

KUUWA RENTALS PTY LTD - MASTER HIRE AGREEMENT

1 DEFINITIONS AND INTERPRETATIONS

In this Agreement:

- (a) “**Agreement**” means this Master Hire Agreement as amended, supplemented or varied from time to time;
 - (b) “**Business Day**” means a day not being a Saturday, Sunday or public holiday in Perth, Western Australia;
 - (c) “**Delivery**” means the date and time a specific item of hired Equipment is collected from the Location by You;
 - (d) “**Equipment**” means the equipment described in column 1 of the table in Item 3 of the Schedule;
 - (e) “**Hire Commencement Date**” means the date specified in item 6 of the Schedule;
 - (f) “**Hire Fee**” means the sum specified in column 3 of the table in Item 3 of the Schedule;
 - (g) “**Hire Form**” means the form attached to this Agreement as the Schedule;
 - (h) “**Hire Term**” means the period of time specified in Item 5 of the Schedule;
 - (i) “**Location**” means Our premises or other location as may be specified in Item 4 of the Schedule;
 - (j) “**PPSA**” means the Personal Properties Securities Act 2009;
 - (k) “**Prescribed Use**” means the proposed use of the Equipment by You as described in column 2 of the table in Item 3 of the Schedule;
 - (l) “**Schedule**” means the schedule to this Agreement;
 - (m) “**We**”, “**Our**”, “**Us**” and similar words mean Kuuwa Rentals Pty Ltd (ACN [631 213 011]) of [9 Havelock Street, West Perth]; and
 - (n) “**You**”, “**your**” and similar words mean the party hiring Equipment from Us, details of which are set out in item 1 of the Schedule.
- and unless the context indicates otherwise:
- (o) a reference to a party shall mean and include its and each of their personal representatives and successors in title respectively;
 - (p) where 2 or more persons are parties to this Agreement the covenants and agreements on their part shall bind and be observed and performed by them jointly and each of them severally;
 - (q) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
 - (r) A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the definitions, the Schedule and any annexures to that agreement or document;
 - (s) except in the Schedule, headings in this Agreement are for convenience and identification of clauses only and do not otherwise affect its interpretation;
 - (t) where applicable, words denoting the singular include the plural, words denoting the plural include the singular, and words denoting a gender include each gender;
 - (u) the word “**includes**” in any form is not a word of limitation; and
 - (v) a reference to “**\$**” or “**dollar**” is to Australian Dollars.

2 BASIS OF EQUIPMENT HIRE

2.1 Agreement to govern

This Agreement applies:

- (a) to each item of Equipment which You hire from Us from time to time; and
- (b) notwithstanding (and to the exclusion of) any contrary terms or conditions which You may seek to assert in that regard.
- (c)

2.2 Basis of hire

We are not obliged to hire any particular item of Equipment to You. However, if We agree to do so, it will be on the basis of a specific Hire Form which will, prior to the relevant Hire Commencement Date, be completed by Us and countersigned by You to record Your agreement to the matters contained in that Hire Form.

2.3 Hire of Equipment

In consideration of You paying the applicable Hire Fee regarding a specific item of Equipment designated in a completed Hire Form, We will hire that Equipment to You for the Hire Term on the terms and conditions of this Agreement.

2.4 Prohibition on dealings

During the Term, You must:

- (a) ensure that We retain unencumbered title in and to the Equipment at all times;
- (b) not attempt to sell, assign, pledge, mortgage, charge, encumber or otherwise deal with the Equipment or permit any lien to exist in respect of the Equipment; and
- (c) not hire, licence, assign Your rights in relation to or part with possession of the Equipment without Our prior written consent.

2.5 Access

You must procure and allow Us to have unfettered access to the Equipment at any time for any purpose in connection with this Agreement including, without limitation, to inspect the Equipment and any relevant maintenance records.

3 INVOICING AND PAYMENT

- (a) In consideration of Us hiring the hired Equipment to You, You agree to pay Us the Hire Fee as set out in this clause 3.
- (b) During the relevant Hire Term, We will invoice You monthly in arrears in connection with the hire of Equipment specified in a Hire Form by way of a valid tax invoice setting out the applicable total Hire Fee for that

period (“Invoice”).

- (c) You will pay the amount specified in an applicable Invoice in full, free from deduction, withholding or set-off, by electronic funds transfer into a bank account nominated by Us.
- (d) We can choose in our sole discretion to apply any funds received from You as against any outstanding amounts due and owing by You under this Agreement and We have no liability to You in that regard.
- (e) If you do not pay Us the amount specified in an Invoice within 14 days of receiving that Invoice then, without affecting any other right, power or remedy available to Us under this Agreement, You must pay Us, on demand, interest on any outstanding monies calculated daily from the time the money is first owed to the time it is paid to Us at the rate of 12% per annum.

4 DELIVERY, OWNERSHIP AND RISK

- (a) You will take Delivery of the particular item of Equipment specified in a Hire Form from the Location.
- (b) Risk and possession in that particular item of Equipment passes to You upon Delivery and remains with You until the Equipment has been returned to the Location by You.
- (c) Notwithstanding the possession and use of the Equipment by You during the Hire Term, title to and ownership of the Equipment shall at all times remain with Us.

5 MAINTENANCE, PRESCRIBED USE AND ALTERATION

5.1 General

- (a) You must ensure the Equipment is:
 - (i) used in a safe, careful and proper manner; and
 - (ii) returned to the Location upon termination of the relevant Hire Term or this Agreement in good repair and condition, fair wear and tear excepted.
- (b) For so long as You are hiring the Equipment, You must promptly pay all fees, duties and charges in relation to the Equipment, proof of payment of

which must be provided to Us upon demand.

- (c) You indemnify Us:
 - (i) for the payment of any fees, duties and charges payable in accordance with clause 5.1(b); and
 - (ii) against any proceedings, claims or demands in respect to the payment or non-payment of those sums.
- (d) You must, at Your sole cost and expense, ensure that You and the Equipment comply with:
 - (i) all applicable statutes, regulations, ordinances and by laws; and
 - (ii) the conditions of any licence, approval or certification relating to the Equipment or its Prescribed Use.

5.2 Repair and Maintenance

- (a) During the Hire Term You must, at Your sole cost and expense keep the relevant hired Equipment in good repair and condition (including in accordance with any written directions or instructions that We may give to You from time to time).
- (b) You must not engage, employ or permit any person to carry out repairs, major maintenance or servicing of any kind to the Equipment without Our prior written consent.
- (c) Other than Our obligations in clause 5.2(d), We are not liable for any loss or damage which is suffered or incurred by You resulting from any piece of Equipment not being useable due to repairs, servicing and maintenance.
- (d) If major maintenance, replacement or repair of the Equipment or any item of the Equipment is required, where such major maintenance, replacement or repair:
 - (i) is not due to any act or omission by You; and
 - (ii) causes the Equipment to be unavailable for more than 7 days, then:
 - (iii) You will not be required to pay the Hire Fee in relation to that piece of Equipment after the Equipment has been unavailable for 7 days; and

- (iv) We may, in Our discretion, offer a replacement piece of Equipment which, if You accept, will be hired by You on the same terms and conditions as if the replacement piece of Equipment were originally hired by You under this Agreement.

5.3 Unsatisfactory Equipment

- (a) If, within 7 days after Delivery of the hire of the Equipment, You determine in good faith that the whole or part of the Equipment is damaged, faulty or unsafe (other than due to any act or omission by You), You must notify Us and We may, in Our discretion:
 - (i) repair or remove the Equipment; and
 - (ii) offer a replacement piece of Equipment which, if You accept, will be hired by You on the same terms and conditions as if the replacement piece of Equipment were originally hired by You under this Agreement.
- (b) You will be obliged to return that piece of damaged, faulty or unsafe Equipment to the Location at Your cost and expense.
- (c) You will not be required to pay the Hire Fee from the time the faulty or damaged Equipment is returned to the Location.
- (d) If the Equipment is damaged, faulty or unsafe We will not be liable for any loss or damage You suffer or incur as a result of the Equipment being damaged, faulty or unsafe, from the time the Equipment is notified to Us as being damaged, faulty or unsafe until the time the Equipment is returned to the Location by You.

5.4 Prescribed Use

- (a) You must use the Equipment:
 - (i) only for the Prescribed Use;
 - (ii) in the ordinary course of Your business;
 - (iii) for the purpose for which it is designed, manufactured and normally used; and
 - (iv) in accordance with the manufacturer's guidelines and recommendations.

- (b) You must ensure the Equipment is used or operated only by operators who are suitably qualified and experienced to use the Equipment.
- (c) You must not do or permit any act or thing which does, or is likely to risk:
 - (i) the safety, condition or the value of the Equipment; or
 - (ii) Our ability to recover the Equipment upon termination of this Agreement.

5.5 Hirer to notify Owner

If any hired Equipment is damaged whilst in Your possession, You must notify Us immediately, and provide Us with reasonable details (including photographs) of the extent of the damage, the circumstances in which the damage occurred and any steps that You propose to take to rectify the damage.

5.6 Alterations

- (a) You must not:
 - (i) make any alteration or addition to any part of the Equipment; or
 - (ii) remove, alter or add to any accessories, equipment or devices on the Equipment, without Our prior written consent and subject to the requirements of any applicable law; and
 - (iii) any other condition imposed by Us.
- (b) All parts, accessories, equipment or devices which are affixed or installed on the Equipment and all item(s) replaced on or replacing the Equipment will be deemed to be:
 - (i) part of the Equipment or the Equipment itself;
 - (ii) Our property; and
 - (iii) subject to the terms and conditions of this Agreement.

5.7 Owner's Entitlement

We may, without notice to You, do anything which You are required to do in accordance with clause 5 and You must immediately, upon demand, reimburse Us for any costs and expenses incurred or paid by Us in accordance with this clause 5.7.

6 INSURANCE

- (a) At all times during the Hire Term You must, as regards the relevant hired Equipment, at Your own expense effect and maintain with an insurance company approved by Us:
 - (i) insurance for the Equipment in the names of Us and You for their respective rights and interests for the full insurable value against loss or damage by all risks usually insured against and any other risks specified by Us; and
 - (ii) such other insurances as We may reasonably require, and provide copies of such policies of insurance to Us upon request.
- (b) If the insurances outlined in clause 6(a) are not at any time effected and maintained in accordance with this Agreement, We may ourselves effect that insurance and You must immediately upon demand reimburse Us for the premiums and any associated costs incurred or paid by Us.
- (c) You must, in relation to all policies of insurance effected under clause 6(a):
 - (i) ensure that, where possible, each such insurance policy contains provisions for cross liability and waiver of subrogation rights;
 - (ii) assign Your rights and interests under every such insurance policy to Us; and
 - (iii) not do or omit to do anything which is reasonably likely to prejudice any such insurance policy or cause the relevant insurance premiums to be increased.

7 INDEMNITY

7.1 Owner

We shall not be liable to You for any loss, damage, injury, pollution, environmental damage or other liability whatsoever to any person or the property of anyone (including the parties, their agents and employees) arising out of or resulting from the use, installation or operation of the Equipment, or otherwise generally in

relation to the Equipment and You agree to indemnify Us and keep Us harmless from and against all claims, actions, damages and demands for any such loss, damage, injury, pollution, environmental damage or other liability of whatever nature arising out of or resulting from the use, installation or operation of the Equipment.

7.2 Hirer's indemnity

You indemnify Us against any loss, damage, cost or claim arising, directly or indirectly, out of:

- (a) the loss of, destruction or damage to the Equipment;
- (b) the use or state of the Equipment including, without limitation, any injury or loss of life to any person or damage or destruction caused by the Equipment or its use;
- (c) anything done by Us in the exercise or purported exercise of Our rights under this Agreement;
- (d) any claim affecting Our interest in or title to the Equipment and any action taken by Us to protect such interest and title; and
- (e) any breach by You of Your covenants, the occurrence of an Event of Default or the repossession of the Equipment or its storage.

8 WARRANTY

You warrant to Us that:

- (a) all the information at any time given to Us is correct and is not by content or omission misleading; and
- (b) You have, prior to or on Delivery of any Equipment, examined the Equipment in question and satisfied yourself as to the good condition, merchantable quality and suitability of the Equipment for the Prescribed Use and otherwise for Your intended purpose and that the Equipment complies with its description in the Schedule.

9 DEFAULT AND TERMINATION

9.1 When this Agreement terminates

This Agreement will terminate in the following circumstances:

- (a) by either party giving at least 30 days' written notice to the other party of such termination; or
- (b) by Us in accordance with clause 9.2.

9.2 Events of default

If any of the following events occurs, then We may in Our sole discretion and without further liability to You, elect by written notice to You either to terminate the Hire Term with respect to some or all of the Equipment or to terminate this Agreement in its entirety:

- (a) You permit or cause servicing, maintenance or repairs to be effected to any Equipment by persons other than Us and without Our prior written consent;
- (b) any insurance policy specified in clause 6(a) is not effected or is cancelled, voided or expires without being immediately renewed;
- (c) You default in complying with Your obligations pursuant to clause 2.5 not to encumber or licence any Equipment;
- (d) We consider (acting reasonably) that any Equipment is not being used for its Prescribed Use or otherwise in accordance with clause 5.4;
- (e) You abandon any Equipment, or it is substantially or materially damaged, lost or destroyed;
- (f) You are in breach of any of Your covenants or obligations under this Agreement (other than clause 9.2(a) to (c) inclusive) for 7 days after notice of such breach has been given to You;
- (g) You are unable to pay your debts as and when they fall due (whether or not a demand for payment is made);
- (h) where You are a corporation, an application is made or a resolution is passed for You to be wound up (other than for the purpose of reconstruction or amalgamation), or a receiver, agent in possession for a mortgagee or administrator is appointed in relation to You or Your property, or You enter into any compromise or arrangement with Your creditors (or any class of them);
- (i) You (or the Guarantor if applicable), being a natural person, commit an act

of bankruptcy, die or are incapable of managing its own affairs by reason of mental illness or other condition;

- (j) if You are a partnership, the partnership is dissolved or any application to a Court for the dissolution of the partnership is made; or
- (k) an event substantially similar to any of those specified in clauses 9.2(g) to (j) occurs in relation to You.

9.3 Consequences of termination

- (a) Upon the exercise of our termination rights under clause 9.2 or the expiry of a particular Hire Term, You must return the relevant Equipment, at your sole cost and expense, within 2 Business Days to Us at the Location in the same repair and condition it was delivered, fair wear and tear excepted.
- (b) You must continue, to the extent we exercise our termination rights, to pay the Hire Fee regarding any hired Equipment until that Equipment is returned to the Location.
- (c) You must in addition pay all costs, charges and fees associated with the return of the Equipment to the Location including transport, however, if We require the Equipment to be returned to a place other than the Location from which it was collected at Delivery:
 - (i) We will be responsible for all costs and expenses associated with returning the Equipment to that location; and
 - (ii) We agree to reimburse You for all reasonable costs incurred in delivering the Equipment to that location.
- (d) If We exercise Our termination rights under clause 9.2:
 - (i) We are immediately entitled to possession of the relevant Equipment; and
 - (ii) You irrevocably authorise Us to go on to Your site or any other premises where the relevant Equipment is located and repossess that Equipment.

10 DISPUTE RESOLUTION

- (a) Any dispute or difference (“**Dispute**”) arising out of or in connection with this Agreement must be dealt with in accordance with this clause 10.
- (b) A party may notify the other party of the existence of a Dispute by giving a notice in writing specifying in reasonable detail (“**Notice of Dispute**”):
 - (i) the nature of the Dispute;
 - (ii) the matters on which the parties are unable to agree as at the date of the Notice of Dispute; and
 - (iii) a person having authority to negotiate and attempt to resolve that particular Dispute on behalf of the notifying party.
- (c) A party served with a Notice of Dispute must respond to the other party within 14 days of receiving it, providing details of the corresponding person who has authority to negotiate and attempt to resolve that particular Dispute on its behalf and proposing a time and location for a meeting in that regard.
- (d) If the representatives of the parties have not resolved a Dispute within 20 Business Days (or such longer period as they may agree in writing) of the service of the notice under clause 10(c) above, either party may commence proceedings in a court of competent jurisdiction in respect of that particular Dispute.
- (e) Notwithstanding the service of a Notice of Dispute or the operation of this clause 10, the parties must continue to perform their other obligations under this Agreement.
- (f) Nothing in this clause 10 shall prejudice the right of a party to seek injunctive or urgent declaratory relief in respect of a Dispute or any matter arising under this Agreement.

11 ACKNOWLEDGEMENT

You acknowledge that:

- (a) You are signing this Agreement with a full understanding of the terms and conditions of this Agreement;
- (b) other than as bailee upon the terms of this Agreement, You have no other

- interest in the Equipment;
- (c) You have relied solely on Your own skill and judgment in selecting the Equipment;
 - (d) You have not relied upon any representation or statement made by or on behalf of Us concerning Your rights or position in relation to this Agreement or any law relating to taxation or concerning the quality of the Equipment or its fitness or suitability for Your intended use;
 - (e) We have no liability for any consequential loss suffered by You because of the breakdown, malfunction or deficiency of the Equipment or because it is not the right Equipment;
 - (f) You have no right or option to purchase the Equipment; and
 - (g) You have no authority to deal with the Equipment or to incur any liability for Us.

12 GST

- (a) If GST is lawfully imposed on any supply made under or in accordance with this Agreement, then upon the supplier giving to the recipient a Tax Invoice for the amount of that GST the amount the recipient must pay for that supply is increased by the amount of that GST and must be paid for at the same time as the supply.
- (b) In this clause 12, the words "GST" and "Tax Invoice" have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13 GENERAL

13.1 Notices

Notices and correspondence between the parties shall be:

- (a) valid only if in writing and delivered personally or sent by electronic or registered mail to the other party's address as set out in the Schedule; and
- (b) deemed to be received:
 - (i) if delivered to a party's address, on the day of delivery if a Business Day, otherwise on the

- next following day;
 - (ii) if sent by registered mail, on the third Business Day after posting; and
 - (iii) if sent by email, at the time at which the sender's email system indicates that the email was sent to the recipient's email address.
- (c) Each party may from time to time change its address by giving written notice to the other party.

13.2 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of the Agreement as at the date of this Agreement.

13.3 Variation

This Agreement may be varied only by agreement in writing signed by the parties.

13.4 Assignment

The rights and obligations of the parties under this Agreement are personal and cannot be assigned.

13.5 Counterparts

This Agreement may be executed in any number of counterparts (including by electronic signature) which, taken together, constitute one and the same document.

13.6 Severance

If any part of this Agreement is, or becomes, void or unenforceable, that part is, or will be, severed from this Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

13.7 Inconsistency

In the event of any inconsistency between the terms of this Agreement and those of a completed and signed Hire Form, the Hire Form prevails to the extent of that

inconsistency.

13.8 Further assurances

Each party must execute and do all acts and things necessary or desirable to implement and give full effect to the provisions and purpose of this Agreement.

13.9 Personal Property Securities Act

- (a) If sections 95, 96, 117, 118, 121(4), 123, 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA would, apart from this clause 13.9, apply to this Agreement or the security interest it creates, those sections will not apply to the maximum extent it is possible to exclude them under section 115 of the PPSA.
- (b) If section 116(2) of the PPSA applies, section 132 of the PPSA will not apply to the maximum extent it is possible to exclude it under section 115(7) of the PPSA.
- (c) You and the Guarantor irrevocably authorise Us to obtain from the register under the PPSA, if You or the Guarantor are an individual, disclosure of any registration in which the individual is registered as a grantor or a secured party and any other searches which may be permitted by section 172 of the PPSA.
- (d) You consent to Us effecting registration on the register under the PPSA in any manner We consider appropriate in relation to any security interest in the Equipment arising under or in connection with or contemplated by this Agreement.
- (e) You waive your right to receive notice of a verification statement in relation to any registration by Us on the register of the PPSA and any other notice required under the PPSA.
- (f) You agree to properly execute any documents, provide all relevant information, fully cooperate with Us

and do any other act or thing We require to ensure any interest created under this Agreement is perfected and remains continuously perfected, has priority over any other security interest in the Equipment or otherwise and to ensure that any defect in the security interest, including its registration, is overcome.

- (g) You must not, without providing prior written notice to Us change Your name, address, contact details or any other details that would cause any details in the financing statement to be different if the security interest was re-registered.
- (h) You will not register a financing change statement for the security interest without Our prior written consent.
- (i) You agree to reimburse Us, on demand, for all costs and/or expenses incurred or payable by Us in relation to registering or maintaining any financing statement, releasing in whole or in part Our security interest or any other document for any security interest and for the enforcement of any rights arising out of Our security interest.
- (j) In this clause 13.9 the following words have the respective meanings given to them in the PPSA: financing statement, financing change statement, perfected, register, registration, security interest and verification statement.

13.10 Governing law and jurisdiction

This Agreement is governed by and to be interpreted in accordance with the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Western Australian courts for all disputes arising in connection with this Agreement.