled as such and specifying details of the Agreement.

**Security Interest** has the meaning given to it in the PPSA.

**Site** means the site specified as such in the Schedule.

**Start Date** means the date specified as such in the Schedule or the date of collection of the Equipment as agreed between the parties, whichever is the earlier.

**Terms and Conditions of Hire** means these terms and conditions, being clauses 1 to 27.

#### 1.2 Interpretation

Unless otherwise specified in this Agreement:

- (a) a reference to a party, clause, schedule, attachment or annexure in reference to this Agreement includes all schedules, attachments and annexures to it;
- (b) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (d) a reference to an opinion of the Owner means an opinion held by an officer or employee of the Owner in its sole and absolute discretion;
- (e) a reference to an obligation of the Hirer to pay money to the Owner or to indemnify the Owner means an obligation to pay or indemnify the Owner on demand;
- (f) a reference to an obligation of the Hirer to provide any document or information to the Owner means that such document or information is

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to be provided by the Hirer to the Owner on demand;

- (g) a reference to any approval, agreement, notice, demand or report means an approval, agreement, notice, demand or report in writing;
- (h) any notice required to be given under this Agreement must be given as soon as practicable after the occurrence of the event giving rise to the requirement;
- (i) where the context so requires or permits, a reference to the Equipment means all or part of the Equipment;
- (j) time is of the essence in respect of all of the Hirer's obligations under this Agreement;
- (k) where two or more persons are named as the Hirer then the obligations on their part will bind and be observed and performed by them jointly and each of them severally; and
- (l) nothing in the Agreement is to be interpreted against a party solely on the ground that the party put forward the Agreement or a relevant part of it.

## 2. AGREEMENT OF HIRE

### 2.1 General

- (a) The Owner hereby hires the Equipment to the Hirer, and the Hirer hires the Equipment from the Owner, for the Hire Period and subject to the terms of this Agreement.
- (b) The Hirer hereby acknowledges that any terms and conditions attached to any order made by the Hirer shall not form part of this Agreement and such order shall be deemed to be an acceptance of these Terms and Conditions of Hire and shall not constitute a counter-offer to the Owner.
- (c) These Terms and Conditions of Hire apply to all future agreements between the Owner and the Hirer unless otherwise agreed by the Owner in writing.

### 2.2 Collection

- (a) Unless specified otherwise in the Schedule, the Hirer must collect the Equipment from the Point of Hire, or an alternative location agreed between the parties, on the Start Date.
- (b) The Hirer must deliver, or arrange for delivery, of the Equipment to the Site directly from the Point of Hire, and the Equipment must not be removed from the Site until such time as it is returned directly to the Point of Hire at the end of the Hire Period.

### 2.3 Reports by the Hirer

- (a) The Hirer must provide to the Owner within 7 calendar days of the conclusion of each calendar month for the previous calendar month, and on the End Date, the following in relation to the Equipment:
  - (i) maintenance records evidencing compliance to the OEM recommendations and maintenance obligations of the Hirer, as set out in this Agreement, including but not limited to service sheets, inspections reports and breakdown reports; and
  - (ii) the Hour Meter reading.
- (b) The Hirer must provide written notice to the Owner of any breakdown or damage to the Equipment within 24 hours of any breakdown or damage.

### 2.4 Pre-delivery

- (a) The Hirer and the Owner will jointly inspect the Equipment prior to delivery of the Equipment, at a date and time nominated by the Owner.
- (b) During the inspection of the Equipment pursuant to clause 2.4(a), the Owner shall prepare a report (**Collection Report**) as to the condition of the Equipment before the Equipment is removed from the Point of Hire prior to the Start Date.
- (c) The Hirer and the Owner must each execute the Collection Report forthwith after its completion to signify their agreement to the contents of that report.
- (d) If the Hirer does not attend for pre-delivery inspection pursuant to clause 2.4(a), then the Hirer will be deemed to have agreed and accepted the Collection Report as executed by the Owner.
- (e) The Owner will provide to the Hirer a copy of the executed Collection Report.
- (f) If the Owner incurs any costs or expenses as a result of preparing the Equipment to the Hirer's site specifications, whether before or after the Equipment has departed the Point of Hire, the Hirer shall be liable for all such costs incurred by the Owner.
- (g) The parties agree that the Owner has made no representations or representation as to the suitability of the Equipment for the purpose intended by the Hirer, and the Hirer has entered into this Agreement in reliance upon its own judgment and investigations.
- (h) To the full extent permitted by Law, all conditions, warranties and guarantees that would be implied (by Law, customs or otherwise) are expressly excluded, however nothing in this Agreement excludes, restricts or limits a condition, warranty or guarantee that is implied under the Australian Consumer Law (or other applicable legislation) that cannot be excluded.
- (i) If any condition, warranty or guarantee is implied into this Agreement under the Australian Consumer Law (or any other applicable legislation) that cannot be excluded, then, to the extent permitted by the Australian Consumer Law (or other applicable legislation), the Owner's liability is limited to:
  - (i) in the case of goods:
    - (A) the replacement of the goods or the supply of equivalent goods;
    - (B) the repair of the goods;
    - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (D) the payment of the cost of having the goods repaired; or
  - (ii) in the case of services:
    - (A) the supplying of the services again; or
    - (B) the payment of the cost of having the services supplied again.

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## 2.5 Rates and Payment

- (a) The Hirer shall be liable to Owner for the Hire Rate in accordance with the Agreement for the duration of the Hire Period.
- (b) Unless otherwise agreed by the Owner in writing:
  - (i) the Hirer must hold a current, valid credit card issued by an Australian financial institution and provide relevant details of the credit card to the Owner; and
  - (ii) the Hirer authorises the Owner to charge Hire Rates against the credit card on Friday of each week.
- (c) The Hirer shall be liable for all fees charges by the issuer of its credit card.
- (d) If the Hirer's credit card cannot be charged for any reason (for example due to expiry of the credit card or insufficient funds) the Hirer authorises the Owner to attempt to charge the credit card again and/or request that the Hirer provides another payment method. The Hirer shall be liable for a fee of \$25 on each occurrence of the Hirer's credit card declining payment. The Hirer shall remain liable for any uncollected amounts.
- (e) If any money payable by the Hirer under this Agreement is not paid to the Owner in accordance with this Agreement then the Hirer must pay to the Owner interest at the rate of 10% per annum for the amount unpaid and for the period of non-payment.
- (f) The Hirer shall continue to pay the Hire Rate during the Hire Period in all circumstances, except for any duration which the Equipment is unavailable as a result of a failure by the Owner to comply with its obligations in clause 3.1(f).
- (g) In addition to the Hire Rate the Hirer shall pay any government charges or imposts levied in respect of this Agreement or anything done pursuant to this Agreement including any GST.

## 3. MAINTENANCE OF EQUIPMENT

### 3.1 Minor and major servicing

- (a) The Hirer, or its nominees, shall at its cost conduct all maintenance and servicing of the Equipment for which it is responsible under this Agreement in accordance with good operating practice and Manufacturers' recommendations.
- (b) The Hirer must ensure that all maintenance personnel performing work on the Equipment are suitably qualified and experienced, and hold any licences required to perform such maintenance.
- (c) The Hirer must keep the Equipment in good working order and condition at all times, Fair Wear and Tear excepted.
- (d) The Hirer is responsible for and shall bear the cost of all labour, materials and consumables associated with the servicing, maintenance and repair of the Equipment for which it is responsible under this Agreement.
- (e) In the event of the Hire Period being for a period of less than [90] days, the Owner must arrange and carry out scheduled servicing of the Equipment, and otherwise the Hirer must arrange and carry out scheduled servicing of the Equipment.
- (f) In the event of a fault of the Equipment having a material effect on the availability of the Equipment, subject to all documentation submitted by the Hirer in accordance with clause 2.2 demonstrating that the Hirer has complied with its maintenance and operation obligations set out in this Agreement, the Owner will be responsible for remedying the fault, except to the extent that such fault arises as a result of:
  - (i) the Equipment not being operated and maintained in accordance with:
    - (A) this Agreement;
    - (B) the OEM guidelines and specifications for the Equipment; or
    - (C) industry best practice; or
  - (ii) any act or omission of the Hirer,in which case the Hirer the Owner will be responsible for remedying the fault within the time directed by the Owner.
- (g) The Hirer shall be responsible for changing all engine oil (including labour, materials and consumables associated with each oil change) as required by the Manufacturer's specifications, and the Hirer must provide a schedule of oil samples and a report containing details of the oil change to the Owner within 24 hours of such event.
- (h) The Owner and its representatives shall be entitled to carry out any servicing and repairs that may be required on any site where the Equipment is located:
  - (i) which are the responsibility of the Owner pursuant to clause 3.1(e) or 3.1(f); or
  - (ii) which are the responsibility of the Hirer and which the Hirer fails to carry out in accordance with this Agreement, and the Hirer shall do all things required by the Owner to facilitate access for such servicing and repairs.
- (i) If the parties agree in writing that any repairs which are the responsibility of the Owner pursuant to clause 3.1(e) or 3.1(f) shall be carried out by the Hirer on the Owner's behalf:
  - (i) the Owner will forward a written purchase order outlining the details of the repairs to the Hirer;
  - (ii) the Hirer must carry out the repairs as soon as practicable after receipt of the purchase order, and after completion of the repairs invoice the Owner for payment of the amount stated in the purchase order which shall be payable by the Owner within 30 days of receipt of the invoice; and
  - (iii) the Hirer may not set-off or deduct any repair costs against any amount due from the Hirer to the Owner under this Agreement.

### 3.2 Replacement parts

- (a) The Hirer must, as soon as reasonably practicable:
  - (i) after becoming aware that a Part requires replacement, replace that Part; and
  - (ii) replace all Parts which may from time to time become worn, lost, stolen, removed, destroyed, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence.
- (b) Unless otherwise agreed in writing, all replacement Parts fitted to the Equipment or supplied by the Hirer shall be the property of the Owner.
- (c) The Hirer must ensure that all replacement Parts are:

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- (i) new and unused;
- (ii) fit for purpose;
- (iii) of merchantable quality;
- (iv) free of all Encumbrances; and
- (v) of a value and utility at least equal to the Parts replaced.
- (d) The Hirer shall be responsible for the capital cost and installation of all Parts required for the operation of the Equipment in accordance with this Agreement.
- (e) The Hirer must not, without the prior written consent of the Owner, make any replacement, alteration or addition of any nature to the Equipment.

## 3.3 Breakdown repairs

- (a) The Hirer shall conduct all repairs, for which it is responsible in accordance with this Agreement, in accordance with the Equipment Manufacturer's recommendations and at the Hirer's expense.
- (b) The Owner may serve on the Hirer a notice in writing of any defect or deficiency in the Equipment or its operation or both (whether or not that defect, or deficiency comes to the Owner's attention in the course of any inspection) requiring repair or replacement for which the Hirer is or may be responsible under this Agreement, that must be undertaken within the time stated in the notice.
- (c) If the Hirer fails to comply with the notice to the satisfaction of the Owner, the Owner may itself carry out those obligations, and the Hirer indemnifies the Owner for all costs, expenses, claims and losses arising from any such action by the Owner, which shall be carried out at the Hirer's risk.

## 4. LIABILITY FOR DAMAGE TO EQUIPMENT GENERALLY

### 4.1 Risk and damage

- (a) Risk in the Equipment passes to the Hirer at the time the Equipment is collected by the Hirer.
- (b) The Hirer is liable and responsible for the repair (or the cost of repair as appropriate) of any damage to the Equipment, except to the extent that such damage is caused by the Owner's Wrongful Acts.
- (c) The Hirer must give notice to the Owner of any damage to the Equipment within 24 hours of its occurrence.
- (d) For the avoidance of doubt, the Hirer must pay the Hire Rate for the duration of time that the Equipment is unavailable to be operated due to damage, except to the extent that such damage is caused by the Owner's Wrongful Acts.

### 4.2 Attachments

The Hirer must adhere to the Manufacturer's recommended use with respect to all attachments of the Equipment, as may be applicable.

### 4.3 Oil Sampling

- (a) The Hirer must adhere to the Manufacturer's recommended oil sampling analysis at every oil change period on all compartments.
- (b) The Hirer must provide the Owner with any oil sampling analysis details requested by the Owner at any time during the Hire Period.

### 4.4 Fuel and Lubricants

All lubricating oils and engine fuel used by the Hirer on or for the Equipment must be in accordance with the Manufacturer's recommendations.

## 5. RETURN OF EQUIPMENT

- (a) The Hirer must return the Equipment to the Point of Hire, or an alternative location agreed between the parties in writing, during normal business hours on or before the end of the Hire Period.
- (b) All oil reservoirs of the Equipment must be full on return of the Equipment.
- (c) The Hirer must ensure that the Equipment is returned to the Owner with a full fuel tank. If the Hirer fails to comply with its obligation in this clause 5(c) it shall be liable to the Owner for the cost incurred by the Owner of filling the fuel tank plus 15%.
- (d) The Hirer must return the Equipment in the condition set out in the Collection Report, Fair Wear and Tear excepted. The parties irrevocably agree that the condition of the Equipment stated in the Collection Report is a true and accurate description of the condition of the Equipment as at the Start Date.
- (e) The Hirer and the Owner will jointly inspect the Equipment following the End Date, at a date and time nominated by the Owner.
- (f) During the inspection of the Equipment pursuant to clause 5(f), the Owner shall prepare a report (**Delivery Report**) as to the condition of the Equipment at the End Date.
- (g) The Owner will provide to the Hirer a copy of the Delivery Report.
- (h) Any work that the Owner is required to undertake to repair or restore the Equipment to the condition:
  - (i) stated in the Collection Report; and
  - (ii) consistent with compliance by the Hirer of the terms of this Agreement,will be at the cost of the Hirer, and the Hirer indemnifies the Owner for all costs, expenses, claims and losses arising from any such action by the Owner.

## 6. USE OF THE EQUIPMENT GENERALLY

- (a) The Hirer must operate and maintain the Equipment in accordance with recognised methods and standards for Equipment of that type and only by competent and (where appropriate) properly qualified, trained, tested and licensed personnel and by appropriate methods and standards of operation.
- (b) The Hirer must comply in all respects with the instructions and recommendations of the Manufacturer or other supplier relating to the Equipment and its use.
- (c) The Hirer must properly and carefully store and protect the Equipment during the Hire Period.

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## 7. COMPLIANCE WITH LAWS

- (a) The Hirer must comply in all respects with all applicable Laws relevant to the safe and lawful operation of the Equipment and in discharging its obligations under this Agreement.
- (b) If any addition or alteration is required to be made to the Equipment in order to comply with applicable Laws during the Hire Period, the Hirer shall be liable for the costs incurred by the Owner for those additions and alterations.

## 8. INSPECTION OF THE EQUIPMENT BY OWNER

Subject to the Owner giving reasonable notice to the Hirer, the Owner will be entitled at all times to enter any premises or site where the Equipment is located with its employees, agents and experts to:

- (a) inspect the state of repair of the Equipment;
- (b) carry out such tests on the Equipment as required by the Owner;
- (c) observe the use of the Equipment;
- (d) inspect any maintenance records in respect of the Equipment; and
- (e) do any act, matter or thing which may be required to be done to give proper effect to the terms of this Agreement or to protect the Owner's rights in the Equipment, including but not limited to retaking possession of the Equipment if the Owner is so entitled.

## 9. INSURANCES

### 9.1 Hirer's obligations to insure

The Hirer at its cost must effect and maintain during the Hire Period and any extension thereof or during any period of holding over, policies of insurance as follows (together, the **Insurance Policies**):

- (a) **(equipment insurance)**: All risk insurance for all physical loss (including theft) and/or damage to the Equipment for its full insurable value as specified in the Schedule, including but not limited to whilst in transit. Such insurance shall name the Owner as owner and loss payee.
- (b) **(third party liability)**: Public and products liability insurance for a minimum of \$20,000,000 in respect of all third-party risks arising from, or in relation to the hire of the Equipment to the Hirer, including liability for damage or injury of any kind to any property or person. Such insurance will name the Owner and Hirer as co-insureds.
- (c) **(worker's compensation)**: Workers compensation and occupational/industrial disease and any other insurance required by any law relating to the Hirer's workers compensation liability to any person, including common law cover for not less than \$50,000,000. The Hirer shall ensure that the policy extends to include a principal's indemnity extension in favour of the Owner, and further that the policy provides a waiver of subrogation for "Act Benefits" and at common law.
- (d) **(other insurance)**: Any other insurance as required by law.

### 9.2 Conditions of Insurance

- (a) The Hirer shall provide the Owner with copies of the certificates of currency confirming its compliance with clause 9.1, prior to the Hirer taking possession of any Equipment.
- (b) The Hirer remains responsible for payment of any excess applicable under any of the Insurance Policies.
- (c) The Insurance Policies must be taken out with an insurer approved by the Owner in writing prior to the Hirer taking possession of any of the Equipment, which approval will not be unreasonably withheld.

## 10. DEFAULT AND TERMINATION

- (a) In the event of a breach of this Agreement by the Hirer the Owner may issue a written notice notifying the Hirer of such breach. The Owner is entitled to terminate this Agreement if the breach:
  - (i) is not reasonably capable of being rectified; or
  - (ii) has not been rectified within 7 days of the date of the notice to the satisfaction of the Owner.
- (b) If this Agreement is terminated pursuant to this clause 10 or otherwise as a result of any default or repudiation by the Hirer, the rights and liabilities of the parties will be the same as they would have been at law had the Hirer repudiated this Agreement and the Owner elected to treat this Agreement as at an end and recover damages.
- (c) Upon termination of this Agreement by either party, the Owner shall be entitled to all things required, including entering onto the Hirer's premises or any other place where the Equipment is located, to take possession of the Equipment.

## 11. EQUIPMENT IS USED AT HIRER'S RISK

- (a) The Hirer uses, operates and possesses the Equipment at the Hirer's sole risk. The Owner has no liability whatsoever for any loss or damage to any property of the Hirer or any third party arising from the use of the Equipment, except to the extent such loss or damage is caused by the Owner's Wrongful Act.
- (b) To the fullest extent permitted by Law the Hirer releases and discharges the Owner, its related entities, agents and employees from all claims and demands of whatsoever nature for loss or damage caused to or incurred by the Hirer in relation to this Agreement whether by way of death of, or injury or illness to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise or any accident to or involving the Equipment or its use, operation, repair, maintenance or for which may otherwise be suffered or sustained in, upon or near the Equipment, except to the extent caused by the Owner's Wrongful Acts which:
  - (i) arise from or relate to the use of the Equipment; or
  - (ii) arise from or relate to this Agreement.

## 12. INDEMNITY

The Hirer will save, keep harmless and indemnify the Owner from and against any and all claims, actions, proceedings, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise of whatsoever kind and nature (including claims based upon strict liability in tort):

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- (a) arising out of or alleged to arise out of the delivery, selection, acceptance or rejection, possession, use (including by reason of the use or incorporation of any invention resulting in infringements of patents), repair, maintenance, storage, or operation, of the Equipment, and by whomsoever used or operated (except where used by the Owner);
- (b) incurred by the Owner in respect of any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment;
- (c) arising out of any claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against the Owner in connection with the Equipment or its operation; or
- (d) arising out of a breach of this Agreement by the Hirer, except to the extent caused by the Owner's Wrongful Act.

## 13. CONSEQUENTIAL OR INDIRECT LOSS

The Owner shall not be liable to the Hirer, its servants or agents or contractors for any indirect, incidental, consequential or punitive or special losses, expenses or damages of any nature howsoever caused (whether based on tort or contract or otherwise) suffered by the Hirer or any other persons or entity, including but not limited to loss of turnover, loss of profits, loss of revenue, loss of production, loss of product, loss of sales opportunity or business reputation, loss of goodwill, increased financing costs, delay costs payable to third parties, direct or indirect labour costs, overhead expenses, or damage to equipment or property.

## 14. FORCE MAJEURE

### 14.1 Force Majeure Event

The Owner shall have no liability to the Hirer for any delay or failure of performance by the Owner, where such delay or failure is caused by an event or circumstance (or combination of events or circumstances) that:

- (a) is beyond the reasonable control of the Owner; and
- (b) causes or results in prevention of the performance by the Owner of any of its obligations under this Agreement, (**Force Majeure Event**).

### 14.2 Actions during Force Majeure

The Owner must:

- (a) within a reasonable period of time notify the Hirer of the details of the Force Majeure Event, the date it commenced, and an estimate of the time required to resume full performance of its obligations;
- (b) use reasonable diligence to promptly remedy or abate the Force Majeure Event;
- (c) resume performance as quickly as possible after the Force Majeure Event has terminated, or abated to an extent that permits it to resume performance (in whole or in part); and
- (d) notify the Hirer when the Force Majeure Event has terminated or abated to an extent that permits it to resume performance (in whole or in part) and promptly revise such notice as required.

## 15. RETENTION OF TITLE

### 15.1 Retention of title

The Hirer acknowledges that:

- (a) it takes the Equipment by way of bailment only;
- (b) it does not have an option to purchase the Equipment;
- (c) no representation has been made by the Owner to the Hirer that the Hirer may purchase the Equipment at any time; and
- (d) title in the Equipment remains with the Owner at all times throughout the Hire Period.

### 15.2 Owner's Security Interest

- (a) The Hirer acknowledges that the hire of Equipment under this Agreement may give rise to a Security Interest by the Owner in the Equipment.
- (b) The Hirer acknowledges that the Security Interest may be or include a purchase money security interest (as that term is defined in the PPSA) in the Equipment and any proceeds from its sale.
- (c) The Owner may register any Security Interest created under this Agreement on the PPS Register in any manner it chooses. The Hirer must provide the Owner with any information it requires for the purposes of effecting such registration.
- (d) The Hirer irrevocably and unconditionally waives its right to receive any verification statement or other notice from the Owner in connection with the registration of a Security Interest arising under this Agreement.
- (e) The Hirer agrees to take any steps the Owner requires to perfect or otherwise ensure the enforceability and priority of any Security Interest of the Owner created under this Agreement or in connection with the Equipment.
- (f) Unless otherwise agreed in writing, the Hirer must ensure that the Equipment does not become a fixture to any land.
- (g) The parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply in relation to a Security Interest in the Equipment to the extent, if any, mentioned:
  - (i) section 123 (right to seize collateral);
  - (ii) section 125 (obligation to dispose of or retain collateral);
  - (iii) section 126 (apparent possession);
  - (iv) section 128 (secured party may dispose of collateral);
  - (v) section 129 (disposal by purchase);
  - (vi) sections 130, 132(3)(d) and 132(4) (right to be provided with a statement of account);
  - (vii) subsection 134(1) (retention of collateral); and
  - (viii) section 135 (notice of retention).

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## 16. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties and any prior agreements, understandings and negotiations in respect hereof are of no effect.

## 17. NOTICES

- (a) Any notice or demand to be given under this Agreement will be deemed to be duly given if it is in writing and:
  - (i) in the case of the Hirer, sent by email to the email address specified for the Hirer in the Schedule; and
  - (ii) in the case of the Owner, sent by email to the email address specified for the Owner in the Schedule.
- (b) Any process for the institution of proceedings by the Owner against the Hirer in respect of a cause of action arising under this Agreement shall be deemed sufficiently served if sent to the Hirer in the manner prescribed in this clause 17.

## 18. GOVERNING LAW

This Agreement will be construed in accordance with the Laws of the State of Western Australia and the Commonwealth of Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia.

## 19. DISPUTE RESOLUTION

### 19.1 Notice of Dispute

Where a party first becomes aware that a Dispute has arisen, it must notify the other party in writing of the existence and nature of the Dispute (**Dispute Notice**).

### 19.2 Conference

Promptly after the date of receipt by the other party of the Dispute Notice and in any case within 7 days (**Notice Date**), the Owner Representative and the Hirer Representative must meet to discuss and attempt to resolve the Dispute.

### 19.3 Litigation

- (a) If the Dispute process referred to in clause 19.2 does not resolve the matter within 21 days of the Notice Date, then unless otherwise agreed in writing by the parties, either party may commence court proceedings.
- (b) This clause 19 shall not affect the right of a party to seek urgent injunctive relief from a court of competent jurisdiction.

## 20. CONFIDENTIALITY

- (a) The terms and conditions of this Agreement and all information exchanged between the parties under or in connection with this Agreement is confidential (**Confidential Information**).
- (b) Each party undertakes that neither it nor its employees may disclose any Confidential Information to a third party, other than:
  - (i) with the written consent of the other party;
  - (ii) to the extent required by Law or by order of any arbitrator, court or tribunal of competent jurisdiction or by a direction or requirement of any government agency or stock exchange;
  - (iii) to any of the following persons:
    - (A) the party's employees, officers or legal counsel or a related body corporate of the party or an employee, officer or legal counsel of the related body corporate;
    - (B) the party's independent consultants and contractors, agents, financiers, auditors and insurers provided that such persons have made an undertaking of confidentiality to the party in favour of both parties on terms similar to this clause 20; and
    - (C) a genuine prospective assignee or acquirer of the party (or a related body corporate of the party) or its rights or obligations under this Agreement and their financiers, consultants and advisers, provided the party obtains an undertaking of confidentiality from such persons in favour of both parties on terms similar to this clause 20.
- (c) Without limitation clause 20(a), neither party may disclose information of the kind referred to in section 275(1) of the PPSA and this clause constitutes a confidentiality agreement within the meaning of the PPSA. The Hirer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.

## 21. VARIATION

This Agreement may only be varied by a document signed by or on behalf of each party.

## 22. EXPENSES

Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

## 23. WAIVER

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Agreement by the Owner does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Agreement.
- (b) A waiver or consent given by the Owner under this Agreement is only effective and binding on the Owner if it is given or confirmed in writing by the Owner.
- (c) No waiver of a breach of a term of this Agreement operates as a waiver of another breach of that term or of a breach of any other term of this Agreement.

# EQUIPMENT RENTAL AGREEMENT

## 24. ASSIGNMENT

- (a) The Hirer must not assign, novate or otherwise transfer (**Dispose**) any of its rights or obligations under this Agreement without the prior consent of the Owner, such consent to be provided in the Owner's sole and absolute discretion. Nothing in this Agreement prevents the Owner from Disposing any of its rights or obligations under this Agreement.
- (b) A party that Disposes of any of its rights or obligations under this agreement must require the party in whose favour the rights or obligations are disposed to enter into a deed agreeing to be bound by the party's obligations under this Agreement.

## 25. GST

- (a) Unless clearly indicated to the contrary, "GST" and other terms used in this clause 25 (and in other provisions of this Agreement where the GST meanings are expressly intended) have the meanings ascribed to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* or any replacement or other relevant legislation and regulations.
- (b) If GST is payable by a person in relation to any supply that it makes under, in connection with or resulting from this Agreement (**Supplier**), the parties acknowledge and agree that:
  - (i) any consideration provided for that supply under this Agreement other than under this clause 25(b) or any value deemed for GST purposes in relation to that supply (**Agreed Amount**) is exclusive of GST (unless otherwise stated);
  - (ii) an additional amount will be payable by the recipient of that supply (**Recipient**) that is equal to the GST payable on that supply;
  - (iii) the additional amount is payable in the same manner as for the Agreed Amount and at the same time as any part of the Agreed Amount is to be first provided for that supply; and
  - (iv) the Supplier will provide a tax invoice to the Recipient.
- (c) If, following the payment of an additional amount pursuant to clause 25(b) in relation to a supply made by the Supplier, the GST payable by the Supplier to the Australian Taxation Office in respect of that supply varies from the total consideration provided by the Recipient to the Supplier on account of GST on that supply such that:
  - (i) the Supplier is required to pay a further amount of GST in respect of that supply; or
  - (ii) the Supplier receives a refund or credit of the whole or any part of the GST paid by the Supplier in relation to that supply,then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the Recipient (as appropriate). Any payment, credit or refund under this clause 25(c) is deemed to be a payment, credit or refund of the additional amount payable under clause 25(b). Where there is an adjustment event, the Supplier must issue an adjustment note to the Recipient as soon as the Supplier becomes aware of the adjustment event.
- (d) Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) This clause 25 will not merge on completion of this Agreement.

## 26. LIMITATION OF LIABILITY

- (a) Notwithstanding any other provision of this Agreement, but subject to clause 26(b), and to the maximum extent permitted by law, the Owner's overall liability:
  - (i) under, or arising out of, or in connection with this Agreement;
  - (ii) otherwise at law or in equity, including by statute, to the extent permitted by law:
    - (A) in tort for negligence or otherwise;
    - (B) on any other basis whatsoever,shall not exceed twenty per cent (20%) of the amount paid by the Hirer pursuant to this Agreement.
- (b) The limitation of liability referred to in clause 26(a) does not apply to liability for direct loss arising from liability which, by law, the Owner cannot contract out of.

## 27. SURVIVAL

Clauses 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 21, 23, 25, 26, 27 and any other provision intended to survive termination or expiry or required to give effect to termination will survive termination or expiry of this Agreement.