



# LEASE

## Terms and Conditions

**May 2021**

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# Asset Finance Terms and Conditions

May 2021

## **IMPORTANT NOTICE TO GUARANTORS**

This document (including the guarantee and indemnity) is an important document. You must read this document, and the warnings in it, carefully before you sign.

## How these Terms and Conditions apply:

- **Part A** – this applies to you the Customer under this Asset Finance Agreement with us
- **Part B** – applies to each Guarantor

## Part A – Asset Finance Agreement

### 1. Your Asset Finance Agreement

Your Asset Finance Agreement, being Lease is made up of these Terms and Conditions and the Schedule signed (by hand or electronically) by you and accepted by us in relation to the Equipment (the Schedule includes details of the Equipment, pricing and Term). Together, these documents are referred to as "this Agreement" in these Terms and Conditions.

Our obligations under Agreement are conditional upon the following pre-conditions:

- No Default:** you are not in Default;
- Insurance:** you have completed and returned Part C of the Schedule with details and evidence of Required Insurance or a certificate of currency of insurance which is satisfactory to us including our interest is noted on any insurance policy of the Equipment;
- Security:** each Security is duly executed and delivered to us in registrable form; and
- Special Conditions:** any additional pre-conditions specified in Part B of the Schedule have been satisfied.

### 2. Delivery and possession

You must take possession of the Equipment. When you do, we will be taken to have delivered it to you and you will be taken to have accepted it from us. You also need to arrange for and obtain all relevant Manuals and Training (if any) before you use the Equipment or permit it to be used.

### 3. Ownership and risk

We own the Equipment but you have a right to use it during the Term. Unless we otherwise expressly agree in writing, there will be no extension of the Term. You are responsible for any Loss arising from the Equipment (including because of theft, destruction, damage or use). Clause 20 describes how we require you to insure for this risk.

For your Lease Agreement, we do not provide any option, promise, undertaking or representation that you may purchase the Equipment at any time.

### 4. Rent

You must pay the Instalments and related stamp duty under your Agreement on each Payment Date. These amounts are not refundable.

### 5. What happens at the end of the Term?

- On the last day of the Term, you must:
  - return the Equipment to us in good working order and condition (fair wear and tear excepted) to a place we reasonably nominate;
  - give us all records and a signed transfer in favour of us or a person we nominate and all certificates of registration; and
  - pay us any amount payable under the Agreement.
- If you don't return the Equipment at the end of the term, you must:
  - pay us rent when we ask for it for each day until you return the Equipment. Daily rent will equal to the Daily Amount. The Residual Value does not reduce because of this additional rent paid or payable; and
  - return the Equipment to us when we ask and deliver it to a place we nominate.

### 6. Early termination of lease of Equipment

You may ask us to terminate the lease of the Equipment in full before the end of the Term, and if we agree to such a request, you must, within the time we specify:

- deliver the Equipment in good working order and condition (fair wear and tear excepted) to a place we nominate;
- give us all records, certificates and other documents, and a signed transfer in favour of us or the person we nominated and all certificates of registration;
- pay us the applicable Termination Value we calculate;
- pay us all outstanding Instalments that have become due and that have not been paid and other amounts payable by you (including all Costs we incur in taking possession, storing, repairing, maintaining, restoring and insuring the Equipment);
- pay us the Early Termination Administration Fee; and
- pay us any additional amounts payable under this Agreement including clause 19 and clause 24.

### 7. What happens when the Equipment is returned

- When Equipment is returned to us or we repossess it under the Agreement before the expiry of the Term, the Agreement will end and you must pay us as required under Clause 9.

- b. We will offer the Equipment for sale at either public auction or private sale as soon as practicable. When doing so, we need not give any representations or warranties as to title, condition or other matters.
  - c. If the Net Sale Proceeds we receive are less than the Residual Value, then you must pay us the difference promptly when we ask.
  - d. If the Net Sale Proceeds we receive are higher than the present value of the Residual Value, we will first apply the excess against any amounts you owe us, and then pay any remaining amount from that excess to you.
  - e. For the purposes of this clause, the Net Sale Proceeds are to be taken to be zero if the Equipment is not sold within one month after first being offered for sale by public auction without reserve or private sale and we have made reasonable efforts to sell the Equipment.
8. Not applicable

### 9. What you must do when the agreement is terminated by us

If we terminate the Agreement for any reason other than the circumstance described in clause 5 you need to:

- a. return the Equipment to us in good working order and condition (fair wear and tear excepted) to a place we nominate;
- b. give us all records, certificates and other documents, and a signed transfer in favour of us or a person we nominate and all certificates of registration;
- c. pay us the Early Termination Payment calculated as at the day termination takes effect;
- d. pay us all Costs we incur in taking possession, storing, repairing, maintaining, restoring and insuring the Equipment); and
- e. pay us any amounts payable to us under this Agreement, including our costs and taxes under clauses 19 and 24 and interest on overdue amounts under clause 26.

Once the Equipment is returned to us, it will be dealt with in accordance with clause 7 or 8, as applicable.

10. Not applicable

11. Not applicable

12. Not applicable

### 13. Defaults

You must ensure there are no Defaults.

#### 13.1 Types of Default

There are two types of Default, each with different consequences.

- a. Payment Defaults (see clause 13.2)
- b. Adverse Events, being specific events of non-monetary default (see clause 13.3).

#### 13.2 Payment Defaults

A Payment Default occurs if you do not pay on time any amount due under this Agreement.

#### What are the consequences of a Payment Default?

If a Payment Default occurs, you are in Default. We will give you a notice that Payment Default has occurred allowing you at least 30 days (or 7 days if you are not a Small Business) to remedy it.

However, we may give you a shorter notice period, or no notice period (or if you are not a Small Business, we do not need to give you any notice), if

- a. the Payment Default is unable to be remedied;
- b. it is reasonable for us to manage a material and immediate risk relating to the nature of the Payment Default, your particular circumstances, or the value of the Security or Security Interest;
- c. you are Insolvent (but if you are a Small Business it must still be reasonable for us to act to manage the material and immediate risk as described above).

We can immediately take any or all of the Enforcement Actions listed in clause 13.5 where:

- a. the Payment Default is not remedied within the required notice period set out in any notice given under this clause (or within any longer period we allow);
- b. we give a notice under this clause but are not required to allow a notice period; or
- c. we are not required to give a notice.

#### 13.3 Adverse Events and consequences

#### What is an Adverse Event?

An Adverse Event occurs if any of the following occurs (whether or not within your control):

- a. **Repudiation:** you indicate through your words or conduct that you are no longer ready, willing or able to meet your obligations under this Agreement;
- b. **Insolvency:** you are Insolvent;
- c. **Loss of capacity:** you no longer have legal capacity;
- d. **Creditor enforcement:** enforcement proceedings are taken against you or your assets by another creditor;
- e. **Cross default:** you are in default under a separate financing arrangement that you have with us being a kind of default included in this Agreement;

- f. **Breach of law:** we believe, on reasonable grounds, that you have not complied with the law or any requirement of a statutory authority, or it becomes unlawful for you or us to continue with this Agreement;
- g. **Misrepresentation:** you or any Guarantor give us information or make a representation or warranty to us (including any promise made under this Agreement) which is materially incorrect or misleading (including by omission);
- h. **Improper dealings with assets:** without our consent, your assets are dealt with, or attempted to be dealt with in breach of this Agreement, any Security, Security Interest or any other agreement with us;
- i. **Failure to maintain licence or permit:** you do not maintain a licence or permit necessary to conduct your respective businesses;
- j. **Failure to maintain Insurance:** you do not maintain Required Insurance. This includes, for example, where the Required Insurance becomes unenforceable because of any action or inaction by you;
- k. **Change of control:** without our consent, there is a change in the legal or beneficial ownership, or management control of you, or of your business;
- l. **Change of status, capacity or composition:** without our consent, there is a change in your status, capacity or composition; or
- m. **If you are not a Small Business:** if you are not a Small Business, any financial covenant specified in this Agreement is not complied with.

#### **What are the Consequences of an Adverse Event?**

If an Adverse Event occurs, then you are in Default.

You need to promptly give us any information we ask for concerning an Adverse Event.

If an Adverse Event has occurred which by its nature is material, or we reasonably consider has had, or is likely to have a significant negative impact on:

- a. you being able to make any payment due to us under this Agreement;
- b. our security risk (or our ability to assess this); or
- c. our legal or reputation risk where the Adverse Event is one described above under 'Breach of law', or 'Misrepresentation',

then we may issue a notice ("**Adverse Event Notice**").

An Adverse Event Notice will set out the grounds on which we consider there is an Adverse Event and allow you at least 30 days to remedy the Adverse Event (if it can be remedied) or to submit to us a plan to resolve the Adverse Event to our satisfaction.

If, after the period specified in the Adverse Event Notice:

- a. the Adverse Event has not been remedied to our satisfaction; or
- b. your plan to resolve the Adverse Event was not satisfactory to us,

then we may give you a further notice that the Adverse Event has not been remedied and allowing at least 7 days (or a longer period required by law) to remedy the Adverse Event.

However, we may give you shorter notice periods than those described above or no notice periods (or if you are not a Small Business, no notices), in relation to an Adverse Event where:

- a. it is reasonable for us to act to manage a material and immediate risk relating to the nature of the relevant Adverse Event, your particular circumstances or the value of the Security or Security Interest, for example, if we became aware that you were attempting to sell any assets or property secured under a Security or Security Interest contrary to the terms of this Agreement; or
- b. you are Insolvent (but if you are a Small Business it must still be reasonable for us to act to manage the material and immediate risk as described above).

We can immediately take any or all of the Enforcement Actions listed in clause 13.5 where:

- a. we give you a notice under this clause and you do not remedy the adverse event within the required notice period set out in the notice given (or within any longer period we allow);
- b. we give a notice under this clause but we are not required to give a notice period; or
- c. you are not a Small Business and we have decided in accordance with this clause not to give a notice.

If we are not entitled to take any of the Enforcement Actions listed in clause 13.5, then we may ask for further information, but we will not at that time take any further action.

#### **13.4 What if another Default occurs during the remedy period?**

Even if you remedy a Default during the applicable remedy period specified in a notice, we may still take Enforcement Action if another Default of the same type has arisen during that period and remains outstanding.

#### **13.5 Enforcement Actions**

After any applicable steps and time periods described above, when you are in Default, we can do any or all of the following (each an "**Enforcement Action**"):

- a. by notice to you, cancel this Agreement with immediate effect;
- b. require you to pay, and if necessary, sue you for, the amounts payable under clause 9;
- c. continue to charge additional interest in accordance with clause 26 on any overdue amounts (including overdue interest);

- d. take possession of the Equipment and deal with it as described in clause 7 or 8, as applicable; and
- e. enforce any other Security granted to us as security for your obligations or the obligations of any Guarantor in respect of this Agreement.

Our rights to take Enforcement Action are subject to any obligations we have to give notices, participate in mediation, return the Equipment or to give you the benefit of the proceeds of any Net Sale Proceeds.

### **13.6 Concurrent Notices**

We may also give you at the same time, or combine with a notice under this clause 13, any additional notice that is required by law in connection with enforcing a Security Interest.

### **14. What happens to payments we receive**

We can use any payment we receive under or in connection with the Agreement to reduce amount you owe us in any way we find necessary to protect our legitimate business interests. After you have paid us the amount you owe us, we may pay any amount left over to a person with a later registered or unregistered Security Interest without being liable to you.

### **15. Casualty Event**

- a. A Casualty Event means, in respect of the Equipment:
  - (i) the Equipment is lost, stolen or destroyed,
  - (ii) the Equipment is seized or confiscated; or
  - (iii) the Equipment is damaged or impaired to such an extent that you or the insurer decides that repair is impractical or uneconomic.
- b. If the Equipment suffers a Casualty Event, you must notify us on the same day.
- c. Following a Casualty Event, you may request a Substitution in respect of the Equipment. We will not unreasonably withhold our consent to a Substitution and if we agree to a Substitution, you must pay us a Variation Fee and PPSR Fee.
- d. If Casualty Event affects only some of the Equipment, and the nature of the unaffected Equipment is such that it could have been the subject of a separate Agreement, this Agreement will continue in relation to that unaffected Equipment but the agreement will be treated as having terminated in relation to the affected Equipment from the time we are notified of the Casualty Event except to the extent a Substitution later occurs.
- e. Unless we agree upon a Substitution for Equipment affected by a Casualty Event within 30 days after the Casualty Event, you must pay us:
  - (i) the Termination Value in respect of the Equipment;
  - (ii) all outstanding Instalments and other amounts payable by you under the agreement; and
  - (iii) the amounts of losses and costs we incur described in clauses 19 and 24,

less the proceeds of any insurance claim we have at that time received in relation to the Casualty Event or any other proceeds we receive from any third party whether as compensation or from the disposal of the Equipment.

If we receive such proceeds after you have paid us the amounts referred to in sub-paragraphs e.(i)-(iii) and you are not in Default, we shall apply them to settle any outstanding liability you have to us and pay any surplus to you.

If instead of receiving a monetary sum as the proceeds of an insurance claim for the Casualty Event, we receive replacement equipment, we may sell the replacement by public auction or private sale and if you are not in Default, apply the Net Sale Proceeds towards satisfaction of any outstanding liability you have and pay any surplus to you.

- f. Where this Agreement continues in relation to any Equipment unaffected by the Casualty Event, we shall notify you of varied Instalments and Stamp Duty payable for the remainder of the Term and the Residual Value in relation to that unaffected Equipment.
- g. If any Equipment is damaged, without resulting in a Casualty Event, you must notify us on the same day, and take steps to restore it to the condition it was in before it was damaged. If we receive any money from any insurer or other third party in relation to the Equipment because of the damage, we will pay it to you, up to the amount required to restore the Equipment, less all money then payable by you to us under this Agreement.

### **16. Your responsibilities in relation to the Equipment**

You must:

- a. supply us with the correct serial numbers of the Equipment to us for recording on the PPSR;
- b. protect our interest in the Equipment and make clear to third parties that we are the owner or mortgagee, as applicable;
- c. affix to the Equipment any Identifying Mark we require;
- d. comply with all applicable laws and safety standards in relation to the Equipment's use and ownership and as to the place it is kept;
- e. protect the Equipment from loss or damage and keep it in good working order and condition;
- f. ensure the Equipment is used only for the purpose for which it was designed;
- g. keep all Manuals and Training in an appropriate place accessible to those who use and maintain the Equipment;
- h. pay all amounts required to lawfully operate the Equipment;
- i. install, service and maintain the Equipment in accordance with the manufacturer's instructions using only qualified personnel or contractors;
- j. keep all records of the servicing and maintenance of the Equipment and provide copies on our request;

- k. keep the Equipment at the address specified in the Schedule or where we otherwise agree, except in the case of moveable Equipment, which must be kept at that address when not in use;
- l. tell us if the Equipment is no longer in your possession or control or you change the address at which the Equipment is usually kept;
- m. allow our authorised representative to enter premises at which the Equipment is located at any time to inspect it, affix any Identifying Mark, exercise any rights we have in relation to it and do anything you should have done under this Agreement;
- n. replace any components which need replacement to keep the Equipment in good working order and condition ensuring all replacement components are free of any third-party encumbrance;
- o. do anything required (including anything we reasonably require) to preserve the benefit of a Supplier warranty;
- p. if such Security Interest is granted to you over the Equipment, register it on the PPSR as soon as it becomes registrable and in the manner, which affords you the highest possible priority under the PPSA and maintain such registration until it is discharged or you cease to have any obligation to us in relation to the Equipment;
- q. allow our authorised representative reasonable opportunity to review and verify your compliance with your obligations under paragraph (p);
- r. give us any information or documents we request in relation to the Equipment including title documents, chattel paper, negotiable instruments and import documents; and
- s. do everything reasonably necessary to ensure we are able to do any of the things above (including obtaining any necessary consents from the owner or occupier of premises at which the Equipment is to be located).

#### **17. Things which require our consent in relation to the Equipment**

You will not, without our consent:

- a. assign or otherwise deal with your rights in connection with this Agreement;
- b. give or allow any other person to have an interest in the Collateral, a finance document in relation to the Collateral or any land to which the Equipment is attached;
- c. place, or allow to be placed, on the Equipment any Identifying Mark inconsistent with our interest as owner or mortgagee, as applicable;
- d. alter the Equipment or do, or omit to do, anything likely to diminish its value;
- e. affix the Equipment to any other property or any land or building or allow it to be commingled with any other property;
- f. allow another person to have possession or control of the Equipment; or
- g. move or allow the Equipment to be moved out of Australia.

#### **18. Your other obligations**

You need to:

- a. give us true and correct information and copies of documents we reasonably request in relation to your business or financial position for any financial period;
- b. ensure that you, each Guarantor and each person who provides a Security Interest to us does not become Insolvent;
- c. ensure there is no change to your business assets or financial position which materially adversely affects your position to meet your obligations to us;
- d. if you are a corporation (other than a listed corporation), ensure you are not the subject of a change of Control;
- e. do anything we reasonably request of you to ensure the Security Interest granted to us over the Collateral is perfected with first ranking priority; and
- f. notify us before you change your name or change your principal place of business.

#### **19. Payment of our Loss and Costs**

When we ask, you must pay any amount we reasonably determine represents the Loss and Cost we have incurred or will incur in connection with:

- a. reasonably exercising our rights under this Agreement or any Security;
- b. a Default by you or you not doing what is required under this Agreement or any Security;
- c. a Guarantor not doing what is required under a Guarantee;
- d. our taking possession of or storing the Equipment under this Agreement or otherwise taking steps to enforce Security;
- e. any death, injury or damage caused directly or indirectly through the Use of the Equipment;
- f. any damage to, or loss or destruction of, or defect in, the Equipment;
- g. our reasonable reliance on information or communications we receive from you or any Guarantor;
- h. any third party claim or proceeding against us relating to this Agreement, the Equipment, or the ownership or Use of the Equipment, including for patent, trademark or copyright infringement, for strict liability, for personal injury or death to any person, for breach of law (including occupational health and safety legislation) or for any other reason,

but only to the extent such Loss or Costs are not separately payable by you under another provision of this Agreement.

#### **20. You must have Insurance**

- a. You must:

- (i) take out and maintain the Required Insurance for the Term;
  - (ii) note our Security Interest as owner or mortgagee, as applicable, on the relevant policy for Required Insurance over the Equipment;
  - (iii) tell us if a claim on Required Insurance is made or if any Required Insurance is cancelled;
  - (iv) not do, or omit to do, anything which would result in insurance cover or a claim on Required Insurance being declined or the proceeds being reduced;
- b. If you do not maintain the Required Insurance, we may take out the Required Insurance on your behalf. If we do, you must pay or reimburse us for the premium when we ask.
  - c. You must not without our consent:
    - (i) do or fail to do anything which would allow an insurer to refuse or reduce a claim;
    - (ii) vary an Insurance policy; or
    - (iii) enforce, conduct, settle or compromise any claim under an insurance policy.
  - d. If any claim is paid, you must ensure that proceeds from loss or, or damage to, the Equipment are used to repair or replace the Equipment, or if we direct, to pay us to apply towards your obligations to us.

## **21. Limitation of our liability to you**

- a. As a passive financier, except as required by law, we make no representations or warranties and provide no undertakings to you relating to the Equipment or to assist you or anyone else while examining the Equipment and in reaching your decision to accept the Equipment.
- b. Except to the extent required by law, we are not liable for, and you release us from any liability in connection with:
  - (i) any faults, defects or inadequacies in the Equipment;
  - (ii) injury or death of any person;
  - (iii) Loss or damage to property arising from the Use of the Equipment (except to the extent this is caused by our negligence); and
  - (iv) our reasonable reliance, or us acting in good faith, on any information you give us or instructions or communications sent to us (in any form) that we receive from you, the Guarantor or a Supplier of the Equipment.
- c. To the extent permitted by law, our liability for anything in relation to the Equipment (including selling it to you upon termination of the Agreement) or the Use of the Equipment or any financial services under this Agreement, including damage or economic loss to anyone, cannot be more than a liability:
  - (i) to replace the Equipment with the same or equivalent Equipment, to pay the cost of such a replacement, or to repair the Equipment or pay for its repair; and/or
  - (ii) where applicable, to re-supply the financial services with the same or equivalent services or pay for the cost of that re-supply of the financial services.

## **22. Your acknowledgements about the Equipment**

- a. You acknowledge that:
  - (i) we have not examined or tested the Equipment, but you have inspected it and satisfied yourself as to its quality, condition and fitness for purpose including as to actual or potential copyright, patent, trademark or licence which may affect its use;
  - (ii) the Supplier of the Equipment is not our agent and has no authority to represent or bind us;
  - (iii) to the extent permitted by law, we are not liable for, and you release us from, any liability in connection with faults or defects in the Equipment or in connection with injury or death or any person, or loss or damage to property arising from the Use of the Equipment (except to the extent this is caused by our negligence);
  - (iv) we provide no option, undertaking or promise that you may purchase the Equipment;
- b. If the Equipment is second-hand, you indemnify us against any Loss we suffer or any claim, suit or demand against us by reason of any defect in title of the seller of the Equipment or any third person claiming any right, title or interest in the Equipment.

## **General Conditions**

**These General Conditions applies generally to you and to each Guarantor (if any).**

### **23. Fees**

You must pay us the fees in the amounts, and at the times, described in the Schedule and this Agreement, and otherwise, promptly when we ask.

We may introduce or vary any fee or charge to cover any additional costs we incur for providing services under this Agreement. We may do this by giving you notice to your nominated electronic address for notices.

### **24. Cost and Taxes**

You must pay us for our reasonable Costs and Taxes payable in connection with:

- a. this Agreement including any actual or attempted exercise or enforcement of rights under it;
- b. any payment, receipt or other transaction arising out of this Agreement;



- c. the registration of our interest in the Collateral on any appropriate register; and
- d. preparing, registering and maintaining any financing statement or financing change statement under the PPSA.

The Guarantor must pay us for our reasonable Costs and Taxes payable in connection with the Guarantee including:

- a. any actual or attempted exercise or enforcement of rights under the Guarantee; and
- b. any payment, receipt or other transaction arising out of the Guarantee.

Anything which you or the Guarantor must do under this Agreement must be done at your or the Guarantor's cost.

## **25. GST**

- a. If GST is imposed on any supply made by us under or in connection with this Agreement, in addition to any other consideration payable by you to us, where we have not already included GST on the price of the supply we may recover from you, an additional amount on account of that GST, such amount to be calculated by multiplying the amount or consideration payable for the relevant supply by the prevailing GST rate. Any additional amount on account of GST recoverable from you under this clause shall be calculated without any deduction or set-off of any other amount and is payable by you upon demand by us.
- b. Where you are required pursuant to this Agreement to pay an amount to us by way of reimbursement of an amount paid or payable by us to a third party, the amount required to be paid by you will exclude any amount in respect of which we are entitled to an input tax credit.

## **26. Payments to be made in full and on time**

- a. If and when a payment is required to be made to us under this Agreement, it must be made in full without any set-off, counterclaim, withholding or deduction, except as required by law (for example, where a court order permits). If you or a Guarantor have a dispute about a payment, please contact us so we can seek to resolve this as soon as possible.
- b. If you, we or the Guarantor are, at any time, compelled by law to deduct or withhold any amount (including Taxes), you or the Guarantor must indemnify us against that amount and pay us concurrently such additional amounts as will result in payment to us of the full amount which would have been received if no deduction had been made.
- c. Any payment by you or the Guarantor to us is to be taken to have been made only when we receive it in cleared funds.
- d. Time is of the essence in relation to each obligation to pay money under this Agreement. Each person must comply with these obligations on time.
- e. You must pay additional interest calculated on a daily basis as the Interest Rate on each amount you do not pay under this Agreement (overdue amount) for the period it is unpaid.
- f. We may add accrued additional interest on any overdue amount or amounts you already owe us and when we do, additional interest may become payable on that added amount.

## **27. Authority to complete**

Each of you and the Guarantor irrevocably authorise us to complete any blanks or amend any of the details in a Schedule (in the case of amending any of the details, where such details are incomplete or incorrect) in order to give effect to this Agreement.

## **28. Our right to act and how we may exercise our rights**

- a. We may:
  - (i) do anything we think reasonably necessary to protect our rights in the Collateral or under this Agreement;
  - (ii) do anything you should have done under this Agreement or the Required Insurance and which we reasonably consider you have not done properly; or
  - (iii) exercise a right or, remedy in any way and at any time we consider reasonably appropriate in all the circumstances. If we do not exercise a right or remedy fully or at a given time, we can still exercise it later.
- b. We are not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy where:
  - (i) there is no breach of a legal duty of care owed to you by us or by any of our employees, authorised representatives or agents; or
  - (ii) such Loss or damage is not a reasonably foreseeable result of any such breach.
- c. We will not be responsible for any Loss or damage resulting from a breach by you or any Guarantor of any term of this Agreement.
- d. Our rights and remedies under this Agreement are in addition to any other rights or, remedies given by law independently of it.
- e. We need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

## **29. Applying money we owe you or a Guarantor**

You and the Guarantor authorise us to apply any money we owe you or the Guarantor (as the case may be), to satisfy amounts you or the Guarantor owe us under this Agreement.

## **30. Reinstatement of rights**

An external administrator may be entitled under law to ask us to refund a payment we have received in connection with this Agreement. If that happens, then we will treat that payment as not having been made to us, and we will be entitled as

against you or the Guarantor as if that payment was never made. This applies even if this Agreement has been terminated.

If this happens, you or the Guarantor must also do anything we reasonably ask to restore any Security Interest we held or rights we had against you or the Guarantor.

### **31. Notices and other communications**

#### **How we will communicate**

- a. Notices and other communications from us can be:
  - (i) given to you personally;
  - (ii) left at or posted to the address last nominated by you;
  - (iii) sent by facsimile to the fax number last nominated by you;
  - (iv) given to you by notifying you through an electronic service provided by us that information is available electronically;
  - (v) given to you electronically by:
    - I. short message service (SMS) to your mobile telephone number or email; or
    - II. notifying you by short message service (SMS), or by email, of information on our website.
- b. We will use your last nominated mobile number or email address to give you notice. You may change your nominated email address or mobile number, by giving us notice or calling us on 1300 728 718. On request, we will provide you with paper copies of any notices or communications sent to you. You must check your email and mobile phone regularly.
- c. If we send a document or communication to you by ordinary post, you are taken to have received it 7 Business Days after it was posted.
- d. A document or communication sent by facsimile is received by you at the time and date shown on the delivery receipt.
- e. A document or communication sent by another form of electronic communication (such as SMS or electronic mail) is taken to be received when it enters your information system as recipient.

#### **Communications from you**

Written communications from you must be signed (including electronically) by you (or by a director or another person we have approved in the case of a company or another entity).

### **32. Variation of contract terms**

- a. We may vary this Agreement to the extent we reasonably consider appropriate to ensure that the facility under this Agreement is provided in accordance with all relevant laws and industry codes. We will give you at least 30 days' notice of any such variation, however we may give you a shorter notice period if it is reasonable for us to manage a material and immediate risk.
- b. This clause is in addition to any changes expressly authorised under other provisions of this Agreement.

### **33. Business Days**

If this Agreement requires you to do something (including paying an Instalment) on a day which is not a Business Day, you must do that thing on the preceding Business Day.

### **34. Applicable Law**

This Agreement is governed by the laws of the state or territory shown in your address in the Schedule (and if there is more than one of you, the first address shown in the Schedule). You agree to any court dispute being conducted in the courts of that state or territory.

### **35. Indemnities**

Each indemnity in this Agreement is a continuing obligation, separate and independent from other obligations. It continues after this Agreement ends or is terminated. It is not necessary for us to incur any expense or make payment before enforcing a right of indemnity against you or the Guarantor.

### **36. Agency and Transfer**

- a. We enter into this Agreement as agent on behalf of a principal.
- b. Any reference in this agreement to Us includes any principal for whom we are an agent (whether identified or not). We may also transfer, assign or otherwise deal with the Collateral, our rights or our interest in this Agreement or give another person an interest in or form a Security Interest over either of them. We may disclose any information or document we consider desirable to help us exercise this right at any time to a person to whom we transfer or assign or propose to transfer or assign our interest.
- c. You agree to sign any documents or give any consents that we consider desirable to help us exercise our rights under this clause.

### **37. Trustee promises**

You and the Guarantor acknowledge that, unless you or the Guarantor have told us otherwise, you and the Guarantor do not enter into this Agreement as trustee of any trust or settlement.

If you or the Guarantor sign this Agreement as a trustee of a trust, the trustee's liability to us is supported by the trustee personally, the trustee's own assets and the trust assets. You promise that:

- a. the trustee is the only trustee of the trust and no steps have been taken to remove the trustee as trustee of the trust;
- b. the trustee has the power and authority to enter into this Agreement and is doing so in good faith, for a proper purpose and for the benefit of all of the beneficiaries of the trust;
- c. the trustee has the right to be fully indemnified out of the trust assets for obligations incurred as trustee under this Agreement ahead of the beneficiaries' claims;
- d. the trustee is not in breach (however described) under the terms of the trust;
- e. the trustee will not without our prior written consent:
  - (i) amend the trust deed;
  - (ii) cease to be the only trustee; or
  - (iii) breach its duties as trustee of the trust;
- f. the trust has not vested or terminated and no action has been taken or is proposed to be taken to terminate the trust;
- g. if requested by us, true copies of the trust deed and other trust documents have been provided and they disclose all the terms of the trust;
- h. the trust deed and other trust documents have not been revoked, varied or amended in any way since being provided to us;
- i. the trustee and its directors and other officers (if any) have complied with all obligations in connection with the trust;
- j. you will immediately notify us if any of the representations and warranties in this clause 37 cease to be true or become misleading in any way; and
- k. you indemnify us against any liability or loss arising from, and any costs, charges and expenses (including legal costs and expenses on a full indemnity basis) incurred in connection with, any of the promises given in this agreement being untrue or unfulfilled.

### **38. Partnership promises**

If you are a partner of a partnership named in the Schedule, you promise that:

- a. you have the full power and authority on behalf of the partnership (including under any partnership agreement) to sign and comply with this Agreement as a partner to bind the partnership, and doing so is for the proper business of the partnership;
- b. true copies of any documented partnership agreements have, if requested by us, been provided by you and they disclose all the terms of the partnership; and
- c. the persons named in the Schedule are all the partners in the partnership.

### **39. Security Interest Confidentiality**

The parties agree that no one will disclose, or authorise the disclosure of, any information of the kind described in section 275(1) of the PPSA, unless allowed or required by law.

### **40. Read down clause**

To the extent any provision of this Agreement would be prohibited, unenforceable or deemed void under any applicable law, the provision is to be interpreted as modified only to the extent necessary for the provision to be effective (for example, by reducing any discretion we have or by reducing an amount payable). If the clause is incapable of being read down to have this effect, it is taken to be severed. The remaining provisions remain effective and enforceable.

### **41. Exclusion of PPSA provisions**

We need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded. If Chapter 4 of the PPSA applies to the enforcement of a Security Interest arising under or in connection with this Agreement, you agree to the extent the law permits, for the purposes of sections 115(1) and 115(7) of the PPSA, we need not comply with sections 95, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA.

You agree that you have waived your right under section 157(1) of the PPSA to receive notice of a verification statement if the Collateral is described in the registration as commercial property (pursuant to section 157(3) of the PPSA).

### **42. Exercise of discretions and rights**

Where this agreement or any finance document confers on us a right or discretion, we will exercise that right or discretion reasonably and after having regard to our legitimate business needs.

### **43. Interpretation**

In this Agreement, a reference to:

- a. the singular includes the plural and vice versa;
- b. law includes common law, principles of equity and legislation of the Commonwealth, a state or territory;
- c. a document or legislation includes any variation, novation or replacement of it;
- d. a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns, and in our case, any principal for whom we may be agent (whether identified or not);
- e. any thing (including the Collateral) includes the whole and each part of it; and
- f. a person includes an individual, a firm, a body corporate, an unincorporated association and an authority.

## Section 5: Glossary

This Glossary explains terms applicable to you and each Guarantor.

In this Agreement:

**Adverse Event** has the meaning given in clause 13.3.

**Asset Finance Agreement** means this Agreement.

**Business Day** means any day except a Saturday, Sunday or Public Holiday in the state of New South Wales.

**Casualty Event means, in respect of the Equipment:**

- the Equipment is lost, stolen or destroyed, or
- the Equipment is seized or confiscated, or
- the Equipment is damaged or impaired to such an extent that you or the insurer decides that repair is impractical or uneconomic.

**Collateral** means each one or more of the following which the context allows:

- the Equipment that is the subject of an Asset Finance Agreement; and
- replacements for, accessories and additions fitted to any such Equipment at any time; and
- Proceeds derived from any insurance claim for, or sale of, such Equipment and any other income derived from such Equipment.

**Control** means,

- in respect of a corporation, having the direct or indirect power to direct its management or control the membership of its board of directors; and
- otherwise, has the meaning given in Part 2.3 of the PPSA.

**Costs** means costs, charges, Taxes and expenses, including those in connection with legal and other advisers.

**Daily Amount** means the Instalment divided by 30.

**Default** has the meaning given in clause 13.

**Early Termination Payment** at any time, means the sum of:

- all accrued and unpaid Instalments at that time;
- the Termination Value; and
- the Early Termination Administration Fee.

**Economic Costs** has the meaning given in clauses 11, 13.5 and 15, as applicable to the circumstances.

**Equipment** in respect of an Asset Finance Agreement, means the goods described in the Schedule, which includes any parts and accessories and any replacements and substitutions of such Equipment.

**GST** means the goods and services tax described in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related Acts, or any similar tax.

**Guarantee** means the guarantee and indemnity contained in Part B of Section 4 of this Agreement and each other provision in this Agreement applying to the Guarantor.

**Guarantee Limit**, in respect of a Guarantor, means the guarantee limit described in the Schedule for that Guarantor.

**Guaranteed Moneys** means all debts and monetary liabilities you have to us under this Agreement irrespective of whether the debts or liabilities:

- are present or future;
- are actual, prospective, contingent or otherwise;
- are at any time ascertained or unascertained;
- are owed or incurred by or on account of you alone, or severally or jointly with any other person;
- are owed to or incurred for our account alone, or severally or jointly with any other person;
- are owed to any other person as agent (whether disclosed or not) for or on our behalf;
- are owed or incurred as principal, interest, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account; or
- comprise any combination of the above.

**Guarantor** means the person or persons described in the Schedule as guarantor. If there are more than one, "Guarantor" means each of them separately and every two or more of them jointly unless the context provides otherwise.

**Identifying Mark** means any plate, mark, number, name or other means of identification that in any way indicates our ownership of, or Security Interest in, the Equipment.

**Insolvent** in relation to you or a Guarantor, means being bankrupt, insolvent, in receivership, in receivership and management, in liquidation, in provisional liquidation, under official management or administration, wound up, dissolved, subject to any arrangement, assignment or composition or protected from creditors under any statute or being unable to pay debts when they fall due.

**Instalment** means the scheduled payments you must make under this Agreement as specified in the Schedule as varied under this Agreement.

**Interest Rate** means the interest rate we have applied or implicitly applied to calculate the Instalments.

**Interested Person** has the meaning given to that term for the purposes of section 275 of the *PPSA*, and includes:

- you; or
- a person with another security interest in the Collateral; or
- if you are a body corporate, your auditor; or
- an execution creditor with an interest in the Collateral; or
- an authorised representative of any of the above.

**Lease Agreement** a type of Asset Finance Agreement under which you lease Equipment we own for the Term.

**Loss** includes any liability or loss, and any Costs (including on account of funds borrowed, contracted for or used to fund any amount payable or any amount in respect of any swap or hedge by us in connection with our purchase of the Equipment or this Agreement) and Taxes.

**Manuals** means all manuals, instructions, guides or other documents in any form relating to the operation, use and/or maintenance of the Equipment.

**Net Sale Proceeds** means the gross sale proceeds received for selling Equipment less all Costs we incur in taking possession, storing and selling it.

**Payment Date** means each date described as such in the Schedule as varied in accordance with this Agreement. Where a Payment Date falls on a corresponding date in each month (or other period) and there is no corresponding date in a particular month or period, the Payment Date will fall on the last Business Day of such month or period.

**Payment Default** has the meaning given in clause 13.2.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and any regulations made pursuant to it.

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

**Proceeds** has the meaning given in the PPSA.

**Records** means certificates of registration, insurance certificates, log books, Manuals and other documents relating to the Collateral.

**Required Insurance** means:

- where the Equipment is a motor vehicle, full comprehensive and third party insurance;
- insurance against loss or damage to the Equipment caused by fire, theft, accident (for the full replacement value of the) and any other risks we reasonably specify up to an amount approved by us;
- public liability insurance for bodily injury or death or damage to property or the environment arising in connection with the Use of the Equipment up to an amount approved by us; and
- insurance against any other liability the law or we reasonably require you to insure against.

**Residual Value** means the residual value described in the Schedule, as varied in accordance with this Agreement.

**Schedule** means

the schedule entitled "Equipment Schedule - Lease Agreement" in Section 1 which forms part of this Lease Agreement.

**Security** means any security described as such in the Schedule

**Security Interest**, in relation to:

- any personal property (as defined in the PPSA) has the same meaning as in the PPSA; and
- any other property means any security for the payment of money or a performance of an obligation, including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement. It also includes a guarantee or indemnity.

**Settlement Date** means, in connection with an Asset Finance Agreement, the date we notify you in writing as the date the Asset Finance Agreement was loaded onto our computer systems.

**Small Business** means a business that employs fewer than 20 persons (including casual employees employed on a regular and systemic basis) unless the sum of all instalments over the Term exceeds \$1,000,000.

**Substitution** means the substitution of Equipment the subject of this Agreement that has been the subject of a Casualty Event with replacement equipment provided by an insurer or other agreed person in consequence of the Casualty Event and in circumstances where we agree

the replacement Equipment becomes our property and is to be treated as Equipment the subject of Agreement.

**Supplier** includes a manufacturer.

**Taxes** means taxes, levies, stamp and other duties, governmental fees and charges including any interest, penalties, fines or expenses in connection with them.

**Term** the period described as the term in its Schedule.

**Termination Value** on a day means

the sum of:

- the present value on that day of the Residual Value; and
- the present value on that day of the Instalments which are still to fall due and which are attributable to the Equipment.

The present day value of an amount on a day is calculated by discounting that amount at a fair and appropriate discount rate.

**this Agreement** means the Schedule and these Asset Finance Terms and Conditions in this Section 4 including the Guarantee, if applicable.

**Training** means all training recommended by the Supplier of the Equipment, their representatives or us in relation to the operation, use and/or maintenance of the Equipment or any part of it.

**Use of the Equipment** includes possession, operation, maintenance, repair, transportation, storage and installation of the Equipment.

**we, our, us** means the party described as "Us" in Section 1 Part A: Details.

**you, and Customer** mean the person or persons described as "You" in Section 1 Part A: Details and if there are more than one, means each of you separately and every two or more of you jointly. "You" includes your successors and assigns to whom we have consented.

**The following words have the respective meanings given to them in the PPSA:**

accession, attach, chattel paper, commingled, documents of title, investment instrument, perfected, financing statement, financing change statement, negotiable instrument, possession, and verification statement.