



Cross Hire Agreement

(for hires between hire businesses allowing sub-hire)

The entities in Part A of the Schedule

The entities in Part B of the Schedule

Disclaimer: This document is not legal advice or a substitute for legal advice on any particular transaction. The issues dealt with by this document are complex. Members should always seek their own legal advice on the implications for their businesses. To the full extent permitted by law the Association and its legal advisers Bartier Perry disclaim all liability of any kind for any loss in respect of use of this document.

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Date 202

Parties

The entities in Part A of the Schedule

The entities in Part B of the Schedule

Background

- A Each of the parties is in the business of hiring Equipment. Each party may be an Owner or Hirer depending in whether it is hiring, or getting a hire of, Equipment from the other party.
- B Each Owner acknowledges that each Hirer may on-hire Equipment to third parties and by doing that enter into Sub-Hires.
- C Each of the parties wishes to agree to hire terms acceptable to the others.
- D The parties have therefore entered into this agreement to document their relationship, to provide for the documentation of all hires, to facilitate Sub-Hires, and to provide protections to each Owner.

Operative Provisions

1 Interpretation

1.1 In this agreement, unless the context otherwise requires:

Business Day means, a day on which trading banks are generally open for business in Sydney.

Chattel Paper means 'chattel paper' as defined in PPS Law created in respect of Sub-Hires.

Commencement Date means the date specified in the Hire Docket or such other date as the Owner and the Hirer agree.

Event of Default means any of the things specified as such in clause 11.

Equipment means equipment (including vehicles and all kinds of goods) as well as parts, components, accessories and things at any time attached to or used in connection therewith and includes but is not limited to things suitable for use in:

building; cleaning; cooling; heating; entertainment; waste management; landscaping and gardening; plumbing; fencing; covering; lifting; transporting; access; compression; fluid management; welding; compaction; earthmoving; floor care; generation; power distribution; shoring; propping; lighting; safety; storage; accommodation; traffic management. Vehicles may include but not are limited to cars, utes, trucks, vans and trailers, earthmoving equipment, materials handling and access equipment.

Hirer means a person named in a Part when hiring Equipment from a person named in another Part.

Hire Docket means in respect of a hire a document in a form reasonably required by the Owner and which contains the material particulars of the hire including particulars of the Equipment.

Location means the place specified in a Hire Docket and includes any place where the Owner reasonably believes the Equipment to be.

Owner means a person named in a Part when hiring Equipment to a person named in another Part. A person can be an Owner whether or not the person has legal title to Equipment.

Part means Part A or Part B of the Schedule.

PPS Law means the Personal Property Securities Act 2009 (Cth) and its related and delegated legislation including the provisions in the Corporations Act 2001 (Cth) relating to Security Interests.

PPSR means the Personal Property Securities Register under the PPS Law.

Rate means the Reserve Bank of Australia cash target rate from time to time plus a margin of 2% per annum.

Related Body Corporate means as defined in the Corporations Act 2001 Cth.

Rent means the Rent specified in a Hire Docket or otherwise detailed by the Owner and includes all charges associated with the hire of the Equipment.

Rent Payment Dates means the dates specified in the Hire Docket or otherwise detailed by the Owner.

Return Address means the address set out in the Hire Docket or such other address as is reasonably notified by the Owner.

Security Agreement means as defined in the PPS Law.

Security Interest means as defined in the PPS Law.

Secured Obligations means the obligations of the Hirer under this agreement and any hire provided for or arising pursuant to or on the terms of this agreement including but not limited to the Hirer's obligations:

- (a) to pay Rent and other amounts;

- (b) to comply with clause 14 and ensure the protection of the Hirer's and the Owner's interest in Equipment under PPS Law;
- (c) to ensure the return of the Equipment to the Owner.

Sub-Hire means, a hire under which the Hirer hires to any other person Equipment hired to the Hirer by the Owner.

Sub-Hire Agreement means an agreement for a Sub-Hire.

Sub-Hire Assets means all the Hirer's rights in respect of Sub-Hires including the relevant Chattel Paper and all rights in respect of the relevant Sub-Hire Agreements and including rights under PPS Law.

Term means, subject to this agreement, a period commencing on the Commencement Date and expiring at the time shown in the Hire Docket.

User means the person who hires Equipment under a Sub-Hire.

2 Hire

- 2.1 A Hirer may ask an Owner to hire Equipment to the Hirer and the Owner may agree to do so. The Owner may require the Hirer to complete and sign a Hire Docket as a condition of any hire.
- 2.2 The Hire Docket is not a separate contract but is part of this agreement to hire. It is also a Security Agreement for PPS Law purposes in respect of any hire under it that is a Security Interest because the PPS Law applies.
- 2.3 The Owner retains full title to the Equipment and the Hirer only has a right to use it as bailee. The Hirer acknowledges that no representation has been made by or on behalf of the Owner to the Hirer that the Equipment may be purchased from the Owner at any time, or that it may be retained after the end of the Term.

3 Delivery of Equipment

- 3.1 On and from the Commencement Date and at the Hirer's own expense, the Hirer shall take possession of the Equipment. The Owner may agree to deliver the Equipment and may impose its usual charges (or if no such usual charge is ascertainable, a reasonable charge) for delivery.
- 3.2 The Owner gives no warranty or representation as to the date of delivery of the Equipment. The Hirer's obligation to make all payments will not be affected by any delay in delivery, except any delay directly caused by the Owner.
- 3.3 The Hirer acknowledges that the Hirer must inspect the Equipment and satisfy itself as to its condition, quality, safety and (where applicable) roadworthiness, its fitness for the Hirer's purposes and its compliance with description.

4 Location of Equipment

- 4.1 Provided there is no Event of Default by or in respect of the Hirer, the Hirer need only disclose the postcode of the Location and not its exact address.
- 4.2 The Hirer must not remove the Equipment from the Location specified in the Hire Docket or any other place to which the Owner has previously consented to its removal without the Owner's prior written consent in each instance.

5 Rent and Other Payments

- 5.1 The Hirer must pay instalments of Rent on each Rent Payment Date.
- 5.2 The Hirer must pay all rates, taxes, licence and other fees, penalties, fines, demands, charges or costs, stamp and other duties and registration fees and assessments (**Costs**) imposed at any time directly or indirectly upon the Equipment or the hire by a government authority or any other third party provided that:
- (a) those Costs relate to an act, omission or an event that occurred during the Term, and
 - (b) the Owner supplies the Hirer with all necessary information to attend to the timely payment of those Costs.
- 5.3 The Hirer must pay all maintenance and operating expenses in respect of the Equipment except any which the Owner expressly agrees to pay.
- 5.4 The Hirer has no authority to and shall not pledge the Owner's credit or create, as grantor, any Security Interest in respect of the Equipment.

6 Method of payment and Interest

- 6.1 Each payment to the Owner must be made in immediately available funds by midday on its due date by direct debit to an account nominated by the Owner or at such other place or by such other means as the Owner may from time to time direct in writing.
- 6.2 Where any Rent or other money payable by the Hirer under this hire is not paid to the Owner in the manner required on or before its due date for payment interest will be payable on the outstanding amount. That interest will be calculated on a daily basis at the Rate until the overdue sum is paid. It will be payable on demand.
- 6.3 The Hirer's obligation to make all payments in respect of hire and the right of the Owner to such payments is absolute and unconditional. In particular, the Hirer must continue to make all payments due from the Hirer under this document in respect of Rent or otherwise in the event of damage to, or destruction of, the Equipment unless this agreement is terminated or the damage or destruction is the fault of the Owner. Payments will not otherwise be subject to any reduction, set-off, defence, counter-claim or recoupment of any kind whatsoever.

7 Exclusion of Liability

- 7.1 If the Competition and Consumer Act 2010 (Cth), any sale of goods legislation or any comparable legislation of any other State or Territory applies to this document, certain conditions and warranties may be implied into this document which cannot be excluded, restricted or modified by agreement (the **non-excludable terms**).
- 7.2 The Hirer agrees in relation to any non-excludable terms that the Owner's liability is, where permitted, limited, at the absolute discretion of the Owner, to:
- (a) the replacement (or the cost of replacement) of the Equipment; or
 - (b) the supply (or the cost of supply) of equivalent Equipment; or
 - (c) the repair (or the cost of repair) of the Equipment.
- 7.3 Subject to the preceding sub-clause, the Hirer agrees that to the full extent permitted by law, the Owner gives no warranty or representation about:
- (a) the condition or quality of the Equipment including, without limitation, latent and other defects, whether or not discoverable by the Owner or the Hirer;
 - (b) the suitability or fitness of the Equipment for ordinary or any special use or purpose;
 - (c) whether the Equipment corresponds to any description of it; or
 - (d) any other matter.
- 7.4 To the extent permitted by law, the Owner will not under this agreement or any other law be liable for special, indirect or consequential loss or damage as a result of a breach by the Owner of this document or otherwise in respect of any hire including, but not limited to, loss of profits or revenue, the costs arising from the loss of use of the Equipment and the costs of any substitute Equipment which the Hirer acquires.

8 Possession, Use and Maintenance of Equipment

- 8.1 Unless otherwise agreed, the Hirer will be responsible for the daily maintenance and operational checks of the Equipment, including without limitation daily checking of all fluids (fuel, oils, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings, lubrication of all (grease) points and proper inflation of tyres.
- 8.2 Daily maintenance does not include scheduled servicing, which means the carrying out of periodic servicing and checking of the Equipment in accordance with the manufacturer's recommendations and regulatory authority requirements. The Owner will be responsible for such scheduled servicing.
- 8.3 At the election of the Owner, and excluding fair wear and tear, the Hirer must either promptly replace, or pay for, all Equipment parts which may become worn out, lost, stolen, compulsorily acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage. All replacement parts will be

the property of the Owner. The Hirer must ensure that all replacement parts are of a high standard and are free of all liens and rights of others.

- 8.4 The Hirer will be fully responsible to the Owner for any loss of or damage to the Equipment (however occasioned) other than loss or damage which is the Owner's fault. The Hirer must give immediate notice to the Owner in writing of any loss or damage.
- 8.5 The Hirer must only operate the Equipment or allow it to be operated in accordance with recognised methods and standards by competent and properly qualified personnel. In particular, the Hirer must comply in all respects with all laws and safety rules and with the instructions and recommendations of the Owner or other manufacturer or other supplier relating to the Equipment and to its use.
- 8.6 The Hirer will at all times comply with the reasonable requirements of the Owner as to any repair, removal or replacement or the remedying of any deficiency of the Equipment.
- 8.7 The Hirer must before delivery of the Equipment or relocating it at any place do all things at its own expense (including obtaining a waiver by any person who owns or has an interest in any relevant place) that the Owner regards as necessary to ensure that no such person shall obtain any interest in the Equipment as a fixture or otherwise. The Hirer must not affix or secure the Equipment upon or to any land or premises unless its use so requires and the prior written consent of the Owner has been obtained in relation to that place. If the place is owned by the Hirer the Equipment is deemed not to be a fixture and the Equipment may be removed by the Owner. If the Owner becomes entitled to possession of the Equipment, the Owner will also be entitled to enter any place at any time for the purpose of removing the Equipment and will not be liable in respect of all reasonable loss or damage arising from such entry or from the removal of the Equipment.
- 8.8 The Hirer shall keep attached to the Equipment all marks and branding identifying it as the Owner's property. The Hirer must not without the Owner's prior written consent, remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Equipment.

9 Insurance

- 9.1 The Hirer shall at its own cost effect and maintain during any Term (including any extension of any Term and any holding over) the following insurances with a reputable insurer with a minimum Standard and Poors rating of A minus:
- (a) insurance of the Equipment for its full insurable value against damage or destruction of any kind including damage caused by fire, accident, malicious damage, or theft; or other risks commonly insured against having regard to the nature of the Equipment;
 - (b) insurance against liability, loss or damage to third parties, including liability for injury and damage to property and public risk insurance, such cover to be effected for an amount no less than \$20 million or such greater amount as may be reasonably stipulated by the Owner from time to time; and

- (c) insurance against such other risks as the Owner may reasonably stipulate.

9.2 The Hirer shall:

- (a) promptly pay all premiums and stamp duty in relation to all policies of insurance and provide to the Owner on demand certificates of currency or such other evidence as the Owner may reasonably require to satisfy itself that the Equipment is fully and properly insured; and
- (b) not do or allow anything to be done which could prejudice any insurance policy or claim under any insurance policy.

10 Hire Term, Extensions and Holding Over

- 10.1 A Hirer may make a written request to the Owner to vary the Term until a particular date. The Owner is not obliged to agree. If the Owner agrees to grant the Hirer's request the Owner may also notify the Hirer of a revised Rent.
- 10.2 If the Hirer continues in possession of the Equipment after the expiration of the Term or sooner termination of this agreement, the Hirer is liable to pay a rental equal to the amount determined from time to time by the Owner or, in the absence of such a determination, a rental equal to the Rent then current. However, this clause does not mean that the Owner agrees to continued possession. All other terms and conditions set out in this document will be deemed to apply.
- 10.3 If any hire under this document is a Security Interest and the Owner does not have both:
- (a) at the date of delivery of any Equipment to the Hirer; and
 - (b) within 20 business days of this agreement,
- a PPSR registration ensuring a perfected first priority Security Interest in the Equipment, then the period of hire (including any or the aggregate of consecutive hire periods during which the Hirer has substantially uninterrupted possession and including any option periods) may not despite anything else in this agreement or any Hire Docket be longer than two years or any other period which is the threshold period for a PPS lease under the PPS Law.

11 Events of Default

- 11.1 Each of the following events is an Event of Default, of the:
- (a) Hirer:
 - (i) if the Hirer fails to pay Rent or other moneys payable in respect of a hire of Equipment or otherwise owing under this agreement on the due date for payment and such failure continues for more than five (5) Business Days after the Owner gives written notice to the Hirer of the failure and demands the amount due;

- (ii) without limiting any other sub-paragraph, if a review of the Hirer's practices in respect of Sub-Hire and PPS Law discloses that the Hirer has failed, or may reasonably be thought to have failed, to comply with clause 14;
 - (iii) if any execution or other process of any court or authority is issued against or levied upon the Equipment (other than as a result of any act or omission on the part of the Owner), and
- (b) either party:
- (i) if a party fails to perform or observe any of its other obligations under this document (other than a failure of the type contemplated by the above sub-paragraph (a)) and (if capable of remedy) such default continues for more than ten (10) Business Days after notice from the other party requiring the party in default to remedy the same;
 - (ii) if an application for the winding up or bankruptcy of a party or its Related Body Corporate or any entity named in the same Part as that party is presented and not promptly withdrawn or set aside; or
 - (iii) if an administrator, receiver or receiver and manager or provisional liquidator of the undertaking or any part of the undertaking of a party or any Related Body Corporate of that party or any entity named in the same Part as that party is appointed.

12 Consequences of Default

12.1 If an Event of Default occurs by or in respect of a party (**Defaulting Party**):

- (a) the party that is not in default may, at its option, exercise its rights under this agreement including:
 - (i) enforcing performance by the Defaulting Party of the applicable provisions of this agreement and/or recovering damages for the breach concerned; or
 - (ii) terminating this agreement and any one or more of all hires under it by notice in writing to the Defaulting Party. Upon service of such notice all rights of the Hirer to or in the use of the Equipment will terminate and the Owner may, directly or by its agent or contractor, take possession of the Equipment; and
- (b) the Hirer must if the Owner asks give the Owner any Chattel Paper or other documents containing all or any part of the Sub-Hire Assets or relating to any of the Sub-Hire Assets and provide the Owner with full particulars of all dealings and transactions between the Hirer and the User in respect of each Sub-Hire.

12.2 The Hirer must at any time after there is an Event of Default by or in respect of the Hirer:

- (a) tell the Owner the exact Location of the Equipment;
- (b) ensure that the Owner can enter with its servants, agents and experts upon or into the Location and remove the Equipment if the Owner desires;
- (c) let the Owner inspect the state of repair of the Equipment, observe and test it; and
- (d) let the Owner inspect any maintenance records in respect of the Equipment.

12.3 Termination of this agreement does not affect any accrued rights or liabilities of any party under this document nor does it affect any provision of the document which is expressly or by implication intended to operate after termination.

13 Return of Equipment

- 13.1 Upon the expiry of the Term or termination of a hire the Hirer must immediately deliver the Equipment, at the Hirer's expense, appropriately protected and in the condition required by this agreement to the Return Address.
- 13.2 If the Equipment is not returned to the Owner when required by this clause, the Owner may retake possession of the Equipment. For that purpose the Owner and its employees and agents may also, without notice, liability or legal process, enter the Location and remove and detach or dismantle the Equipment from any part of the Location to which the Equipment has been affixed.

14 Dealings and Sub-Hire

- 14.1 The Hirer must not without the Owner's prior written consent agree, attempt, offer or purport to sell, assign, lend, create (as secured party) any Security Interest over, let on hire, bail or otherwise part with or attempt to part with the personal possession of or otherwise deal with the Equipment except as expressly permitted by the Owner.
- 14.2 The Owner hereby consents to Sub-Hire by the Hirer but only on the conditions of this clause 14.
- 14.3 Each Sub-Hire must be pursuant to a written Sub-Hire Agreement in a form that a prudent hire business would be expected to use.
- 14.4 The Hirer must take all steps including registration under PPS Law as may be required to:
- (a) ensure that any Security Interest arising under or in respect of the Sub-Hire is enforceable, perfected by registration and otherwise effective under the PPS Law;
 - (b) ensure that the Security Interest of the Owner is perfected at all times subject only to any rights of a User contemplated by this agreement;
 - (c) prevent the Security Interest from vesting in the User or anyone else;

- (d) enable the Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed to by the Owner in writing) for the Security Interest; and
- (e) enable the Owner and the Hirer to exercise their respective rights in connection with the Security Interest.

14.5 If the Hirer does not have both:

- (a) at the date of delivery of any Equipment under a Sub-Hire; and
- (b) within 20 business days of the Sub-Hire Agreement,

a PPSR registration ensuring a perfected first priority Security Interest in the Equipment, the period of hire (including any or the aggregate of consecutive hire periods during which the User has substantially uninterrupted possession and including any option periods) must not be longer than two years or any other period which is the threshold period for a PPS lease under the PPS Law.

14.6 The Owner may appoint a consultant (including an accountant or lawyer) to audit the Hirer's compliance with this clause and the Hirer must give the consultant access to all relevant records and documents of the Hirer in respect of Sub-Hires. The Owner must instruct the consultant not to disclose to the Owner the name of any User unless this agreement permits or requires the identity of the User to be disclosed to the Owner. If the consultant determines that there has been a breach by the Hirer of this clause 14 the Hirer must reimburse the Owner for the costs of the consultant.

14.7 The Hirer is not obliged to disclose the name of a User to the Owner unless there is an Event of Default. At any time after there is an Event of Default, the Hirer must ensure that the Owner is provided at all times with up-to-date information about every Sub-Hire including the identity of the User, the terms of and state of accounts and payment under the Hirer and the User and the location and condition of the Equipment.

14.8 To assure performance of its obligations under this agreement, the Hirer hereby gives the Owner an irrevocable power of attorney exercisable at any time after an Event of Default to do at the Hirer's cost anything the Owner considers the Hirer should do under this agreement.

15 Security interest over Sub-Hire Assets

15.1 For the purpose of securing performance of the Secured Obligations the Hirer hereby grants the Owner a Security Interest in present or future Sub-Hire Assets.

15.2 The Security Interest granted under clause 15.1 includes but is not limited to a transfer of the present or future Chattel Paper in respect of the Sub-Hire Assets and the Hirer agrees to transfer the Chattel Paper accordingly.

15.3 For the purposes of section 153 of the PPS Law, the Owner authorises the Hirer to act as the Owner's nominee in respect of registration under PPS Law of any Security Interest in favour of the Hirer which is transferred to the Owner under this agreement

- but in respect of which the Hirer is shown as the secured party on the PPSR. This authority ceases when:
- (a) the relevant registration is transferred to the Owner; or
 - (b) the Owner expressly terminates the authority.
- 15.4 The Hirer must do everything the Hirer can to make sure that the Sub-Hire Assets are not forfeited, vested, extinguished, cancelled or varied.
- 15.5 The Hirer must get Owner's written consent before the Hirer:
- (a) transfers the Sub-Hire Assets; or
 - (b) creates another Security Interest in connection with the Sub-Hire Assets or allows one to arise; or
 - (c) waives any of the Sub-Hire Assets or releases any person from their obligations in connection with the Sub-Hire Assets in a manner that may adversely affect the interests of the Owner in any Equipment.
- 15.6 If Owner consents to another Security Interest in the Sub-Hire Assets and Owner asks, then the Hirer must enter into an agreement acceptable to Owner regulating the priority between this agreement and any other Security Interest.
- 15.7 After an Event of Default has occurred, Owner may do anything else the law allows Owner to do as the holder of a Security Interest including suing the Hirer. The Owner may also appoint one or more receivers to part or all of the Sub-Hire Assets and/or do anything that a receiver could do.
- 15.8 The receiver is the Hirer's agent unless Owner notifies the Hirer that the receiver is to act as Owner's agent. The Hirer is solely responsible for anything done, or not done, by a receiver and for the receiver's remuneration and costs.
- 15.9 Unless the terms of appointment restrict a receiver's powers, the receiver may do one or more of the following:
- (a) take or give up possession of the Sub-Hire Assets as often as it chooses;
 - (b) receive all money payable in connection with the Sub-Hire Assets;
 - (c) anything else the law allows an owner or a receiver of the Sub-Hire Assets to do, (including, if the Hirer is not a corporation, anything the law would allow a receiver to do if the Hirer were a corporation incorporated or deemed to be incorporated under the Corporations Act) and also including selling or exercising rights in connection with it or making a claim under the Sub-Hire Assets.
- 15.10 The Hirer must at its expense do any further act and execute any further documents which the Owner may reasonably request in order to protect the Owner's title to the Equipment and its rights in respect of the Sub-Hire Assets and under this document and PPS Law.

16 PPS Law

- 16.1 The parties acknowledge that by entering into this agreement they are providing for the terms of hires that will occur or are likely to occur and that it will promote flexibility in the terms of those hires if each party's actual or potential interest is protected for PPS Law purposes. Each party named in a Part agrees to each party named in another Part making a registration on the PPSR against it (including as a purchase money security interest) and waives any right to make any claim for compensation against a registering party if it turns out there is no Security Interest in fact.
- 16.2 Each party making a registration against another party must consult with the other party in good faith as to the particulars of registration and in particular the collateral description so that the registration is no wider in its terms than reasonably required to protect the interests of the registering party. However this does not prevent an Owner taking any steps it reasonably considers are urgently required to perfect any actual or impending Security Interest.
- 16.3 The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of ensuring that any Security Interest of an Owner is enforceable, perfected and otherwise effective as a first priority security interest under the PPS Law.
- 16.4 The rights of Owner under this agreement are in addition to and not in substitution for Owner's rights under any other applicable law (including the PPS Law) and Owner may choose whether to exercise rights under this agreement, and/or under such other law, as it sees fit. The Hirer agrees that in addition to any rights of the Owner under PPS Law, the Owner may, if there is default by the Hirer, seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this agreement and the Hirer agrees that the Owner may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 16.5 Sections 95 (notice of removal of accession to the extent it requires Owner to give a notice to the Hirer) and section 96 (retention of accession) of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement to the extent they could otherwise apply.
- 16.6 The Hirer waives:
- (a) any notice that the Owner would be obliged to give it under PPS Law but for this clause, including a notice under Chapter 4 (to the extent if any that Chapter 4 applies);
 - (b) any time period that must otherwise elapse before the Owner or any receiver exercises a right or remedy under PPS Law; and
 - (c) its right to receive notice, including notice of a verification statement, in relation to registration events under section 157 of the PPS Law.
- 16.7 Solely for the purpose of allowing to the Owner the benefit of section 275(6) of the PPS Law, the Owner and the Hirer agree that neither of them must disclose

information of the kind that can be requested under section 275(1) of the PPS Law if it is requested under that section.

- 16.8 For the purposes of section 153 of the PPS Law, each person named in a Part appoints each other person named in that Part jointly and separately as its nominee in respect of any PPSR registration made in respect of any Hirer and authorises that nominee to act on its behalf in connection with that registration. This authority can be terminated at any time by the person giving it.

17 GST

- 17.1 Any consideration or amount payable under this agreement, including, but not limited to, any rental, fees and non-monetary consideration, is exclusive of GST unless the contrary is expressly stated or clearly agreed. If GST applies to a supply by a party under this agreement the recipient party must pay an amount equal to the GST at the same time and to the same extent as any other consideration for the supply is payable or if earlier when the supplier party becomes liable to pay or allow credit against that GST.
- 17.2 Any consideration shown as GST-inclusive on the basis of an assumed rate of GST must be increased or decreased under this clause if the rate of GST increases or decreases.
- 17.3 A supplier party seeking payment of any amount including (or increased to include) GST must give the recipient party, a valid tax invoice for GST included therein.
- 17.4 If an adjustment event arises in connection with a supply made under this agreement, the supplier must give the recipient an adjustment note in accordance with the GST law.
- 17.5 If this agreement requires one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

18 Risk and Indemnities

- 18.1 The Hirer agrees to use, operate and possess the Equipment at the Hirer's risk and bears the entire risk of loss and damage to the Equipment from any cause whilst the Equipment is on hire or being recovered from hire except a cause which arises from an act or omission of the Owner. If the Equipment is lost or damaged whilst at the Hirer's risk, the Hirer agrees to pay the Owner:
- (a) any costs incurred by the Owner to recover and repair or replace the Equipment; and
 - (b) the Rent for the period of time it takes for the Equipment to be repaired or replaced.

- 18.2 The Hirer releases the Owner to the full extent permitted by law from all claims in respect of any loss or damage arising directly or indirectly from a breakdown of, or defect in, the Equipment or any accident to or involving the Equipment where the claims do not arise from an act or omission of the Owner.
- 18.3 The Hirer indemnifies the Owner and its agents and employees from and against all duties, taxes, damages, penalties, claims, actions, losses, liabilities, legal costs or other expenses (including legal fees reasonably incurred), whether in respect of property or persons, or otherwise:
- (a) which may arise in respect of the hire of the Equipment to the Hirer, or the possession, condition, use or operation of the Equipment by the Hirer or any other person, except where arising from something the Owner does or fails to do or from things beyond the reasonable control of the Hirer,
 - (b) arising from any breach by the Hirer of this document; or
 - (c) incurred by the Owner resulting from any seizure, distress, execution, extinguishment, confiscation, vesting or forfeiture of the Equipment whilst on hire to the Hirer.
- 18.4 The indemnities contained in this clause will continue in full force notwithstanding the expiry or termination of this agreement.
- 18.5 If a hire is a standard form small business contract under the Australian Consumer Law, the indemnities must not be applied to the extent that they are unfair under that law.

19 Notices and other communications

- 19.1 Notices, certificates, consents, approvals and other communications in connection with this agreement must be in writing. If the Hirer is a corporation, communications from the Hirer must be signed by a director or another person the Owner approves.
- 19.2 They may be:
- (a) given personally (if they are for the Hirer and the Hirer is a corporation, to one of the Hirer's directors; if they are for Owner, to one of Owner's employees at the office where the Hirer arrange this agreement or any other office Owner tell the Hirer); or
 - (b) left at the address last notified;
 - (c) sent by prepaid post to the address last notified; or
 - (d) sent by fax to the fax number last notified; or
 - (e) sent by email to email address last notified; or
 - (f) given in any other way permitted by law.

- 19.3 They take effect from the time they are received unless a later time is specified in them.
- 19.4 If they are sent by post, they are taken to be received three days after the date of posting.
- 19.5 If they are sent by a fax machine that produces a transmission report, they are taken to be received at the time shown in a transmission report that indicates that the whole fax was sent.

20 Certificates

- 20.1 Owner may give the Hirer a certificate about a matter or about an amount payable in connection with this agreement
- 20.2 The certificate is sufficient evidence of the matter or amount if the Owner acts reasonably and fairly in giving it, unless it is proved to be incorrect.

21 How Owner may exercise Owner's rights

- 21.1 If the doing or execution of any thing by the Hirer requires the Owner's consent, it may be given conditionally or unconditionally or may be withheld by the Owner in its absolute uncontrolled discretion.
- 21.2 If the Owner or a receiver do not exercise a right or remedy fully or at a given time, Owner or the receiver can still exercise it later.
- 21.3 The Owner's rights and remedies under this agreement may be exercised by any of Owner's directors, any of Owner's employees whose job title includes the word "manager" or any other person Owner authorises.

22 Trustee provisions

- 22.1 The Hirer makes the following declarations if the Hirer enters into this agreement, or owns any of the Sub-Hire Assets, as trustee of any trust or settlement:
- (a) this agreement is for the benefit of the trust;
 - (b) the Hirer is the sole trustee of the trust;
 - (c) the Hirer has authority to enter into this agreement;
 - (d) the Hirer has the right to be fully indemnified out of the trust assets for obligations incurred under this agreement;
 - (e) no action has been taken or proposed to terminate the trust;

- (f) a true copy of the trust deed and other documents relating to the trust has been provided to the Owner if requested and those documents disclose all the terms of the trust; and
- (g) the Hirer has not delegated any of the Hirer's powers as trustee or exercised any power of appointment.

22.2 The Hirer must tell Owner whenever anything happens that would prevent the Hirer truthfully repeating all these declarations (unless the Owner consents to that thing happening).

23 Governing law and submission to jurisdiction

- 23.1 This document will be construed in accordance with the law of the State or Territory in which it is executed by the Owner and the law of such State or Territory will be the proper law of the contract.
- 23.2 The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory and any courts which may hear appeals therefrom.

24 General

- 24.1 The provisions in this document state all the rights and all the obligations of the Hirer and the Owner and supersede all negotiations and prior agreements in respect of the subject matter of this document.
- 24.2 Where the Hirer or Owner comprises more than one person who act together in respect of a hire, this document binds and benefits them jointly and each of them severally.

Schedule 1

| Part A | | | |
|---------------|------------|----------------------------------|----------------|
| Name | ACN | Name and ABN of any trust | Address |
| | | | |
| | | | |
| | | | |
| Part B | | | |
| Name | ACN | Name and ABN of any trust | Address |
| | | | |
| | | | |
| | | | |

Fair Trading Act 1987 (NSW) – Information for Hirers

To the extent permitted by law, the provisions of this document:

- *provide that you (the Hirer) are liable for the loss of, or damage to, the equipment that we (the Owner) hire to you;*
- *provide that you indemnify us for claims in relation to the hired equipment unless caused by us or something beyond your reasonable control;*
- *exclude all warranties and guarantees about the hire and the equipment unless we expressly give them, to the extent it is permitted under law for us to exclude liability that way;*
- *limit our liability for consumer guarantees to supplying the relevant goods or services again or the cost of doing so where it is permitted under law for us to limit liability that way, and*
- *exclude our liability for indirect or consequential loss to the extent it is permitted under law for us to limit liability that way.*

Executed as an agreement

Executed by The entities in Part A of the Schedule in accordance with section 127 of the *Corporations Act 2001* (Cth) by its authorised officers:

Signature of director

Signature of director/secretary

Name

Name

Executed by The entities in Part B of the Schedule in accordance with section 127 of the *Corporations Act 2001* (Cth) by its authorised officers:

Signature of director

Signature of director/secretary

Name

Name