



## **PORTABLE SPECTRAL SERVICES**

### **EQUIPMENT RENTAL AND RENT TO BUY AGREEMENT**

This Rental or Rent to Buy Agreement ('**Agreement**') governs the Rental and/or Rent to Buy of Equipment from Portable XRF Services Pty Ltd (ACN 151 669 091) trading as Portable Spectral Services ('PSS') by the Renter.

### **GENERAL TERMS AND CONDITIONS**

#### **1. DEFINITIONS**

In this Agreement:

- (a) **Agreement** means this Rental Agreement or Rent to Buy Agreement (as is applicable) and includes any relevant Quote provided to the Renter by PSS related to the Rent and/or Rent to Buy of Equipment and any Schedule or annexure to this Agreement;
- (b) **Amount Payable** means the total cost to the Renter under this Rental or Rent to Buy Agreement to be paid in accordance with the Payment Instalments listed in the Quote.
- (c) **Commencement Date** means the date that the Renter accepts the Quote provided to it by PSS for the Equipment;
- (d) **Completion Date** means the date that the Renter pays the final Payment Instalment to PSS;
- (e) **Consumables** means any reference materials, Prolene windows or any other consumables usually required to operate the Equipment for its intended purpose;
- (f) **Damage Report Form** means PSS' Damage Report Form available on request from PSS;
- (g) **Deposit** means the deposit specified in the Quote;
- (h) **Equipment** means the equipment described in the Quote;
- (i) **Guarantor** means the person or persons signing this Agreement as Guarantor;
- (j) **Radiation Management Plan** means the PSS radiation management plan covering the Equipment rented from PSS;
- (k) **Renter** means the person, firm, organisation or corporation hiring Equipment from PSS and includes any officer, employee or agent of the Renter who signs this or any other documents purportedly on the Renter's behalf who shall be taken by PSS as having full authority to sign on the Renter's behalf;

- (l) **Rental Agreement** means an agreement between PSS and the Renter by which PSS grants a licence to the Renter to utilise the Equipment for the Rental Period as defined in this Agreement.
- (m) **Rental Period** means the period specified in the Quote and includes any period of time commencing on the Commencement Date and extending until the Completion Date;
- (n) **Rent to Buy Agreement** means an agreement between PSS and the Renter whereby title to the Equipment passes to the Renter upon the payment of the full Amount Payable to PSS, as specified in the Quote;
- (o) **Licensed Operator** means any person who has completed the Radiation Safety Training as defined in this Agreement;
- (p) **Payment Instalments** means the agreed instalments by which the Renter is to pay the Amount Payable to PSS as specified in the Quote;
- (q) **Radiation Safety Training** means radiation safety training provided by an authorised training provider, including PSS. Where the Customer has not completed Radiation Safety Training with PSS, they will on request produce evidence of completion of training with an alternative authorised training provider.
- (r) **Quote** means any quote for the Rental or Rent to Buy of Equipment provided by PSS to the Renter.

## 2. GRANT, RENTAL PERIOD, DEPOSIT AND AMOUNT PAYABLE

### 2.1 Grant

PSS Rents the Equipment to the Renter in good working order on the terms contained in this Agreement.

### 2.2 Rental Period

- (a) PSS shall Rent the Equipment to the Renter for the Rental Period.
- (b) The Renter may request to extend the Rental Period, and PSS may in its sole discretion elect to extend the Rental Period, and should this occur, then this Agreement shall continue for the extended Rental Period.

### 2.3 Amount Payable

- (a) The Renter shall pay the Amount Payable to PSS in accordance with this Agreement.
- (b) Where required, the Renter must pay the Deposit (which may in PSS' sole discretion be the full amount payable) on or before the Commencement Date. PSS reserves the right to withhold the Equipment from the Renter if the Renter fails to pay the Deposit in full, as specified in the Quote.

## 2.4 Payment

- (a) The Amount Payable shall be payable strictly in accordance with the Quote and the Payment Instalments, and:
  - i. PSS will issue an invoice to the Renter for the use of the Equipment at the end of each calendar month;
  - ii. The invoice issued by PSS will be for the Payment Instalment specified in the Quote; and
  - iii. The Renter must pay each invoice in full within 14 days of the date of the invoice.
- (b) PSS may charge the Renter interest at 6% per annum on any outstanding amounts that remain due and payable in accordance with this Agreement until payment of those amounts is received by PSS in full in cleared funds.

2.5 Unless otherwise agreed by the parties in writing, the Renter must pay all delivery and operating expenses in respect of the Equipment including (without limitation) the cost of Consumables, the cost of replacement parts and accessories during the Rental Period.

2.6 The Renter will be charged for the full Rental Period. For the avoidance of doubt, the Renter must pay the Amount Payable in the agreed Payment Instalments and any other amount payable pursuant to this Agreement by the Completion Date if it has not already done so. This obligation survives termination of this Agreement.

2.7 If this Agreement is a Rental Agreement and the Renter fails to return the Equipment to PSS at the expiration of the Rental Period, PSS may continue to charge the Renter for their use of the Equipment at a rate of 150% of the usual daily rental fee for each day or part thereof until the Equipment is returned to PSS.

## 3. TITLE TO EQUIPMENT

3.1 If this is a Rental Agreement, PSS shall at all times retain indefeasible title to the Equipment and under no circumstances shall title to the Equipment ever pass to the Renter or be considered a fixture of the Renter, even after the Amount Payable is paid in full by the Renter.

3.2 If this is a Rental Agreement, the Renter acknowledges that its rights to use the Equipment are as bailee only.

3.3 If this is a Rent to Buy Agreement, PSS shall at all times during the Rental Period retain indefeasible title to the Equipment and title to the Equipment shall only pass to the Renter after the Amount Payable is paid in full by the Renter.

3.4 If this is a Rent to Buy Agreement, the Renter acknowledges that prior to the Amount Payable being paid in full, its rights to use the Equipment are as bailee only.

#### **4. DELIVERY & RETURNS**

##### **4.1 Delivery**

- (a) The method of delivery of the Equipment will be as agreed by PSS and the Renter in the Quote prior to the commencement of this Agreement.

##### **4.2 Prior Inspection**

- (a) The Renter agrees that it takes delivery of the Equipment on an “as is” basis.
- (b) The Equipment will be deemed to have been accepted as suitable for the Renter’s requirements unless the Renter has provided PSS with written notification to the contrary within 12 hours of delivery of the Equipment. The failure to provide such notice will irrevocably constitute acceptance of the Equipment by the Renter for all purposes of this Agreement and will bind the Renter absolutely to full and unconditional acceptance of the Equipment by the Renter for the purposes of this Agreement.

##### **4.3 Returns**

- (a) PSS will allow for time for overnight delivery and return of Equipment to the Renter in the Rental Period.
- (b) PSS will always use overnight express and is not responsible for delays in delivery.
- (c) The Renter must return the Equipment by overnight express and must not use Australia Post as a form of transport.
- (d) If Equipment is returned to PSS early by the Renter, PSS may, in its absolute discretion:
  - i. Refund any rental fees paid to it in advance by the Renter;

OR

  - ii. Issue the Renter with a credit for the amount of the feeds paid in advance to be used within 6 months of the date on which the credit is issued.

#### **5. INTERNATIONAL RENT**

5.1 The Renter assumes full financial responsibility for any loss, theft or damage of the instrument and/or its associated items if they are taken overseas.

5.2 The Renter will also assume full responsibility for all costs associated with the international travel, including but not limited to customs duties, import levies and the like.

#### **6. RENTER OBLIGATIONS**

## 6.1 General Obligations

At all times, the Renter:

- (a) Must use the Equipment with due care and skill and only for the purposes and within the capacity for which the equipment was designed, in compliance with the Radiation Management Plan and the manufacturer's guidelines;
- (b) Must ensure that all users of the Equipment are Licenced Operators within the state or territory of use, suitably trained in its safe and proper use and qualified to use the Equipment;
- (c) Accepts full responsibility and liability for the safe keeping of the Equipment and indemnifies PSS for any loss, theft of or damage to the Equipment however caused;
- (d) Must ensure that no person other than a Licenced Operator uses the Equipment;
- (e) Must ensure that the Equipment is stored safely and securely and is protected from theft, seizure, or damage;
- (f) Must comply in all respects with all applicable laws, regulations, requirements, and rules reasonably necessary for the safe and lawful operation of the Equipment, including the obtaining of any required permits or authorisations required for the use of the Equipment;
- (g) Must not in any way part with possession of the whole or part of the Equipment, nor sell, assign, mortgage, pledge, sub-Rent, lend, grant a security interest in or otherwise deal with the whole or part of the Equipment, and if this is a Rent to Buy Agreement, prior to title to the Equipment passing to the Renter in accordance with clause 3;
- (h) Must inform PSS immediately if the Equipment or any part thereof is stolen, lost, destroyed, or damaged;
- (i) Must not remove or cover up any plates or other marks that PSS may affix or cause to be affixed to the Equipment to indicate that the Equipment is the property of PSS;
- (j) Must if this is a Rental Agreement return to PSS at the conclusion of the Rental Period the Equipment together with all accessories, paperwork and other items provided to the Renter in the case. Any accessories, paperwork or other items not returned will be charged to the Renter; and
- (k) Must ensure that the Equipment is kept clean, and in good working order for the duration of this Agreement. Where the Equipment is returned in a dirty condition, a cleaning fee will be charged to the Renter.

## 6.2 Release and indemnity

- (a) all guarantees, terms, conditions, warranties, undertakings, inducements, or representations whether express or implied, statutory, or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.
- (b) Nothing in this Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement, or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited.
- (c) Where PSS are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement, or representation imposed by legislation in relation to this Agreement, ('**Non-Excludable Provision**'), and PSS are able to limit the Renter's remedy for a breach of the Non-Excludable Provision, then PSS' liability for breach of the Non-Excludable Provision is limited to (at PSS' election):
  - (i) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
  - (ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- (d) Subject to PSS' obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, PSS' maximum aggregate liability for all claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute or under an indemnity is limited to an amount equal to the fees paid by the Renter under this Agreement. In calculating PSS' aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by PSS for a breach of any Non-Excludable Provisions.
- (e) Subject to clauses 6.2(c) and 6.2(d), PSS will not be liable to the Renter for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs incurred, amounts that the Renter is liable to pay to its customers for or any loss suffered by third parties under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- (f) The Renter is liable for and indemnifies PSS against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against PSS and any environmental loss, cost, damage or expense) in respect of:

- (i) personal injury;
- (ii) damage to property; or
- (iii) a claim by a third party,

in respect of the Renter's Rent or use of the Equipment or the Renter's breach of this Agreement. The Renter's liability under this indemnity is diminished to the extent that PSS's breach of this Agreement or PSS's negligence causes the liability, claims, damage, loss, costs or expenses.

- (g) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.

### 6.3 Notice of Damage

The Renter must, as soon as practicable after any Equipment is damaged, complete and return to PSS a Damage Report Form. Where the Equipment is damaged, PSS may:

- (i) Take possession of the Equipment at the Renter's cost; and
- (ii) Have the Equipment repaired by PSS at the Renter's cost.

For the avoidance of doubt, the Renter shall be liable for all costs and expenses directly or indirectly relating to the repair of the Equipment where it was damaged during the Rental Period or prior to title in the Equipment passing to the Buy in accordance with clause 3 of this Agreement.

## 7. BREAKDOWN

7.1 At all times during the Rental Period, where the Equipment becomes unusable or unsafe, the Renter must:

- (a) Immediately stop using the Equipment;
- (b) Take all necessary steps to prevent injury to the Renter or any other persons or property as a result of the condition of the Equipment;
- (c) Take all necessary steps to prevent any further damage to the Equipment; and
- (d) Not repair or attempt to repair the Equipment without PSS's prior written approval.
- (e) Where the Equipment becomes unusable or unsafe to operate, PSS reserves the right to immediately cease using the Equipment and to take reasonable steps to re-engage the Equipment as soon as practical after it is repaired or rendered safe

to use and PSS shall not be liable to the Renter for any loss or damage howsoever arising as a result of the Equipment becoming unusable or unsafe.

## **8. PSS'S OBLIGATIONS**

8.1 At all times during the Rental Period, PSS shall:

- (a) At its own expense, provide routine maintenance and recalibration of the Equipment, where the Rental Period is for 6 or more months;
- (b) At its own expense, effect timely repairs to or replace faulty or defective Equipment except where the fault or defect has been caused by the Renter;
- (c) At the Renter's expense, repair or replace Equipment that has been broken or damaged by the Renter;
- (d) Ensure that the Equipment, if required, remains licensed and registered; and
- (e) Provide the Equipment to the Renter in good working order.

## **9. TECHNICAL ASSISTANCE**

9.1 If the Renter requests technical assistance from PSS and PSS provides technical assistance to the Renter, the Renter agrees to pay for that advice in accordance with the following schedule of rates:

- i. For the first 15 minutes – no charge
- ii. For every 15 minutes or part thereof thereafter - \$50.00 plus GST

9.2 If this is a Rent to Buy Agreement, this provision survives the Completion Date.

## **10. INSURANCE**

### **10.1 Renter's Insurance**

The Renter shall, at its own cost, take out and maintain at all times during the Rental Period and any extended Rental Period at PSS's request:

- (a) full comprehensive insurance (at its sole cost) covering loss, theft, damage, or destruction of the Equipment for an amount not less than the new replacement value of the Equipment; and
- (b) any other insurance that PSS requires the Renter to take out and ensure that PSS is listed as an interested party (as owner of the Equipment) on all such policies. The Renter must provide all certificates of currency for such insurances to PSS on demand.



## 10.2 Insurance Excess

The Renter shall pay on demand any excess levied by PSS' insurer in respect of damage to the Equipment whilst the Equipment is within the Renter's care. As at May 2021, the standard damage excess levied by PSS' insurer is \$5,000.00.

## 11. TERMINATION

### 11.1 Termination by PSS

PSS may terminate this Agreement if:

- (i) The Renter is subject to any winding up petition or order, appointment or receiver, official management, assignment, arrangement, or compromise for the benefit of creditors, commits an act of bankruptcy or any action is taken or threatened to be taken to place the Renter in bankruptcy or liquidation, is subject to a judgment which is unsatisfied or partly unsatisfied, a sequestration order is made against the Renter, or where the Renter ceases to carry on business;
- (ii) The Renter breaches this Agreement, and the Renter fails to remedy that breach within 7 days of written notice being provided to the Renter requiring it to remedy its breach;
- (iii) The Renter fails to pay any amount payable to PSS under this Agreement within 7 days of the date that those monies become due and payable;
- (iv) The Renter is convicted of an indictable criminal offence;
- (v) Any judgment or process is entered against the Renter and is not satisfied forthwith;
- (vi) The Equipment is abandoned, condemned, seized or appropriated by any lawful authority or person and not returned to PSS or the Renter within 7 days; or
- (vii) PSS has provided 7 days' written notice of termination of this Agreement to the Renter.

### 11.2 Costs and Expenses

The Renter must on demand reimburse PSS for all costs, charges, expenses, fees, disbursements (including all legal costs on an indemnity basis) paid or incurred by PSS as a result of or incidental to:

- (i) Any breach, default or repudiation of this Agreement by the Renter; and/or

- (ii) The exercise or attempted exercise of any right, power, privilege, authority or remedy of PSS under or by virtue of this Agreement, including all amounts incurred in preparation and service of a notice under this Agreement and in repossessing the Equipment from the Renter under the terms of this Agreement and in enforcing this Agreement generally.

### 11.3 Return of Equipment

- (i) If the Renter fails to pay the full Amount Payable in accordance with the Payment Instalments, the Renter must subject to any alternative arrangements agreed in writing between the parties immediately deliver the Equipment to PSS at their own expense and in the same condition as the Equipment was originally delivered to the Renter.
- (ii) If the Equipment is not returned to PSS within a period of time as notified to the Renter by PSS, PSS shall be entitled to take possession of the Equipment and the Renter hereby authorises PSS, its servants, and agents to enter upon any land or premises of the Renter or under its control upon which the Equipment is situated to search such premises and to remove the Equipment there from.

## 12. FURTHER INDEMNITIES

### 12.1 Indemnity

Without limiting any other indemnity given by the Renter under this Agreement, the Renter shall indemnify PSS and PSS' directors, agents, servants, sub-agents, subcontractors and employees against all liability, loss, claims, actions, suits, demands, costs, expenses, including all legal costs and expenses, in any way arising out of or in connection with any or all of the following:

- (i) The use of the Equipment by the Renter whether caused by the Renter's negligence or its servants or agents or by the negligence of any other person whomsoever or arising out of the condition of the Equipment or the use to which it is put;
- (ii) The repair and maintenance, storage, or possession of the Equipment;
- (iii) Any breach of this Agreement; or
- (iv) The seizure, distress, execution or other legal process, confiscation, or forfeiture of the Equipment.

### 12.2 Survival of Indemnities

The indemnities specified in clause 12.1 and any other indemnities provided in this Agreement survive the termination or expiration of this Agreement.

### **13. LIABILITIES, WARRANTIES, REPRESENTATIONS AND CONDITIONS**

#### **13.1 Renter's Warranties and Representations**

The Renter and the person signing this Agreement warrant and represent that:

- (i) The Renter has full power and authority to execute this Agreement and to perform and observe all of its terms and provisions and the person signing or accepting the terms of this Agreement indemnifies PSS against all losses, costs and claims incurred by PSS arising out of the person so signing this Agreement not in fact having such power and/or authority;
- (ii) If the Renter is at any time acting in as a trustee of a trust ("Trust") then whether or not PSS has notice of the Trust, the Renter covenants with PSS as follows:
  - i. Any contract between the Renter and PSS extends to all rights of indemnity which the Renter now or subsequently may have against the Trust and the trust fund;
  - ii. The Renter has full and complete power and authority under the Trust to enter into this Agreement contract with PSS and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Renter against the Trust or the trust fund. The Renter will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity; and
  - iii. The Renter will not without consent in writing of PSS cause, permit or suffer to happen any of the following events:
    - (a) The removal, replacement, or retirement of the Renter as trustee of the Trust;
    - (b) Any alteration to or variation of the terms of the trust;
    - (c) Any advancement or distribution of capital to the Trust; or
    - (d) Any resettlement of the Trust property.
- (iii) This Agreement has been duly executed by the Renter and is a legal and binding Agreement of the Renter enforceable against it in accordance with the terms of this Agreement;

- (iv) The Renter has disclosed to PSS all facts, circumstances, and other information of which the Renter knows or should reasonably know relating to the Rent or Buy of the Equipment and which are material to, or may have an effect on PSS;
- (v) The Renter holds all licences, permits and authorities required to operate the Equipment; and
- (vi) The Rent of the Equipment will not breach any law or requirement or direction of any authority.

#### 14. PPSA AND SECURITY

- 14.1 For the purpose of this clause, "PPSA" means the *Personal Properties Securities Act 2009* and the *Personal Securities Regulations 2010*, as amended from time to time.
- 14.2 PSS may effect and maintain registration of a security interest (as that term is defined in the PPSA) in the Equipment and the proceeds arising in respect of any dealing in the Equipment. The Renter must do all things (such as obtaining consents and signing documents) which PSS requires for the purpose of:
- (i) creating and registering PSS' security interest including (but not limited to) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the PPSA;
  - (ii) ensuring that PSS' security interest is and remains enforceable, perfected and otherwise effective under the PPSA;
  - (iii) enabling PSS to gain first priority (or any other priority agreed to by PSS in writing) for its security interest; or
  - (iv) enabling PSS to exercise its rights in connection with the security interest or the PPSA.
- 14.3 PSS' rights under this Agreement are in addition to and not in substitution of PSS' rights under any other law (including the PPSA) and PSS may choose whether to exercise rights under this Agreement and/or under such other law, in its discretion. For the avoidance of doubt, any security interest that PSS may have in the Equipment will attach to proceeds in accordance with the PPSA.
- 14.4 To the extent that Chapter 4 of the PPSA applies to any security interest under this Agreement, the following provisions of the PPSA are contracted out of in accordance with section 115 of the PPSA and the following sections of the PPSA shall not apply to this Agreement: sections 95, 96, 121(4), 125, 130, 129(2), 129(3), 132(3) (d), 132(4), 135, 142 and 142.

- 14.5 In addition to any rights conferred upon PSS under the PPSA, the Renter agrees and acknowledges that in addition to those rights PSS shall, if the Renter is in default of this Agreement, have the right to seize, Buy, take possession or apparent possession of, retain, deal with or dispose of any goods (including the Equipment) not only under those provisions under the PPSA but also as additional and independent rights under this Agreement. The Renter agrees that PSS may exercise any of its rights under this clause in any way it deems fit including (in respect of dealing and disposal) by private or public Rent to Buy, Rent or licence.
- 14.6 Pursuant to section 157(3) of the PPSA, the waives its rights to receive a verification statement in relation to registration events in respect of commercial property pursuant to section 157(1) of the PPSA.
- 14.7 PSS and the Renter agree not to disclose information of the kind that can be requested under section 257(1) of the PPSA.
- 14.8 The Renter must not dispose or purport to dispose of or create or purport to create or permit to be created any security interest in the Equipment without the express written consent of PSS or until title passes in accordance with clause 3 (if applicable).
- 14.9 The Renter must not Rent, sub Rent, bail, lend or part with possession of the Equipment (Sub-Rent) prior to the passing of title in accordance with clause 3 (if applicable).
- 14.10 To assure the Renter's performance of its obligations under this Agreement, the Renter grants to PSS an irrevocable power of attorney to do anything PSS considers the Renter should do under this Agreement. PSS may recover from the Renter the cost of doing anything under this clause including registration fees.
- 14.11 Before PSS provides the Equipment to the Renter, PSS may require the Renter to provide either an unconditional Bank Guarantee for the Amount Payable, Amount Payable, or a director's guarantee.
- 14.12 Where the Renter is a company, by accepting these Terms and Conditions and in consideration of PSS hiring the Equipment at the request of the Renter, each director of the Renter agrees to personally guarantee the payment of all money payable by the Renter to PSS and agrees to execute a separate Deed of Guarantee before the Equipment is provided to the Renter.
- 14.13 PSS is entitled to require the directors of the Renter to pay any money due from the Renter to PSS without being obligated to institute any proceedings against the Renter.

## **15. INTELLECTUAL PROPERTY**

- 15.1 All intellectual property rights, including but not limited to patents, designs and copyright are reserved. The Renter must not make or permit to be made copies of anything supplied by PSS to the Renter pursuant to this Agreement or to otherwise assist the Renter to use the Equipment in accordance with recognised methods and standards for equipment of its type.

Clause 15.1 survives both the Completion Date and the termination of this Agreement.

## **16. GUARANTEE**

- 16.1 In consideration of the Rent of the Equipment to the Renter, the Guarantor:
- (a) unconditionally and irrevocably guarantees and continues to guarantee to PSS that the Renter will:
    - (i) Pay the Amount Payable, additional charges and all other amounts to be paid under this Agreement in accordance with the terms of this Agreement; and
    - (ii) Comply with all the other terms of this Agreement on its part to be complied with.
  - (b) As separate undertakings, the Guarantor:
    - (i) Agrees to indemnify PSS and keep PSS indemnified against any liability, loss, claims, actions, suits, demands, costs, expenses, including all legal costs and expenses, suffered or incurred by PSS arising from or in connection with any breach of this Agreement; and
    - (ii) As principal debtor agrees to pay to PSS on demand an amount equal to any liability, loss, claims, actions, suits, demands, costs, expenses referred to in this clause.
- 16.2 The guarantee and indemnity specified in this clause continues until the Renter complies with all of its obligations under this Agreement.
- 16.3 The Guarantor agrees to pay to PSS on demand PSS's costs and expenses, including legal costs, relating to any action taken under this guarantee and indemnity.
- 16.4 The guarantee is a continuing security and shall not be wholly or partially discharged as long as any money due by the Renter is owing or payable to PSS or which in the opinion of PSS may become owing or payable.
- 16.5 If for any reason any of the obligations of the Renter to PSS are rendered unenforceable, the Guarantor shall indemnify PSS against any resulting loss,

cost or expense which PSS may suffer or incur including payment of any third-party disbursements.

- 16.6 The Guarantor charges all of their right, title and interest in any land and personal property held now or in the future by them to secure the payment of the guaranteed debt. The Guarantor consents to PSS lodging a caveat to protect its interest under this clause. If a demand is made by PSS, the Guarantor agrees to immediately execute a mortgage or other instrument of security, on terms satisfactory to PSS to further secure the payment of the guaranteed debts.
- 16.7 The Guarantor agrees to pay all legal costs, on an indemnity basis, disbursements and expenses incurred by PSS arising from a breach of this clause by the Guarantor.

## 17. GOODS AND SERVICES TAX

- 17.1 In this clause the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- 17.2 Unless otherwise stated, all amounts payable or any consideration to be provided under this Agreement are exclusive of GST.
- 17.3 Notwithstanding any other provision in this Agreement, if GST is imposed on any supply made under the Agreement, the supplier may in addition to the consideration, recover an amount equal to the consideration multiplied by the current GST rate. Payment of the additional amount will be made at the same time as payment for the taxable supply subject to the supplier delivering a valid tax invoice to the recipient at or before the time of payment.
- (a) If a variation in the rate of any GST is associated with the abolition or reduction of any tax, duty, excise or statutory charge which directly or indirectly affects the costs of a supplier in respect of any supply made under the Agreement, the consideration payable for the supply will be varied so that the supplier's net financial position in respect of the supply remains the same.
- (b) Any contract entered into by a party to the Agreement with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with this Agreement, must include a clause in equivalent terms to this clause of the Agreement.
- 17.4 If this Agreement requires a party to reimburse or indemnify the other party for any expense, loss or outgoings, including the Reimbursable Expenses ("expense"), the amount required to be paid by the first party will be the sum of:

- (a) the amount of the expense net of input tax credits (if any) to which the other party is entitled in respect of the expense ("net amount"); and
- (b) if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

17.5 If a GST inclusive price is charged or varied, the recipient can withhold payment of the GST until the supplier provides a valid tax invoice or adjustment note as appropriate.

## **18. SPECIAL CONDITIONS**

Any special conditions specified in the Schedule or otherwise agreed between the parties in writing from time to time form part of this Agreement. In the event of any inconsistency between the special conditions and the provisions in this Agreement, the special condition shall prevail.

## **19. SEVERABILITY**

In the event of any part of this Agreement becoming void or unenforceable, whether due to the provision of any statute or otherwise, then that part shall be severed from this Agreement to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any such severance.

## **20. COUNTERPARTS**

- 20.1 This Agreement may be executed in any number of counterparts, all of which (taken together) constitute one instrument. A party may execute this Agreement by signing any counterpart.
- 20.2 A party who has executed a counterpart of this Agreement may exchange that counterpart with another party by faxing it or otherwise providing a copy to that other party.

## **21. ENTIRE AGREEMENT**

This Agreement forms the entire agreement between the parties and no regard shall be had to any other dealings.

Any terms and conditions that may have been attached or embodied in any other document, tender, offer, quote, Buy order or included in correspondence are deemed to have been withdrawn in favour of these Agreements.

## **22. GOVERNING LAW AND JURISDICTION**



This Agreement is governed by the laws of Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Western Australia.

### **23. DISPUTE RESOLUTION**

In the event of a dispute, PSS and the Renter must follow the steps herein before seeking judicial intervention:

- (i) Confer in relation to the dispute;
- (ii) If no Agreement is reached, exchange written offers of settlement. The party claiming the dispute will provide the first offer, and the other party will respond with either acceptance or a counteroffer within seven (7) days of receipt of the offer;
- (iii) If no Agreement is reached, the parties will attend mediation with a mediator agreed by the parties.
- (iv) If a mediator cannot be agreed, the party claiming the dispute will provide the other party with a list of three (3) proposed mediators to select from.
- (v) The other party will notify the party claiming the dispute of their choice of mediator within seven (7) days of receiving the list.
- (vi) The parties will then attend mediation with the selected mediator.
- (vii) The cost of mediation will be shared equally by PSS and Renter.
- (viii) If no Agreement is reached at mediation, the party claiming the dispute may issue proceedings.
- (ix) Nothing in this clause prevents PSS from seeking urgent or injunctive relief.

### **24. VARIATION**

PSS may at any time vary this Agreement by providing the Renter with not less than 14 days' written notice of its intention to do so to the extent that the variation is not detrimental to the Renter. Any other variation of this Agreement must be agreed to in writing by PSS and the Renter.

### **25. FORCE MAJEURE**

Neither party will be responsible for any delays in delivery due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, pandemic, orders, or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.



Nothing in this clause will limit or exclude the Renter's responsibility and liability under this Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Rent and Buy Period, or has broken down or become unsafe to use as a result of the Renter's conduct or negligence.

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Portable Spectral Service Signature

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Date

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Renter Signature

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Print Name

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Guarantor signature

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Date