

HIRE APPLICATION

HIRER DETAILS

IF THE HIRER IS A COMPANY, THE GUARANTEE IN ANNEXURE 2 MUST BE COMPLETED AND SIGNED

Name:	ACN:	ABN:	D.O.B: / / <small>(where Hirer is an individual)</small>
Phone:	Fax:	E-mail:	
Contact Person:		Position:	

PERIOD OF HIRE

Commencement Date: / /	Mobilisation Date: / /	Demobilisation Date: / /
-------------------------------	-------------------------------	---------------------------------

EQUIPMENT TO BE HIRED

Wet Hire Rate: \$ / / / hour day week month	Operator Rate: \$	Deposit: \$
Dry Hire Rate: \$ / / / hour day week month	Stand Down Rate: \$ / / / Hour day week month	

SITE DETAILS

Site Location: <small>(where equipment is to be used)</small>
Project:
Hirer's Authorised Site Representative (name and position):

MOBILISATION AND DEMOBILISATION COSTS – EQUIPMENT

Mobilisation: \$
Demobilisation: \$

INVOICING AND PAYMENT

Number of days from date of invoice: 7 / 14 / 21 / 30 (circle which is to apply) Other:			
Account to which payment to be made:	BSB:	A/C number:	A/C name:

EXECUTION OF AGREEMENT

The Owner and the Hirer agree to the hire of the Equipment on the terms shown above and in the Standard Hire Terms and conditions provided with this document.

Signed by the Owner by their duly authorised signatory:	Signed by the Hirer by their duly authorised Signatory who warrants they have authority to sign for and bind the Hirer:	
Date:	Date:	

OFFICE USE ONLY

Approved by: _____	[name and position]	Date Approved: / /
Interest registered on PPSR? <input type="checkbox"/> Yes <input type="checkbox"/> No		

WARNING: IF TERMS OF HIRE EXCEEDS 89 DAYS OR IS FOR AN INDEFINITE PERIOD INTEREST MUST BE REGISTERED ON THE PPSR

1. DEFINITIONS

- 1.1 **"Agreement"** means the agreement between the Owner and the Hirer comprising the covering Hire Application, the Standard Hire Terms and Conditions and Guarantee.
- 1.2 **"Commencement Date"** means the Commencement Date specified in the Hire Application.
- 1.3 **"Demobilisation Costs"** mean the monies payable as specified in the Hire Application in respect of the removal of the Equipment (including loading, if any) from the Site (or other location as nominated by the Hirer).
- 1.4 **"Demobilisation Date"** means the Demobilisation Date specified in the Hire Application or if this is a periodic hire agreement under clause 2.2, means the Demobilisation Date nominated by the Hirer in accordance with clause 2.2(c).
- 1.5 **"Dry Hire"** means the hire of the Equipment under clause 2.1, where no Operator is to be provided by the Hirer.
- 1.6 **"Equipment"** means the items of plant and equipment described in the Equipment section of the Hire Application and any replacement for that Equipment and includes all parts and accessories attached to or forming part of the Equipment and all modifications and repairs to the Equipment irrespective of whether such parts and accessories were attached to or became part of the Equipment or such modifications and repairs were carried out, prior to or during the term of this Hire Application.
- 1.7 **"Expiry Date"** means the later of:-
- the Demobilisation Date;
 - the date upon which the Hirer returns possession of the Equipment to the Owner;
 - where the Equipment has been stolen, destroyed or otherwise damaged beyond repair, and is the subject of a successful insurance claim for the full value of the Equipment, the date on which the Owner or the Hirer's insurer pays to the Owner the proceeds of such insurance claim; or
 - where the Equipment has been stolen, destroyed or otherwise damaged beyond repair, and is the subject of a successful claim by the Owner for the cost of replacement of the Equipment, the date that the Hirer pays to the Owner the amount of that claim
- 1.8 **"GST"** has the same meaning as that term appears in the *A New Tax System (Goods and Services) Act 1999*, as amended from time to time.
- 1.9 **"Guarantor"** means the individuals named in the guarantee attached to these terms and conditions.
- 1.10 **"Hirer"** means the entity described as Hirer in the Hire Application and includes its successors and permitted assigns.
- 1.11 **"Hire Fee"** means the amount payable by the Hirer pursuant to this Agreement as calculated by reference to clause 3.1;
- 1.12 **"Hire Period"** means the period beginning on the Commencement Date and ending on the Expiry Date.
- 1.13 **"Insolvent"** means in the case of a company, that the company enters into voluntary administration, administration, provisional liquidation, liquidation (and whether or not the company enters into any deed of company arrangement) or has receivers and/or managers appointed to it or to any of its assets or undertakings or passes a resolution to wind up. And in the case of a natural person means the person becomes bankrupt, or enters into any personal insolvency agreement under the *Bankruptcy Act 1966*.
- 1.14 **"Mobilisation Costs"** mean the monies payable as specified in the Hire Application in respect of the delivery of the Equipment (including unloading, if any) and/or an Operator to the Site (or other location as nominated by the Hirer).
- 1.15 **"Mobilisation Date"** means the Mobilisation Date specified in the Hire Application.
- 1.16 **"On-Hire"** means when the Equipment is being used by the Hirer and in which case the relevant Hire Rate and/or Operator Rate (if applicable) applies.
- 1.17 **"Operator"** means labour personnel provided by the Owner to the Hirer pursuant to clause 5.
- 1.18 **"Owner"** means *Mineforce Australia Pty Ltd ACN 080 955 648*, and includes its substitutes, successors and assigns.

- 1.19 **"PPSA"** means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.
- 1.20 **"PPSR"** means the Personal Properties Security Register.
- 1.21 **"Site"** means the Site Location referred to in the Hire Application and includes all areas of the land and parts thereof above and below the surface of that land and all buildings and structures built on or below that land.
- 1.22 **"Stand Down"** means when a Stand Down Rate is provided in the Hire application and the Hirer has given a Stand Down notice in accordance with clause 6 and is not using the Equipment, however still requires the Equipment to be available for use.
- 1.23 **"Stand Down Rate"** means the rate set out in the Hire Application.
- 1.24 **"Wet Hire"** means the hire of the Equipment under clause 5, whilst an Operator is provided by the Owner and available to operate the Equipment.
- 1.25 **Terms Used in Hire Application**
Where a capitalised term is used in the Hire Application and is also used in these Terms of Agreement but is not defined in clause 1, then the relevant term shall incorporate the information completed in the Hire Application for that term.

2. HIRE OF THE EQUIPMENT**2.1 Hire and Term**

The Owner agrees to hire the Equipment to the Hirer without provision by the Hirer of an Operator (unless clause 5 applies) and the Hirer agrees to hire the Equipment for the Hire Period (as may be extended) in accordance with this Agreement.

2.2 Periodic Hire

- This clause 2.2 applies where the Hire Application shows the Equipment is hired on an hourly, daily, weekly or monthly basis and a Demobilisation Date is not specified.
- The Equipment is hired on a periodic hire from the Commencement Date:
 - for hourly, daily or weekly hire – on a week to week basis; or
 - for monthly hire – on a monthly basis, until the Hirer gives notice under clause 2.2(c).
- The Hirer must give the Owner at least 7 days' notice in writing of its proposed Demobilisation Date for a weekly hire, or at least 14 days' notice for a monthly hire.
- Unless otherwise agreed to in writing, the weekly or monthly Hire Fee shall be payable for the full duration of the notice period provided for in clause 2.2(c) notwithstanding that the Expiry Date may not fall at the end of a full week or month.
- Where the Hire Application does not specify a Demobilisation Date, the Demobilisation Date for a periodic hire is 12 weeks from the Commencement Date unless otherwise agreed in writing.

2.3 Holding Over

- Where the Hirer (or its servants, agents, contractors or employees) retains possession of the Equipment after the Demobilisation Date with the express consent of the Owner (other than pursuant to the grant of an extension of the Hire Period), then
 - the Hirer does so on a week to week term from the last day of the hire period, terminable on one day's notice in writing to the Hirer, subject always to the Owner's rights to terminate in respect of any default by the Hirer; and
 - the Hirer will be liable to pay the Hire Fee and any additional hire charges for the period that the Equipment remains in the Hirer's possession and until it is returned to the Owner's business premises.
- Subject to clause 2.3(a), the hire shall continue on the same terms and conditions as are contained in this Agreement.

2.4 Extension of Agreement

Any extension of the Hire Period must be agreed to in writing.

2.5 Hire Continues until Expiry Date

The hire under this Agreement and the obligation on the Hirer to pay the Hire Fee continues until the Expiry Date, even if it is later than the Demobilisation Date.

3. HIRE FEE & OTHER PAYMENTS**3.1 Deposit and Mobilisation Fee**

The Hirer will pay to the Owner the Deposit and the Mobilisation Fee upon entering into this Agreement. The Owner will not mobilise the Equipment or make it available for collection until the whole of the Deposit and the Mobilisation Fee are paid to the Owner in full in cleared funds. The Deposit shall be applied to the last amounts payable by the Hirer to the Owner under this Agreement.

3.2 Hire Fees

- (a) Dry Hire: The Hirer shall pay to the Owner the Dry Hire Rate for each applicable period from the Commencement Date until the Expiry Date except for such periods as the Equipment is on Wet Hire or Stand Down.
- (b) Wet Hire: The Hirer shall pay to the Owner the Wet Hire Rate shown in the Hire application for each applicable period that the Equipment is on Wet Hire.
- (c) Stand Down Rate: If the Stand Down Rate in the Hire Application is completed, the Hirer shall during times the Equipment is on Stand Down pay to the Owner the Stand Down Rate and clause 6 shall apply.

3.3 Subject to clause 3.4, the Hirer will pay to the Owner the Hire Fee upon being issued with an invoice by the Owner for the hire period (or any part thereof) and will do so in accordance with the period specified in the hire application and if nothing is stated, within 30 days from the date of invoice.

3.4 The Owner reserves the right to require the Hirer to pay for all or part of the Hire Fee:

- (a) upon delivery of the Equipment to the Hirer or to its nominated representative; or
- (b) prior to delivery of the Equipment.

3.5 Payment of the Hire Fee will be made by the Hirer by cash, bank cheque or by credit card (which may incur a surcharge of up to 1.5%), or by direct credit to the Owner's nominated bank account, or by any other method agreed to between the Hirer and the Owner.

3.6 The Hire Fee as stated as due and owing on any invoice issued by the Owner to the Hirer shall be conclusive evidence of that amount which is payable by the Hirer to the Owner on the due date.

3.7 GST and other taxes and duties that may be applicable shall be added to the Hire Fee except to the extent that they are expressly included in the Hire Fee. The parties shall issue (where applicable) tax invoices for any taxable supply.

3.8 Interest will accrue (and the Owner reserves the right to charge for same) at the rate of 10% per annum calculated daily, on all amounts owing by the Hirer from the date that payment of that amount was due, until the date that payment is received by the Owner. The Owner may, in its sole and absolute discretion, apply payments made by the Hirer in satisfaction of interest first, and then to the balance of overdue monies.

4. DELIVERY AND COLLECTION OF EQUIPMENT

4.1 Delivery of the Equipment will be deemed to occur on the earlier of the following, either:

- (a) when the Hirer takes possession of the Equipment at the Owner's address; or
- (b) when the Hirer takes possession of the Equipment at the Site or other location as nominated by the Hirer; or
- (c) when the Hirer's agent or nominated representative takes possession of the Equipment, whether that taking of possession occurs at the Owner's business premises or the Hirer's premises,

and risk will pass to the Hirer upon delivery irrespective of the operation of clause 17.

4.2 At the Owner's sole and absolute discretion, the costs of delivery and collection (if any) will be either:

- (a) included in the Hire Fee; or
- (b) in addition to the Hire Fee in which case, such Mobilisation Costs and Demobilisation Costs will be specified in the Hire Application.

4.3 The Hirer will make all arrangements necessary to take possession of the Equipment when tendered for delivery. In the event the Hirer is unable to take delivery, the Owner may charge a fee for re-delivery.

4.4 The Owner shall not be liable to the Hirer if the Equipment cannot be delivered due to any acts of God (including fire, flood, earthquake, storm, cyclone or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone service. The Hirer shall not be entitled to terminate the Agreement in such circumstances.

4.5 Subject to clause 4.4, the Owner will only be liable for its failure to deliver the Equipment (or to make it available for collection), to an amount equal to or less than the Hire Fee paid by the Hirer under this Agreement (if any) and no damages will be payable by the Owner beyond the Hire Fee paid (if any).

4.6 Upon delivery of the Equipment and at the end of the hire period, the Hirer and the Owner shall jointly inspect the Equipment and record the details of the inspections in writing. In the event of any damage to the Equipment (fair wear and tear excepted which shall be determined in the Owner's sole discretion), the indemnity in clause 15 shall apply.

5. WET HIRE WARRANTIES

5.1 This clause 5 applies where the Hirer advises the Owner that the Hirer wishes the Owner to provide an Operator to operate the Equipment for part or all of the Hire Period and the Owner agrees to providing an Operator.

5.2 Whilst the Equipment is operated by an Operator provided by the Owner, the Equipment shall be subject to Wet Hire.

5.3 If the Owner and the Hirer agree that for any period the Equipment is on Wet Hire, but the Owner cannot procure or maintain the provision of an Operator, then for the period the Owner is unable to provide an Operator, the Equipment shall be deemed to be on Dry Hire whilst it is operating, or on Stand Down whilst it is not operating.

5.4 In the event of dispute as to whether Equipment has been on Wet Hire or Dry Hire or Stand Down, the onus shall be on the Hirer to show that the Equipment at the relevant time was not operated by an Operator provided by the Owner.

5.5 For the avoidance of doubt, the parties agree that the Operator provided by the Owner does not need to be an employee of the Operator.

5.6 Unless otherwise agreed, where the Site is more than 50 kilometres outside Townsville, the Wet Hire Rate shall be exclusive of the Operator's accommodation and meal allowances. The Hirer shall in addition to the Wet Hire Rate provide and pay for the Operator's accommodation and meals whilst the Operator is working on Site, or reimburse to the Owner reasonable accommodation and meal allowances paid to the Operator immediately after being invoiced the amount by the Owner.

5.7 If the Hirer on reasonable grounds objects to the Operator nominated by the Owner entering or remaining on Site, the Hirer may give to the Owner a notice in writing that states:-

- (a) the grounds for that objection;
- (b) whether the Hirer wishes for the Operator to cease work immediately, or allow them to continue until an alternate Operator is available;

5.8 Upon receipt of the notice in accordance with clause 5.7 if the notice is reasonable:

- (a) the Owner will ask the Operator to leave the Site as requested by the Hirer; and
- (b) if the Hirer reasonably establishes that the Operator is incompetent or has committed a criminal act or recklessly negligent act or omission, the Equipment shall be subject to Stand Down whilst the Owner sources a replacement Operator, or else the Equipment shall revert to Dry Hire until a replacement Operator is provided.

5.9 Whilst a Wet Hire Operator remains on site, the Hirer shall be entitled to give reasonable directions to that Operator in connection with workplace health and safety and the performance of the work being undertaken by them, provided that such directions are not illegal and do not endanger the Operator or the Equipment or subject the Equipment to undue

- wear and tear or operate beyond its capacity or reasonable tolerances.
- 5.10 Where the Owner notifies the Hirer that the Operator of the Equipment is authorised to take possession and control of the Equipment or to remove the Equipment from Site, the Hirer must yield possession and control of the Equipment to the Operator and must not prevent or obstruct the Operator from removing the Equipment from Site.
- 5.11 Where the equipment is subject to Wet Hire:
- (a) the Owner warrants that:
 - (i) the Operator shall be suitably trained, appropriately qualified and licensed to operate the Equipment;
 - (ii) the Operator shall attend any required Site inductions and shall be required by the Owner to adhere to safe working procedures whilst at Site;
 - (iii) in the event the Operator's employment is terminated by the Owner, a suitable replacement Operator will be provided as soon as is reasonably possible.
 - (b) the Hirer acknowledges and agrees that:
 - (i) it shall be responsible for arranging any necessary Site inductions for the Operator and will bear all costs associated therewith including but not limited to time spent by the Operator attending such inductions;
 - (ii) in relation to a docket completed by the Operator showing hours worked:
 - A. a docket signed by the Hirer's authorised representative shall be conclusive evidence that the job has been completed to the Hirer's satisfaction and that the hours worked by the Operator are true and correct;
 - B. if the Hirer disputes the docket in any way it shall, within seven (7) days of the date shown on the docket, give written notice to the Owner setting out the reasons for the Hirer's refusal to sign the docket. The parties agree to act reasonably and attempt to resolve the dispute amicably within seven (7) days after the Owner receives the Hirer's written notice and clause 28 may apply;
 - C. in the event any docket is not signed within seven (7) days and the Hirer has not given to the Owner a written notice pursuant to the immediately preceding sub-subparagraph, then the Hirer is deemed to have accepted the docket as being conclusive evidence that the job has been completed to the Hirer's satisfaction and that the hours worked are true and correct;
 - (iii) in the event Equipment breaks down or becomes bogged, inoperable or unsafe to use as a result of instructions or directions given by the Hirer, the indemnity in clause 15 shall apply;
 - (iv) it shall be responsible for marking the location of all services (and expose sufficient parts of them), to enable the Operator to prevent the Equipment coming into contact therewith. The Hirer is liable for any damage occasioned to any service including but not limited to, drains, pipes, sewers, mains, electric or other cables (above or below ground) and the indemnity in clause 15 shall apply.
- 6. STAND DOWN**
- 6.1 This clause 6 applies only where the Hire Application is completed to indicate a Stand Down Rate.
- 6.2 The Equipment is deemed to be On-Hire unless written notice is given by the Hirer to the Owner notifying the Owner that the Hirer will Stand Down the Equipment.
- 6.3 The notice referred to in sub-paragraph 6.2 must state:
- (a) the date when the Hirer will Stand Down the Equipment;
 - (b) the estimated duration of the Stand Down of the Equipment; and
 - (c) the hours recorded on the hour meter of the Equipment at the time that the Stand-Down commenced (if applicable).
- 6.4 If the Hirer gives the Owner the notice referred to in sub-paragraph 6.2 then the Equipment shall be on Stand Down until further written notice is given by the Hirer to the Owner notifying that the Equipment is On-Hire. The Hirer must not use the Equipment whilst it is on Stand Down. If the Hirer uses the Equipment whilst it is subject to a Stand Down notice, the applicable Dry Hire Rate shall apply for the entire period of the claimed Stand Down.
- 6.5 The notice stating that the Equipment is On-Hire referred to in sub-paragraph 6.4, must state:
- (a) the date when the Hirer will place the Equipment On-Hire; and
 - (b) the hours recorded on the hour meter of the Equipment at the time that the Equipment was placed back On-Hire (if applicable).
- 7. SITE ACCESS, POSSESSION AND CONTROL OF THE EQUIPMENT**
- 7.1 If the Place of Delivery is the Site, the Hirer shall, from the Mobilisation Date, give the Owner access to the Site to allow the Owner to deliver the Equipment to the Site and into the care, custody and control of the Hirer.
- 7.2 The Equipment shall be deemed to be in the physical or legal care, custody or control of the Hirer from the moment the Hirer takes control of the Equipment or the moment the Equipment enters the boundaries of the Site, whichever occurs the earlier, whether the Equipment is being transported or operated by the Owner's servants, contractors or agents or by any other person.
- 7.3 The Hirer must at all times during the Hire Period, give the Owner access to the Site to allow the Owner or their nominee, full access to the Equipment to inspect or effect repairs to the Equipment or to remove the Equipment from the Site.
- 7.4 To remove doubt, the Hirer grants the Owner an irrevocable licence to enter and stay upon the Site for any of the purposes referred to in this clause 7 or clause 8.
- 8. URGENT PROTECTION**
- 8.1 If the Owner believes that urgent action is necessary to protect the Equipment and the Hirer fails to take the appropriate action, the Owner may take the necessary action. If the action taken by the Owner is action which the Hirer should have taken at the Hirer's cost, the cost incurred by the Owner shall be reimbursed by the Hirer on an indemnity basis and shall be a debt due from the Hirer to the Owner payable upon demand.
- 9. USE, CARE AND PROTECTION OF EQUIPMENT**
- 9.1 The Hirer shall, at its own cost:
- (a) be responsible for safety associated with the use of the Equipment including the safety of its servants, agents and contractors, those of the Owner, and any other persons at the Site;
 - (b) each time before starting the Equipment, ensure that all appropriate start up procedures for the Equipment are followed;
 - (c) ensure the Equipment is used in a sensible and responsible manner by appropriately qualified and skilled personnel;
 - (d) inform itself of the appropriate service and maintenance of the Equipment, in accordance with the Owner's service and maintenance requirements communicated to the Hirer (if any), recommendations of the manufacturer of the Equipment, relevant Australian Standards and general best practice;
 - (e) service and maintain the Equipment, in accordance with the Owner's service and maintenance requirements communicated to the Hirer (if any), the recommendations of the manufacturer of the Equipment, relevant Australian Standards and general best practice;
 - (f) ensure the security of the Equipment to keep it safe from the weather, vandalism, theft and damage;
 - (g) subject to first obtaining the Owner's consent cause an appropriately qualified person to repair any damage whatsoever caused to the Equipment whilst the equipment is in the Hirer's physical or legal care, custody or control including without limitation, damage caused by vandalism, negligence or misadventure (including all costs

associated with the transport of the Equipment to and from any place of repair, all parts, freight and labour costs) and arrange all repairs to the Equipment that may be necessary to maintain the Equipment in good and workable condition, including making minor repairs save for any repairs that are necessary due to major component failure; and

- (h) just prior to the return of the Equipment to the Owner at the Expiry Date thoroughly wash and clean the Equipment prior to it being de-mobilised and leaving the Site, so that it is delivered to the Owner with no mud, soil, seeds, vegetation or other foreign matter adhering to the Equipment.

9.2 Where any breakdown of the Equipment is due to major component failure and that breakdown is not caused by any act or omission or any breach of the terms and conditions of this Agreement by the Hirer then the Hirer may by notice in writing to the Owner, suspend this Agreement until such time as the necessary repairs have been effected and the Equipment is capable of being used by the Hirer. If at the absolute discretion of the Owner, they consider it uneconomic to repair or replace the Equipment, the Owner may by notice to the Hirer terminate this Agreement and the Hirer shall have no claim or right of action against the Owner as a result.

9.3 If the Owner considers it necessary to remove the Equipment from the Site for repair, the Hirer shall facilitate and otherwise assist the Owner to remove the Equipment from the Site.

10. OPERATION, MAINTENANCE AND STORAGE OF EQUIPMENT

10.1 The Hirer shall at its own expense keep and maintain the Equipment in proper working order and condition and in good and substantial repair, employing only properly trained and competent persons and using recognised standards.

10.2 The Hirer shall operate, maintain and store the Equipment with due care and diligence and in compliance with the instructions and recommendations of the supplier and/or manufacturer of the Equipment as to operation and storage.

10.3 The Hirer shall not without the prior written consent of the Owner make any addition, replacement or alteration of a significant nature to the Equipment.

10.4 Any parts, accessories, equipment or devices which are installed upon or in the Equipment shall be deemed to be part of the Equipment and become the property of the Owner and be subject to all terms and conditions of this Agreement.

10.5 The Hirer must:

- (a) comply with all relevant laws, regulations, rules and by-laws governing or relating to the registration or licensing of the Equipment, or in any other manner governing or relating to the Equipment or their use, and to obtain and maintain in full force and effect all necessary licences, permits, certificates and registrations governing or relating to the Equipment or any part of them or to the use thereof, and to pay promptly all requisite fees and charges and upon demand to produce to the owner receipts for the payment of such fees and charges;
- (b) punctually to pay all rents, taxes, rates, mortgage payments and interest charges and other impositions payable in respect of the premises where the Equipment may at any time be installed or housed and to produce on demand all receipts of such payments to the Owner on demand;
- (c) pay to the Owner on demand all money which the Owner has paid to make good any failure by the Hirer to comply with an obligation under this Agreement or any other obligation incurred by the Hirer in respect of the Equipment, and all other costs and expenses including without limitation legal costs and expenses that the Owner may incur in the enforcement or protection or attempted enforcement or protection of the Owner's rights under this Agreement or in the Equipment including without limitation money paid by the Owner in releasing any lien or other encumbrance claimed over the Equipment, in dismantling and removing the Equipment from any premises and in any repair or renovation to any

such premises, together with interest thereon in accordance with clause 21;

- (d) promptly to give notice to the Owner of the occurrence of any event of default by the Hirer of its obligations under this Agreement or any event which, with the passing of time or giving of notice, or both, might constitute an event of default;
- (e) make the Equipment available for examination and testing by the Owner upon reasonable notice given by the Owner;
- (f) not do or cause to suffer to be done any act, matter or thing which is likely to endanger the safety or condition of the Equipment; and
- (g) ensure that the Equipment remains at all times under the Hirer's control. Unless the Equipment is mobile and by its nature hired for use off-Site, the Hirer must keep the Equipment at the Site, or such other premises approved by the Owner in writing. In any event, the Equipment must be stored at the Site (or other location approved in writing by the Owner) when not in active use.

10.6 The Hirer must do everything reasonably within its power to ensure that the Owner, upon giving reasonable notice, is given access to any premises the Owner believes the Equipment to be located and to examine and test the Equipment and their state of repair and operating condition.

10.7 The Owner may serve upon the Hirer a notice in writing of any defect in the Equipment requiring the Hirer within a reasonable time to repair and the Hirer must carry out that repair.

10.8 The Hirer irrevocably appoints the Owner and each of its directors and executive officers as its attorney to do all things the Hirer is required, but has neglected or refused to do under this Agreement. The Hirer shall in the absence of fraud or gross negligence indemnify and keep indemnified the Owner and its officers against any claim action or demand arising from any act matter or thing done and any document executed by the Owner pursuant to that power of attorney.

11. HIRER'S GENERAL WARRANTIES

11.1 The Hirer warrants and represents to the Owner that:

- (a) where the Hirer is incorporated, it is duly incorporated and validly existing under the law of its state of incorporation, and has full power and authority to enter into and observe and perform the terms of this Agreement, or if the Hirer is an individual, they have full power and capacity to enter into and observe and perform the terms of this Agreement;
- (b) this Agreement constitutes legal, valid and binding obligations enforceable against the Hirer in accordance with its terms;
- (c) the execution of this Agreement and the performance and observance by the Hirer of every term hereunder and the use by the Hirer of the Equipment does not and will not violate any relevant law or regulation or any agreement or instrument to which the Hirer is a party or by which any of its assets are bound or, the Hirer being a body corporate, the constitution of the Hirer;
- (d) all consents and approvals, governmental or otherwise, required in order for the Hirer to execute this Agreement and to perform and observe every term hereunder have been obtained and are in full force and effect;
- (e) no event of default exists and no event has occurred or is continuing which constitutes or might, with the passing of time or giving of notice, or both, constitute an event of default by the Hirer of its obligations under this Agreement;
- (f) to the best of the knowledge and belief of the Hirer, no information furnished by the Hirer to the Owner in connection with this Agreement contained any material misstatement of fact or omitted to state a material fact;
- (g) the Hirer is conducting its business and operations in compliance with all applicable laws and rules and, the Hirer being a body corporate, the constitution of the Hirer;
- (h) all servants, contractors, agents and any other person engaged by the Hirer or otherwise acting for or on behalf of the Hirer using the Equipment shall have the necessary

qualifications and skill reasonably expected having regard to the nature of the Equipment and the location where the Hirer will be using the Equipment and the nature of the Hirer's use of the Equipment.

11.2 The Hirer hereby warrants that the Equipment is to be used by the Hirer wholly or mainly for the purpose of a business carried on by the Hirer, and the Hire Fee is necessarily incurred in carrying on the business.

11.3 The Hirer warrants to the Owner that the Hirer is the owner of or is in lawful possession of the Site or any other premises where the Equipment will be installed or housed during the Hire Period.

11.4 The Hirer shall not attach, affix or secure the Equipment or any part thereof to any land or premises without the prior consent in writing of the Owner. Without limiting the generality of the foregoing:

- (a) if the Equipment becomes affixed, attached or secured to land or premises of which the Hirer is owner, the Equipment shall be deemed not to be a fixture and may be removed by the Owner at any time in accordance with the provisions hereof, and the Owner shall be entitled to enter upon such land or premises at any time for that purpose and shall not be liable in respect of loss, damage or otherwise arising in respect of such entry or removal; and
- (b) if the Equipment becomes affixed, attached or secured to land or premises of which the Hirer is not the owner, the Hirer shall, prior to such affixing, attaching or securing, obtain the assent in writing of the owner or any mortgagee thereof to the entry thereon and the removal therefrom of the Equipment in the manner referred to in clause 11.4(a) and as between the Owner and the Hirer the Owner shall have the same rights of entry and removal as set forth in clause 11.4(a).

12. DRY HIRE WARRANTIES

12.1 Where the Owner is not responsible for the supply of an Operator for Equipment:

- (a) the Owner warrants that:
 - (i) at the time of supply, the Equipment shall be in good working order; and
 - (ii) in the event of breakdown of Equipment and provided the Hirer notifies the Owner in accordance with clause 12.1(b)(viii), the Hirer will not be liable for any payment of that part of the Hire Fee for the period commencing from the day of such notification (and the Owner accepts that to be the case) until such time as the Owner (in its sole discretion) either:
 - replaces the Equipment;
 - repairs the Equipment;
 - determines that the Equipment is working correctly,
 except to the extent that the Equipment has been operated in breach of clause 10.1(c) or the Equipment has failed as a result of any intentional or negligent act or omission of the Hirer or its servants, agents, contractors or employees;
- (b) Further to and in addition to the warranty given by the Hirer pursuant to clause 10 the Hirer acknowledges and agrees that:
 - (i) the Equipment has been made available for the Hirer's inspection prior to entry into the Agreement and by accepting the Equipment, the Hirer acknowledges that it is in good working order and free from defects;
 - (ii) it will use the Equipment safely, for its intended use only and strictly in accordance with the manufacturer's instructions and all applicable safety laws;
 - (iii) it will ensure persons operating the Equipment are suitably trained, properly qualified and licensed (if required) and not under the influence of drugs or alcohol and that those persons will not use the Equipment for any illegal purpose;

- (iv) it will maintain the Equipment in a reasonable condition. This includes cleaning the Equipment at regular intervals and ensuring it remains in good working order and a serviceable condition and the Hirer shall supply all fuel, grease and oil necessary for operation, service and maintenance;
- (v) all servicing and maintenance of the Equipment during the hire period is to only be performed by appropriate and properly qualified mechanics;
- (vi) the Owner is not under any obligation to provide fuel, lubricants, oil etc. for the Equipment during the hire period;
- (vii) in the event the Equipment breaks down or becomes unsafe to use, the Hirer will immediately stop using the Equipment and notify the Owner within twenty four (24) hours of the occurrence. If the occurrence is due to the negligence of the Hirer (or its servants, agents, contractors or employees), then hiring charges will continue to apply during the period which the Equipment is unusable; and
- (viii) should the Equipment be lost or stolen, the Hirer shall be liable for any costs the Owner incurs in recovering or replacing the Equipment and in addition, the hire charges for the period commencing from such loss or theft and ending when such recovery or replacement occurs and the indemnity in clause 15 will otherwise apply;

13. RELIANCE AND LIMITATION OF LIABILITY

- 13.1 The Hirer acknowledges that it has not, in deciding to enter into this Agreement, relied in any way on the Owner's skill and judgment and that the Hirer is wholly satisfied as to the condition and suitability of the Equipment and its fitness for the Hirer's purpose.
- 13.2 The Hirer further acknowledges that the Owner has not, prior to entering into the Agreement, and does not provide by virtue of these terms and conditions, any warranties or representations in respect of the Equipment.
- 13.3 Nothing herein is intended to exclude, restrict or modify rights which the Hirer has under the *Competition and Consumer Act 2010* ("CCA") or any other legislation which may not be excluded, restricted or modified by agreement.
- 13.4 If the CCA or any other legislation implies a condition or warranty in respect of the Equipment or an Operator and the Owner's liability for breach of that condition or warranty may not be excluded but may be limited, then the Owner's liability for any breach of that condition or warranty is limited to the Owner doing any one or more of the following (at its election):
 - (a) replacing the Equipment or supplying equivalent equipment;
 - (b) paying the cost of replacing the Equipment or of acquiring equivalent equipment;
 - (c) repairing the Equipment or paying the cost of having the Equipment repaired; or
 - (d) replacing the Operator.

14. DEFAULT

- 14.1 The following are events of default hereunder and include but are not limited to, where the Hirer:
 - (a) fails to pay the Hire Fee (or any part) to the Owner when due;
 - (b) fails to take delivery of or collect Equipment or return it after the hire period has ended;
 - (c) fails to provide a certificate of currency of insurance after being requested to do so;
 - (d) becomes Insolvent;
 - (e) fails to pay any debt due under this Agreement.
- 14.2 In the event of the Hirer's default and without limiting any other rights that the Owner has under these terms and conditions:
 - (a) the Owner may immediately terminate the Agreement;
 - (b) the Owner may suspend or terminate supply of Equipment;
 - (c) all amounts that are due and owing by the Hirer to the Owner will be immediately due and payable without any set-off or deduction by the Hirer whatsoever, and the

Owner will be entitled to issue proceedings in a court of competent jurisdiction against the Hirer and/or Guarantor (if any) for recovery of all amounts which remain unpaid.

15. RELEASE AND INDEMNITY

15.1 The Hirer hereby releases, indemnifies and forever holds the Owner (including the Owner's related bodies corporate, directors, officers, employees and agents, if any) harmless (save for any loss or damage arising through the Owner's negligence or wilful act or omission) against:

- (a) loss or damage to the Equipment where such damage is caused by any breach of this Agreement by the Hirer or otherwise by any act or omission by the Hirer, its servants, agents or contractors;
- (b) the loss of or damage to Equipment, whether by fire, theft, accident, seizure, confiscation or otherwise;
- (c) all losses, damages, claims, penalties, liabilities and expenses (including legal costs on an indemnity basis) to any person or property howsoever arising and incurred as a result of or in connection with or as a consequence of the Hirer's use, possession, care, control or storage of the Equipment and any maintenance, repair, inspection, seizure and/or repossession of the Equipment;
- (d) any damage to land owned by the Hirer or any other person on which the Equipment is situated resulting in any way from the Owner exercising its rights hereunder;
- (e) any and all liability whatsoever to the Owner, arising from a default by the Hirer under the Agreement. Without limiting the generality of the foregoing, the Hirer indemnifies the Owner for any hire charges which the Owner could have charged (whether that be to the Hirer or any other Hirer) for the hire of the Equipment during the period of time taken to repair any damage to the Equipment occasioned whilst hired to the Hirer; and
- (f) all losses, damages, claims, penalties, liabilities and expenses (including legal costs on an indemnity basis) to any person or property howsoever arising and incurred as a result of or in connection with the supply of an Operator by the Owner to the Hirer.

15.2 Where an act or omission of the Owner has contributed to the loss, damage, injury or death, then the Hirer's liability to indemnify the Owner shall be reduced proportionally.

16. OBLIGATION TO INSURE

16.1 Insurance Prior to Commencement

- (a) Prior to the Commencement Date, the Hirer must:
 - (i) obtain insurance policies sufficient to cover the extent of the Hirer's liabilities under this Agreement, including but not limited to public liability insurance of a minimum of \$20,000,000; and
 - (ii) obtain a comprehensive insurance policy for the full market value of the Equipment.
- (b) The policies shall cover the Hirer, the Owner and their respective servants, Owners and agents and shall remain in force until the Expiry Date.

16.2 Insurance Conditions

- (a) Before the Mobilisation Date and at other times when requested by the Owner, the Hirer shall lodge with the Owner information about the policies along with certificates of currency or copies of policies and a copy of the receipt for the premium most recently paid as evidence of the insurances arranged. If the Hirer fails to do so to the Owner's satisfaction, the Owner may effect and maintain the insurance and pay the premiums and recover the cost thereof from the Hirer.
- (b) The Hirer must not do or make, or cause or allow any of its servants, contractors or agents to do or make any act, omission or admission which may provide grounds for an insurer to refuse payment of any claim made under any insurance policy effected in accordance with this Agreement.

17. TITLE

17.1 The Hirer will not, nor will it attempt to, assign, mortgage, pledge, sell, charge, encumber, sublet, re-hire, part with possession of, licence or otherwise dispose of or deal with or

permit to exist any lien or other encumbrance over the Equipment or any part of it.

17.2 Without limiting the generality of clause 17.1, title to Equipment remains with the Owner at all times and the Hirer obtains no legal or beneficial interest in or to the Equipment and further, unless and until the Hirer has paid the Owner all monies owed in respect of the Equipment:

- (a) the Hirer holds the Equipment merely as bailee for the Owner;
- (b) the Hirer shall not sell the Equipment or purport to give title to any other person or entity;
- (c) the Hirer must properly and separately store the Equipment in a manner which clearly shows that the Owner is the owner of the Equipment;
- (d) the Hirer must insure the Equipment pursuant to the terms contained in clause 16.

18. PPSA

18.1 Without limiting clause 17:

- (a) the Owner's rights under this clause and the PPSA in respect of the Equipment are in addition to and not in derogation of the Owner's rights generally at law and in equity, in respect of the Equipment;
- (b) the Hirer consents to the Owner effecting and maintaining a registration on the PPSR in relation to any security interest in the Equipment contemplated or constituted by this Agreement;
- (c) the Hirer undertakes to:
 - i. sign any documents and provide all information necessary to facilitate the registration and maintenance of a perfected security interest under the PPSA and hereby waives the right to receive notice of a verification statement in relation to any registration on the PPSR of a security interest in the Equipment;
 - ii. not register, or permit to be registered in favour of any third party, a financing statement of financing change statement in respect of the Equipment.

19. SECURITY

19.1 Despite anything to the contrary contained herein or any other rights which the Owner may have howsoever arising under the Agreement:

- (a) where the Hirer and/or the Guarantor (if any) is the owner of any real or personal property capable of being charged, both the Hirer and/or Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said real or personal property in favour of the Owner (or its nominee) to secure all amounts and other monetary obligations payable by the Hirer hereunder; and
- (b) the Hirer and/or Guarantor acknowledge and agree that the Owner (or its nominee) shall be entitled to, among other things, lodge a caveat over any real property of which they are the registered owner (whether as joint tenants or tenants in common), which shall be released once all payments and other monetary obligations payable hereunder have been met;
- (c) should the Owner elect to proceed in any manner in accordance with this clause, the Hirer and/or Guarantor will indemnify the Owner from and against all of the Owner's costs and disbursements including but not limited to, legal costs on a full solicitor and own client basis;
- (d) the Hirer and/or Guarantor agree to irrevocably nominate, constitute and appoint the Owner (or its nominee) as the Hirer's and/or Guarantor's attorney to perform all necessary acts to give full effect to this clause;
- (e) if the Hirer is a trustee of any trust, the Hirer is bound by these terms and conditions and charges its land as trustee in favour of the Owner, and the Hirer warrants that it is a proper exercise of the Hirer's authority and power under the trust instrument and at law, to trade with the Owner and to charge the assets owned by the trust in accordance with these terms and conditions.

20. NO RIGHT TO PURCHASE

20.1 The Hirer acknowledges and agrees that notwithstanding any suggestion to the contrary contained in this Agreement or any

discussions or communications between the Owner and the Hirer as at the date of this Agreement (unless there is a clear unequivocal written option or agreement to purchase signed by the Owner and the Hirer), the Owner has not made an offer capable of acceptance to sell to the Hirer the Equipment and there is no agreement between them giving the Hirer the option to purchase the Equipment.

21. INTEREST

- 21.1 The Hirer shall pay interest on all monies due and outstanding to the Owner under this Agreement from time to time at the rate of 10% per annum.

22. TERMINATION

22.1 Notice of Termination

- (a) In addition to any other rights of the Owner under this Agreement or at law, the Owner may at any time and at its absolute discretion, whether or not the Hirer is in default, and with or without cause, terminate this Agreement by giving written notice to the Hirer that this Agreement is terminated or is to be terminated as of a specified date (the "Termination Date"). The obligations of the parties in the event that the Owner exercises its right to terminate under this clause shall be subject to the conditions in this clause. If the Owner terminates this Agreement in whole or in part under clause 22.1(a), the Demobilisation Date shall be the Termination Date.
- (b) Those provisions of this Agreement which by their nature are intended to survive the Termination Date under this Agreement shall remain in full force and effect after such termination to the extent intended or provided in such provisions as if this Agreement had reached the Termination Date.

22.2 Hirer's Obligations on Termination

Upon receipt of a notice of termination, the Hirer shall, unless the notice requires otherwise:

- (a) immediately make the Equipment available to the Owner for removal from the Site;
- (b) do all things necessary to facilitate the removal of the Equipment from the Site by the Owner;
- (c) facilitate and otherwise assist the Owner with the removal of the Equipment from the Site;
- (d) enable the Owner or their nominee to take possession of the Equipment;
- (e) take any other action relating to the termination of this Agreement and the removal of the Equipment from the Site which the Owner may reasonably require; and
- (f) to remove doubt, notwithstanding anything in this Agreement to the contrary, the Equipment shall continue to be in the care custody and control of the Hirer until such time as the Equipment is removed from the Site.

22.3 Release by Hirer

- (a) Upon any such termination, the Hirer shall immediately pay to the Owner all Hire Fees due and not previously paid to the Owner and any other monies payable under this Agreement.
- (b) Except as provided for in clause 22.3(a) the Hirer hereby waives any claims arising out of or in connection with the termination including loss of anticipated profits and loss of opportunity, which the Hirer may otherwise have had on account of the termination of this Agreement or part or parts of this Agreement and acknowledges that, subject to the payments provided for in the previous paragraph, the Owner shall from the date on which termination is effective be released from all further obligations and liabilities to the Hirer pursuant to this Agreement or the relevant part or parts of this Agreement (as the case requires).

23. SUSPENSION

- 23.1 Upon receiving a notice pursuant to clause 28.3, the Owner may elect to suspend the hire of the Equipment during the period set out in clause 28.4 to 28.7 and either:

- (a) take possession of the Equipment from the Site and in doing so, reserves its rights to charge the Hirer costs associated therewith including but not limited to,

Demobilisation Costs. If the dispute is resolved under clause 28.8 such that the Hirer requires the Equipment to be returned to the Site, the Owner further reserves its rights to charge the Hire costs associated therewith including but not limited to, fresh Mobilisation Costs; or

- (b) leave the Equipment at the Site in which case the Hirer acknowledges and accepts that the Stand-By Rate will be payable by the Hirer to the Owner for that period.

- 23.2 The Owner's election in clause 19.1(c) may also be exercised in the event the Hirer's works at the Site are suspended for any reason.

24. NOTICES

- 24.1 Where these terms and conditions of the Agreement specify that notice is required to be given by one party to the other, then any notice must be:

- (a) in writing;
- (b) addressed to the recipient party; and
- (c) sent by either facsimile or prepaid post to the recipient party's address for service.

- 24.2 For the purposes of this Agreement, the address for service of each party is that address listed on the hire application, subject to any notification by one party to the other that their address has changed.

- 24.3 A letter or facsimile is taken to be received:

- (a) in the case of a posted letter, on the second day after posting; and
- (b) in the case of a facsimile, on production of a successful transmission report by the machine from which the facsimile was sent in its entirety to the facsimile number of the recipient provided that where the transmission is completed after 5.00pm on a business day or is sent on a day that is not a business day, the message will not be deemed to have been received until the next business day.

25. ASSIGNMENT

- 25.1 The Hirer shall not, without the prior written approval of the Owner and except on such reasonable terms and conditions as may be specified by the Owner, assign this Agreement or any payment or any other right or benefit or interest under this Agreement.

- 25.2 The Owner may assign any benefit or obligation under this Agreement at any time without the consent of the Hirer.

26. CONFIDENTIAL INFORMATION

- 26.1 The Hirer shall keep, and shall ensure that its servants, agents and contractors keep all information, documents, data, and the like relating to this Agreement confidential and shall ensure that such information is not disclosed to a third party without the prior written approval of the Owner.

27. COSTS

- 27.1 Each party shall bear its own costs arising out of the preparation of this Agreement. The Hirer shall pay any Stamp duty payable in respect of this Agreement and the costs associated with registration of any security interest on the PPSR by the Owner pursuant to this Agreement. The Hirer must reimburse to the Owner on an indemnity basis, all legal costs incurred by the Owner as a consequence of any breach by the Hirer of terms of this Agreement.

28. DISPUTE RESOLUTION

- 28.1 This clause shall not restrict or prejudice the Owner's rights to pursue a claim against the Hirer for a liquidated sum payable pursuant to the Agreement and the Owner shall not be required to utilise the below procedure prior to issuing such proceedings in a court of competent jurisdiction.

- 28.2 If a dispute arises out of, or in any way in connection with or otherwise relates to this Agreement ("the Dispute"), the parties must, prior to commencing any court, tribunal or arbitration proceeding use the procedure set out herein.

- 28.3 The party asserting that a dispute exists shall serve upon the other party a written notice setting out particulars of the Dispute ("Notice of Dispute").

- 28.4 The parties shall meet on a without prejudice basis, within 7 days of being served with a Notice of Dispute, in an attempt to settle the Dispute. The parties acknowledge that the meeting

may occur either in the absence, or with the attendance of, their respective legal representatives.

- 28.5 In the event the meeting required to be held pursuant to clause 28.4 is unsuccessful in settling the Dispute, then within 7 days of that meeting, the parties shall agree upon the appointment of a suitably qualified legal practitioner (a solicitor or barrister) to act as a mediator in respect to the Dispute.
- 28.6 In default of the parties' agreement to the appointment of a mediator in accordance with clause 28.5, the party who served the Notice of Dispute shall request the president of the Queensland Law Society to appoint a mediator (who is experienced in building and construction disputes and who is also a qualified legal practitioner) to act as a mediator and such appointment shall be binding upon the parties.
- 28.7 A person appointed as a mediator pursuant to clauses 28.5 or 28.6 ("the Mediator") shall, following consultation with the parties, determine in his or her sole and absolute discretion the procedure, venue, dates and times for mediation of the Dispute, save that the mediation must take place and be concluded within 30 days of the Mediator's written acknowledgment of his or her appointment (unless the parties agree in writing to an extended or further period for the holding and conclusion of the mediation).
- 28.8 Where the Dispute has been resolved by the mediation, the terms of such resolution shall be reduced to writing and executed by both parties, otherwise such resolution shall be unenforceable.

29. ENTIRE AGREEMENT

- 29.1 This Agreement:
- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement;
 - (b) supersedes any prior agreement or understanding on anything connected with that subject matter dealt with in this Agreement; and
 - (c) may only be varied in writing.
- 29.2 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party.

30. AMOUNTS DUE

- 30.1 A statement in writing signed by any person who is for the time being the general manager, manager, financial controller or leasing manager of the Owner stating the amount or any amount due from the Hirer hereunder shall (in the absence of manifest error) be conclusive evidence of the amount so due.

31. GENERAL

- 31.1 Headings are for convenience only and do not form part of the Agreement or affect its interpretation.
- 31.2 If any provision of the Agreement or any related document shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 31.3 The Agreement and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts at the appropriate venue in Queensland.
- 31.4 The Owner may licence, subcontract, assign, let or sell all or any part of its rights and obligations pursuant to this Agreement without the Hirer's consent. The Hirer is not permitted to do any of these things.
- 31.5 These terms and conditions may only be varied by written agreement executed by the Hirer and the Owner and prevail to the extent of any inconsistency with other terms and conditions in relation to the hire of the Equipment by the Owner to the Hirer.
- 31.6 The Owner's failure to exercise any right or power herein does not operate as a waiver and a partial exercise of a power or right does not preclude any further exercise of that power or right.
- 31.7 A reference to any legislation includes any statutory modification or re-enactment of, legislative substitution for, and subordinate legislation under, that legislation.
- 31.8 Agreement binds each of them separately and any two (2) or more of them jointly.

- 31.9 An obligation, representation or warranty in favour of more than one (1) person is for the benefit of them separately and jointly.

- 31.10A party which is a trustee is bound both personally and in its capacity as a trustee.

32. COUNTERPARTS

- 32.1 This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

GUARANTEE

(ANNEXURE 2 OF 2)

IF THE HIRER IS A COMPANY THIS GUARANTEE MUST BE COMPLETED

YOU SHOULD OBTAIN INDEPENDENT LEGAL ADVICE ON THE EFFECT OF THIS GUARANTEE BEFORE SIGNING IT

TO: **MINEFORCE AUSTRALIA PTY LTD ACN 080 955 648 ("the Owner")**

IN CONSIDERATION of the Owner hiring to the Hirer the Equipment set out in the Hire Application:

..... of ("**Guarantor**")
[PLEASE PRINT FULL NAME]

..... of ("**Guarantor**")
[PLEASE PRINT FULL NAME]

HEREBY COVENANTS with the Owner as follows.

1. The Guarantor irrevocably and unconditionally guarantees the due and punctual:-
 - (a) payment by the Hirer to the Owner of all monies which the Hirer may now or in the future be liable to pay to the Owner actually or contingently on any account;
 - (b) observance and performance by the Hirer of its obligations under the terms and conditions for the supply of Services by the Owner to the Hirer on credit, and indemnifies the Owner against all loss (including but not limited to unpaid monies) and damage suffered or incurred by the Owner by reason of the Hirer's failure to pay the monies owed or to observe or perform its obligations hereunder.
2. If there is more than one (1) guarantor, "*Guarantor*" means all of them collectively and each of them individually and the Guarantor's covenants are joint and several.
3. This deed is a continuing and irrevocable guarantee and indemnity until the Guarantor is expressly released by the Owner and the Guarantor is not discharged by any intermediate payment or settlement of accounts.
4. The Guarantor's obligations under this deed are unconditional and not affected by anything which might otherwise affect them under the law relating to sureties including:-
 - (a) any change in the legal capacity, rights or obligations of any Guarantor, the Hirer, or any other person; or
 - (b) the fact that in relation to any of the monies owed or any security, guarantee or indemnity for them, the Owner:-
 - (i) obtains a judgment against the Hirer, one or more Guarantors or any other person; or
 - (ii) gives up, releases, varies, exchanges or fails to obtain, perfect, register, realise or deal in any other way with any security, guarantee or indemnity; or
 - (iii) grants time or any other concession or compounds or compromises with, or does or omits to do anything which affects the obligations of the Hirer, one or more Guarantors or any other person; or
 - (iv) receives any dividends out of the estate or assets of the Hirer, one or more Guarantors or any person;
 - (c) the fact that any security, guarantee or indemnity held or taken by the Owner is void, defective or informal or ranks after any other security or obligation for any reason; or
 - (d) the death, mental or physical disability or insolvency of the Hirer, one or more Guarantors or any other person; or
 - (e) the inability to enforce, for whatever reason, of the terms of the agreement to supply as referred to in clause 1(b) on the Hirer or the terms of this deed on the Hirer, one or more Guarantors or any other person; or

- (f) a variation or extension to, or a stopping, replacement or refusal of any credit or other arrangement (including an increase in any credit or a variation in the terms of supply of the Services) given to the Hirer whether with or without the Guarantor's consent or knowledge; or
- (g) the fact that any monies may not be recoverable from the Hirer or one or more Guarantors or any other person for any reason; or
- (h) the cessation of business by any firm or partnership which the Hirer or the Guarantor comprise, or any change in its membership.

5. The obligations of the Guarantor under this deed are principal obligations and the Owner is not required to take action first against the Owner or make demand first against the Owner or to marshal security.
6. The Guarantor must not prove or claim in the assets of the Hirer in competition with the Owner if the Hirer is made bankrupt, wound up or makes a deed of arrangement, composition or compromise in satisfaction of its debts with its creditors or (being a natural person) dies until the Owner has been paid the whole of any amount owed to it by the Hirer. If directed by the Owner, the Guarantor shall lodge a proof of debt and must hold any distribution or payment received on trust for the Owner.
7. The Guarantor hereby charges as beneficial owner, its entire right, title and interest in all of its assets including without limitation, all of the Guarantor's real property and/or personal property (now owned or in the future) in favour of the Owner to secure the payment of monies owed to the Owner by the Hirer and/or the Guarantor so as to better secure the performance and observance of the Guarantor's covenants under this deed. In the case of real property (ie. land), the Owner may register a caveat over the Guarantor's land in respect of this charge and the Guarantor hereby consents to such registration.
8. This deed is binding on the Guarantor and its executors, administrators and successors. The Guarantor shall not assign or novate any of the Guarantor's rights or obligations under this deed. The Owner may at any time during the currency of this deed assign its rights or any part of them under this deed. For such purpose, the Owner may disclose to a potential assignee such information about the Guarantor as has been made available to the Owner. Where the Owner assigns its rights or any part of them under this deed, the Guarantor shall execute such documents which in the Owner's opinion are reasonably necessary to effect the assignment.
9. The Guarantor shall pay all of the Owner's costs, fees and expenses associated with this deed, its enforcement by the Owner and all stamp duty, if any. A signed certificate from an officer of the Owner stating the amount of the monies payable by the Hirer or any other matter or fact is proof of the amount payable or other matter or fact as at the date stated in the certificate, unless the Guarantor proves to the contrary.
10. The Guarantor fully understands the risks associated with this deed of guarantee and indemnity and that he/she/they may obtain legal advice in respect of it, and freely elects to execute this deed.
11. This deed is governed by the laws of the State of Queensland and the applicable laws of the Commonwealth of Australia. The Guarantor agrees that all contracts made between the Hirer and the Owner shall be deemed to be made in the State of Queensland and the Guarantor agrees to submit to the jurisdiction of Queensland's courts in respect to all disputes and other matters arising between the Hirer and the Owner.

EXECUTED AS A DEED THIS

day of

20

Signed by

at

in the presence of:

[PLEASE PRINT FULL NAME]

Witness [PLEASE PRINT FULL NAME]

Signed by

at

in the presence of:

[PLEASE PRINT FULL NAME]

Witness [PLEASE PRINT FULL NAME]