

**1. INTERPRETATION****1.1 Definitions**

The following definitions apply in this agreement:

**"Account Service Fee"** means the account service fee specified in the Schedule.

**"Approved Account Holder"** means a LOSCAM account holder whose account, at the time of a proposed transfer of Equipment, has not been stopped/suspended by LOSCAM ~~and in respect of whom LOSCAM has registered a financing statement under the PPSA.~~

**"Associated Persons"** in relation to a Hirer means:

- (a) in relation to a Hirer that is a corporation:
  - (i) any related body corporate as that term is defined in section 50 of the Corporations Act;
  - (ii) a director or Substantial Shareholder of the corporation or any related body corporate;
  - (iii) the spouse or any blood or adoptive relative of any natural person mentioned in (ii); or
  - (iv) any corporation, partnership, joint venture, trust, business or other entity in which any of the persons mentioned in (ii) or (iii) whether alone or together have a beneficial interest in an entitlement to 30% or more of the income or capital or voting rights or of which any such person acts as director, secretary or manager; and
- (b) in relation to a Hirer that is a natural person, the spouse or any blood or adoptive relative of that person or that person's spouse.

**"Australian Consumer Law"** means the law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday in the place to which a notice or invoice is sent under this agreement.

**"Business Hours"** means the hours between 9:00am and 5:00pm on a Business Day.

**"Certificate of Currency"** means a certificate of currency evidencing to the reasonable satisfaction of LOSCAM valid and subsisting insurance in respect of the Hirer's business site or sites that is sufficient to cover the loss, damage or destruction of the Equipment.

**"Commencement Date"** means the date specified as such in the Schedule.

**"Consumer Guarantees"** mean the consumer guarantees contained in Division 1 of Part 3-2 of the Australian Consumer Law.

**"Corporations Act"** means the *Corporations Act 2001* (Cth) as amended from time to time.

**"Daily Hire Rate"** in respect of a type of Equipment means the rate specified for that type of Equipment as notified in writing from time to time, subject to amendment in accordance with clause 3.1(b), and does not include GST.

**"Day"** means a period of 24 hours commencing at midnight.

**"Dehire"** in respect of a unit of Equipment means the return of that unit from the Hirer to the Depot.

**"Depot"** means a depot of LOSCAM that is made available to the Hirer from time to time for the collection and return of Equipment.

**"Effective Date of Transfer"** means the date agreed between the Hirer and the proposed transferee and specified as such by the Hirer or proposed transferee in the Notification of Transfer and submitted to LOSCAM.

**"Equipment"** means the equipment owned by LOSCAM which may bear LOSCAM or the ~~Loscam~~ **LOSCAM** brand or mark as described in the Schedule.

**"Equipment Charges"** means:

- a) the hire charges for each Day (or part thereof) during which Equipment is on hire to the Hirer which amount, in respect of each type of Equipment, will be calculated by multiplying the

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Daily Hire Rate for that type of Equipment by the aggregate number of units of that type of Equipment on hire during the Day (or part thereof); and

- b) any other charges in relation to the Equipment specified in the Schedule or these terms and conditions, exclusive of GST.

**"Force Majeure"** means any circumstances or events beyond the reasonable control of LOSCAM including, without limitation, any acts of God or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, terrorism, embargoes, riot or civil disturbances, lock outs, strikes or other labour disputes or industrial action.

**"GST"** means:

- a) the same as in the GST Law; and
- b) any other goods and services tax, or any Tax applying to this transaction in a similar way; and
- c) any additional tax, penalty tax, fine, interest or other charge under a law for such a Tax.

**"GST Law"** means the same as "GST law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**"Hirer"** means the person, firm, corporation or other legal entity to whom the Equipment is hired as specified in the Schedule, including its legal representatives, successors and permitted assigns.

**"Insolvency Event"** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, being bankrupt, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

**"Issue"** in respect of a unit of Equipment means the supply of that unit by LOSCAM to the Hirer for hire.

**"LOSCAM"** means Loscam Australia Pty Ltd ABN 26 006 440 991 of Level 1, 37- 41 Prospect Street, Box Hill, Victoria, 3128.

**"Loss"** means any loss, liability, cost (including all legal costs and expenses on a full indemnity basis), claim, expense, damage, charge, penalty, outgoing or payment, however arising and whether present, unascertained, future or contingent.

**"Notification of Transfer"** means any document whether physical or electronic, the form and content of which has been agreed by the Hirer and proposed transferee and which specifies, in a suitable format, sufficient details of the proposed equipment transfer to allow LOSCAM to process the transfer in accordance with these terms and conditions.

~~**"PPSA"** means the *Personal Property Securities Act 2009* (Cth).~~

**"Quotation"** means the quotation provided by LOSCAM to the Hirer.

**"Remote Loss"** means Loss which does not arise naturally from the relevant breach of this agreement, even if that Loss may reasonably be regarded as having been in the contemplation of the parties as a probable result of the breach and, in particular, includes loss of profits, loss of business opportunity, loss of revenue, loss of use, loss of contract, loss of goodwill and economic loss.

**"Schedule"** means the credit account application form completed by or for the Hirer and accepted by LOSCAM and which includes amongst other things, details of the name and address of the proposed Hirer and the details of the Equipment to be taken on hire and includes the Quotation. Schedule also means any subsequent account application form that has been completed by or for the

Hirer and accepted by LOSCAM that replaces, amends or supplements the original Schedule.

"**Service Charges**" means any charges related to the [Software and the provision of services by LOSCAM to the Hirer](#) including but not limited to the Account Service Fee.

"**Software**" means the LOSCAM ~~standard equipment hire~~ management system software [or "Loscam Online" portal](#) or such other software provided to the Hirer by LOSCAM.

"**Substantial Shareholder**" means any person holding a controlling interest in 5% or more of the issued shares of a corporation.

"**Taxes**" means all stamp duty and other duties, fees, taxes and charges levied or otherwise payable in relation to any supply of goods or services to the Hirer or otherwise arising out of or in connection with this agreement, other than GST.

"**Termination Date**" means, subject to clause 6, the date of termination of this agreement in accordance with clause 7 or clause 8 or as specified in the Schedule, whichever is the earlier.

"**Transaction**" means an Issue, Dehire, Transfer On or Transfer Off.

"**Transfer Off**" in respect of a unit of Equipment means a transfer of the hire of that unit by the Hirer to an Approved Account Holder in accordance with clauses 10.1 and 10.2.

"**Transfer On**" in respect of a unit of Equipment means a transfer of the hire of that unit to the Hirer by another person.

["Non Account Holder" in respect of a unit of Equipment means a physical movement of equipment with a non LOSCAM account holder; the cost of the equipment and any related charges remain the responsibility of the Hirer.](#)

"**Unrecoverable Equipment**" means any Equipment which, in the reasonable opinion of LOSCAM, is incomplete, damaged ~~[beyond economical repair]~~, or is destroyed or lost or not able to be returned to the Depot for any reason.

["Third Party Software" means any software or web portal not provided by LOSCAM that is used by the Hirer.](#)

## 1.2 Rules for Interpreting this Agreement

In this agreement, unless the context otherwise requires:

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) an agreement, or a provision of an agreement, is to that agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a clause, paragraph or schedule is a reference to a clause or paragraph of or a schedule to this agreement;
  - (iv) this agreement includes any schedules;
  - (v) a party to this agreement includes a permitted substitute or a permitted assign of that party;
  - (vi) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (vii) anything (including a right, obligation or concept) includes each part of it.

~~b) Headings are for convenience only, and do not affect interpretation.~~

~~c) A singular word includes the plural, and vice versa.~~

~~d) A word which suggests one gender includes the other gender.~~

~~e) If a word is defined, another part of speech has a corresponding meaning.~~

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~~f) If the Hirer comprises more than one person, each person is jointly and severally liable for the performance of all of the Hirer's obligations under this agreement.~~

## 2. HIRING OF EQUIPMENT AND LICENCE OF SOFTWARE

### 2.1 Hiring Agreement

a) LOSCAM agrees to hire the Equipment to the Hirer, and the Hirer agrees to hire the Equipment from LOSCAM, on the terms and conditions of this agreement.

b) If there is any inconsistency between the terms and conditions contained in the body of this agreement and any term or condition in the Schedule, the term or condition in the Schedule will prevail.

c) Equipment may only be used for lawful purposes.

~~d) The Hirer is responsible for all Equipment on hire to it by LOSCAM whether that Equipment is in the Hirer's possession and control or not.~~

### 2.2 Licence of Software

a) If specified in the Schedule, LOSCAM grants to the Hirer a non-transferable, non-exclusive, end user licence to use, until such time as this agreement is terminated, the Software pursuant to the terms set out in a licence agreement separately entered into between the parties.

b) The Hirer must, at the Hirer's expense, provide to LOSCAM copies of all documents generated by the use of the Software and/or evidencing all transactions in respect of Equipment made using the Software no later than seven (7) Days after being requested by LOSCAM.

c) Where:

(i) the Software is damaged or destroyed by the Hirer or

(ii) the Hirer introduces any virus, trojan horse, worm or other computer program into the Software,

the Hirer must pay to LOSCAM all resultant loss or damage incurred or suffered by LOSCAM.

### 2.3 Title to Equipment and Software

LOSCAM retains full legal and equitable title to the Equipment and Software at all times, notwithstanding that the Equipment is hired to, and in the possession of, the Hirer and the Software is licensed to, and in the possession of, the Hirer. Subject to clause 10 in respect of Equipment, the Hirer must ensure that:

a) none of the Equipment or Software is sold or otherwise disposed of;

b) possession of the Equipment or Software is not shared with or provided to any other person other than in accordance with this agreement;

c) no sublease, licence or sub-licence affecting the Equipment or Software is granted to any person;

d) it maintains and makes available to LOSCAM on demand at no cost to LOSCAM records detailing the names and addresses of any person in possession of Equipment;

e) it maintains and makes available to LOSCAM on demand at no cost to LOSCAM copies of all documentation in relation to the Equipment and/or copies of electronic records from use of the Software in relation to the Equipment; and

f) no security interest, lien or other encumbrance is created over the Equipment or Software.

### 2.4 Third Party Software

[If the Hirer uses any Third Party Software for the management of Equipment hired from LOSCAM under this agreement the Hirer does so at its own risk indemnifies LOSCAM from all Loss or damage suffered by it and LOSCAM caused or contributed to by the use of the Third Party Software.](#)

### 2.42.5 Stopping and/or Suspension of Accounts

a) LOSCAM may, at any time and at its absolute sole

discretion, stop or suspend an account ~~of any Transaction.~~

- b) Where an account has been stopped or suspended, it is the Hirer's responsibility to provide sufficient information and authority to LOSCAM to enable it to clear any Transactions that have been rejected as a result of the account being stopped or suspended.
- c) During the period in which an account is stopped or suspended, the Hirer remains liable to LOSCAM for any charges accruing to the account and any other charges that would otherwise have been charged to the Hirer's account had not the account been suspended, notwithstanding that LOSCAM may seek to hold another party responsible for such charges. LOSCAM may, at any time and at its absolute sole discretion, elect to reinstate the account and impose such conditions to the reinstatement as it sees fit.

## 2.6 Records

The Hirer must at all times maintain full and complete records of all Equipment and Software on hire or licensed to it by LOSCAM.

## 3.1 PAYMENT OBLIGATIONS Equipment Charges and Service Charges

- a) The Hirer must pay to LOSCAM:
  - (i) the Equipment Charges;
  - (ii) the Service Charges;
  - (iii) all other charges agreed by the Hirer and LOSCAM; from time to time;
  - (iv) any applicable Taxes, imposts, levies, stamp or other duties; and ~~Service Charges to LOSCAM~~
  - (v) any other amounts owing under this agreement.
- b) LOSCAM and the Hirer acknowledge and agree that LOSCAM may, in its absolute sole discretion, amend any of the charges or fees specified in the Schedule including by introducing additional charges or fees, with such amendment taking effect upon LOSCAM providing written notice to the Hirer. Notwithstanding the foregoing, if the Hirer hires more Equipment from LOSCAM or the Hirer takes a Transfer On or if the Hirer pays the next invoice the Hirer receives from LOSCAM after LOSCAM has provided notice of the changes, any of these actions will mean the Hirer accepts and is bound by the amended charges and fees. If the Hirer does not accept the amended fees and charges, the Hirer must within 7 days after LOSCAM has provided notice of the changes to the charges and the fees notify LOSCAM in writing to close the Hirer's account and the Hirer must immediately return all Equipment and pay all amounts owing in accordance with clause 7.

## 3.2 Equipment on Hire

The following rules will apply in determining the number of units of Equipment on hire by the Hirer:

- a) the hire of a unit of Equipment begins:
  - (i) in the case of an Issue, on the Day that unit is made available for collection by the Hirer at the Depot according to the records of LOSCAM; and
  - (ii) in the case of a Transfer On, on the Effective Date of Transfer of that unit;
- b) the hire of a unit of Equipment ends:
  - (i) in the case of a Dehire (excluding Unrecoverable Equipment), on the Day that the unit is received by LOSCAM at the Depot according to the records of LOSCAM;
  - (ii) in the case of a Transfer Off, on the Effective

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- (iii) in the case of Unrecoverable Equipment, on the Day LOSCAM receives payment from the Hirer in accordance with clause 9.4(b);
- c) the total number of units of a type of Equipment on hire to the Hirer on any given Day will be the number of units of that type of Equipment the hire of which began on or before that Day as determined in accordance with paragraph (a) less the number of units of that type of Equipment the hire of which ended before that Day as determined in accordance with paragraph (b).

## 3.3 Transportation

Subject to clause 10, ~~unless the Schedule provides otherwise,~~ the Hirer is responsible for collecting the Equipment from, and returning the Equipment to, the Depot ~~and must bear all costs associated with loading, transporting and unloading Equipment. Where the Hirer requires LOSCAM to deliver to or collect Equipment from the Hirer, the Hirer must reimburse LOSCAM for all transportation costs incurred by LOSCAM in transporting Equipment to the Hirer, or collecting it from the Hirer, and any costs of insurance while such Equipment is in transit.~~

## 3.4 Timing of Payments

Unless the Schedule provides otherwise, and subject to clause 4.23(b), all charges, including Equipment Charges and Service Charges, are due and payable within 14 days from the date of the invoice for the relevant period.

## 3.5 Interest on Late Payments

Without prejudice to any other rights or remedies of LOSCAM if the Hirer fails to pay the full amount payable in an invoice (including any GST amount included on an invoice by virtue of clause 4) within the period specified in clause 3.4, the Hirer must pay to LOSCAM on demand:

- a) interest on the amount outstanding at the rate which is 5% above the maximum overdraft rate published by LOSCAM's principal bankers from time to time which will be calculated on a daily basis; and
- b) the administration fee specified in the Schedule.

## 4. GST AND OTHER TAXES

### 4.1 Rules for Interpreting this Clause

The words in clause 4 have the same definitions as the GST Law ~~unless otherwise defined in clause 1.1.~~

### 4.2 Indemnity for Taxes

~~The Hirer must pay to LOSCAM, and indemnify LOSCAM against, all Taxes. Where any amount for Taxes is specified in an invoice, the Hirer must pay that amount. The obligation of the Hirer to indemnify LOSCAM for Taxes is paramount, however, and if the amount of Taxes actually payable at any time and for any reason exceeds the amount shown in an invoice, the Hirer must pay to LOSCAM, upon receiving a notice in writing, the amount required to indemnify and keep LOSCAM indemnified at all times against Taxes.~~

### 4.3.2 GST Payable in Addition to Equipment Charges and Service Charges

In addition to paying the Equipment Charges and Service Charges, the Hirer must:

- a) pay to LOSCAM an amount equal to any GST payable on any supply by LOSCAM under or in connection with this agreement, without deduction or set-off of any other amount; and
- b) make that payment on the earlier of the due date for payment of ~~that the relevant~~ invoice to which the supply relates and some other date notified by LOSCAM to the Hirer.

### 4.4.3 GST Indemnity

The Hirer must indemnify LOSCAM against all GST on the transaction or transactions contemplated by this document.

### 4.5.4.4 GST on Claims and Expenses

- a) If a payment to satisfy a claim or a right to claim under or in connection with this document (for example, for misleading or deceptive conduct or for misrepresentation or for a breach of any warranty of

LOSCAM or of the Hirer or for indemnity or for reimbursement of any expense) gives rise to a liability on the part of LOSCAM to pay GST, the Hirer must pay, and indemnify LOSCAM against, the amount of that GST.

- b) ~~If LOSCAM has a claim under or in connection with this agreement for a supply on which GST is paid or payable by LOSCAM, the claim is for the cost of the supply plus all GST (except any GST for which LOSCAM is entitled to a full input tax credit).~~
- c) ~~Without limiting the generality of paragraph (b), if LOSCAM acquires a supply under or in connection with this agreement, the Hirer must pay to LOSCAM, upon receiving written notice, the amount of GST paid or payable on that supply, except where LOSCAM is able to obtain a full input tax credit.~~
- d) ~~If a party has a claim under or in connection with this agreement the amount of which depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).~~

## 5. INVOICES

### 5.1 Content of Invoices

Invoices rendered to the Hirer will show the quantity of Equipment on hire to the Hirer on the first Day of the invoice period, together with any variations during the invoice period due to:

- a) additional Issues;
- b) Transfers On;
- c) Transfers Off;
- d) Dehires; or
- e) any Unrecoverable Equipment in respect of which LOSCAM has received payment in accordance with clause 9.4(b),

which, taken together, will constitute the Hirer's closing balance of Equipment as at the end of the invoice period.

### 5.2 Invoice Disputes

The total number of units of a type of Equipment stated in an invoice as being or having been on hire and all charges transactions and calculations stated in an invoice shall be a final, conclusive and binding determination of such total number of units of that type of Equipment and such charges, transactions and calculations unless the Hirer, within ~~45~~20 Business Days of the last Day of the invoice period referred to in such invoice, gives notice in writing to LOSCAM that the Hirer disputes the total number of that type of Equipment or such charges, transactions and calculations so stated ~~PROVIDED THAT THE HIRER MAY ONLY DISPUTE NUMBERS, AMOUNTS, CHARGES, TRANSACTIONS AND CALCULATIONS THAT RELATE TO TRANSACTIONS WITHIN THE 30 DAYS PRIOR TO THE LAST DAY OF THE INVOICE PERIOD REFERRED TO IN SUCH INVOICE~~ provided that the hirer may only dispute numbers, amounts, charges, transactions and calculations that relate to transactions within the 20 Business Days prior to the last day of the invoice period referred to in such invoice, or LOSCAM within 40 Business Days of the last Day of the invoice period renders an amended invoice or there is a clerical error manifest on the face of such invoice.

The Hirer must include specific details of which balances, charges or calculations are in dispute and the reason for the dispute.

### 5.3 Credit Balances

#### a) Equipment

If ~~for any reason due to a backdated Transfer Off~~, the closing balance of Equipment on an invoice is a negative figure (Credit), the closing balance may, at LOSCAM's absolute discretion and at any time, be adjusted to zero

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~~at any time~~. If the amount is adjusted, upon written notification from the Hirer together with written evidence of the entitlement to the Credit, LOSCAM at its sole discretion may ~~record the amount of the credit and~~ apply the ~~credit~~Credit against any positive invoice figure over a period of three (3) months after the date of the invoice containing the negative figure ~~;~~ and only when the Hirer has provided Loscam written notification to. If the amount of the ~~credit~~Credit is not fully utilised after being applied over the three (3) month period (or any longer period which LOSCAM in its sole discretion considers appropriate), the ~~credit~~Credit will be forfeited. ~~If the credit is forfeited, the Hirer may, within a period of three (3) months from the date of forfeit, request that LOSCAM reinstates the forfeited amount and apply it against any subsequent positive invoice figures.~~ LOSCAM is under no obligation to reinstate the amount and may do so at its sole discretion. For the avoidance of doubt b) Charges

If for any reason, the amount due and payable on an invoice is a negative figure (Credit), the amount due and payable may, at LOSCAM's absolute discretion, be adjusted to zero or another negative figure deemed appropriate by LOSCAM at any time. Such adjustment may take the form of an additional sundry administration charge on the invoice.

If the amount due and payable on an invoice is adjusted, upon written notification from the Hirer together with written evidence of the entitlement to the Credit, LOSCAM may at its sole discretion apply the Credit against any positive invoice amount payable over a period of three months after the date of the invoice containing the negative figure. If the amount of the Credit is not fully utilised after being applied over the three month period (or any longer period which LOSCAM in its sole discretion considers appropriate), the Credit will be forfeited.

#### c) Invoices

LOSCAM shall not be liable to make payment to, or allow any set off against, amounts owing to LOSCAM in respect of ~~credit balances, Credit balances, or offset against any LOSCAM accounts that the invoice amount was not originally reversed on.~~

### 5.4 Overpayment

The Hirer must notify LOSCAM of any overpayment made by or adjustment, credit or refund due to the Hirer within six (6) months from the date of the relevant invoice. LOSCAM will not be obliged to provide a refund, adjustment, credit or refund for any relevant amount not notified to LOSCAM by the Hirer within the six (6) month period.

## 6. TERM

Unless the Schedule provides otherwise, the rights and obligations of the parties to hire the Equipment under this agreement begin on the Commencement Date and end on the Termination Date.

If the Hirer continues to hire or remain in possession of Equipment without objection by LOSCAM after the end of the term of this Agreement, this Agreement will be renewed on a month to month basis without the need for any written notice of any kind from LOSCAM and the Hirer will be subject to the same terms and conditions unless otherwise agreed by LOSCAM except that LOSCAM may terminate this agreement on demand.

## 7. TERMINATION

### 7.1 Termination by LOSCAM

LOSCAM may at any time at its absolute sole discretion terminate this agreement by giving 10 Business Days prior written notice to the Hirer. Upon receiving such notice, the Hirer must, at its own expense and prior to the Termination Date, return to the Depot all Equipment which is on hire to the Hirer as determined in accordance with clause 3.2 and any other equipment, the legal title of which belongs to LOSCAM either in accordance with Clause 2.3 or which can be reasonably identified as belonging to LOSCAM or in which LOSCAM otherwise has an interest. Any Equipment not returned on or before the Termination Date will be



Unrecoverable Equipment for the purposes of clause 9.4(b).

Hire charges will continue to accrue on such Equipment until it is returned to the Depot or until a payment is made under clause 9.4(b) for Unrecoverable Equipment.

Upon such termination:

- a) the Hirer must, at its own expense, immediately return to the Depot ~~the Software (if applicable), all documents generated by the use of the Software, and~~ all Equipment which is on hire to the Hirer as determined in accordance with clause 3.2;
- b) the Equipment returned in accordance with paragraph (a) must be in good order and condition; and
- c) the Hirer must remove all labels, wrapping and debris from the Equipment before returning Equipment to LOSCAM and, in the event that all labels, wrapping and debris is not removed from Equipment, the Hirer shall pay LOSCAM on demand a reasonable service fee for the removal of all labels, wrapping and debris from Equipment; and
- d) if the Hirer fails to return ~~the Software and~~ all Equipment in accordance with paragraphs (a) and (b):
  - (i) LOSCAM may repossess ~~the Software and~~ Equipment and otherwise exercise its rights under clause 14 and charges will continue to accrue on such Equipment until it is returned to the Depot or until a payment is made under clause 9.4(b) for Unrecoverable Equipment~~clause 7(b) shall continue to apply; and~~
  - (ii) if the Equipment is not repossessed for any reason, clause 9.4(b) will apply;~~and,~~
  - (iii) ~~if the Software is not repossessed for any reason, clause 9.4(c) will apply.~~

## 7.2 Amounts owing

Upon notice of termination of this agreement under clause 7.1, all amounts owing by the Hirer to LOSCAM will be due and payable on the date of termination.

## 8. EVENTS OF DEFAULT

### 8.1 Events of Default

Each of these events or circumstances is an Event of Default:

- a) **(non-payment)** if the Hirer fails to pay any amount that is due and payable by it under this agreement when it is due;
- b) **(other obligations)** if the Hirer fails to comply with any of its obligations under this agreement (other than a failure referred to elsewhere in this clause) and:
  - (i) LOSCAM considers that the failure cannot be remedied; or
  - (ii) LOSCAM considers that the failure can be remedied, and the failure is not remedied within 5 Business Days after LOSCAM requires the Hirer to remedy it;
- c) **(misrepresentation)** if any representation, warranty or statement made or repeated by the Hirer in or in connection with this agreement is untrue or misleading (whether by omission or otherwise) in any material respect when so made or repeated;
- d) **(Insolvency Event)** if an Insolvency Event occurs in respect of the Hirer or any of its subsidiaries or Associated Persons;
- e) **(documentation)** if the Hirer fails to provide any documentation, including but not limited to a Certificate of Currency, to LOSCAM as required by this agreement within the applicable time;
- f) **(inability to perform)** if the Hirer ceases for any reason to be able lawfully to carry out all the transactions which this agreement contemplates

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may be carried out by it; and

- g) **(provisions void)** if all or any material provision of this agreement is or becomes void, voidable, illegal or unenforceable or of limited force (other than because of equitable principles or laws affecting creditors' rights generally), or the Hirer claims this to be the case.

### 8.2 Consequences

If there is an Event of Default, LOSCAM may terminate this agreement immediately by written notice to the Hirer. Upon such termination:

- aa) all amounts owing by the Hirer to LOSCAM will be due and payable;
- b) the Hirer must, at its own expense, immediately return to the Depot the Software (if applicable), all documents generated by the use of the Software, and all Equipment which is on hire to the Hirer as determined in accordance with clause 3.2 and hire charges will continue to accrue on such Equipment until it is returned to the Depot or until a payment is made under clause 9.4(b) for Unrecoverable Equipment;
- bc) the Equipment returned in accordance with paragraph (a) must be in good order and condition; and
- d) the Hirer must remove all labels, wrapping and debris from the Equipment before returning Equipment to LOSCAM and in the event that all labels, wrapping and debris is not removed from Equipment, the Hirer shall pay LOSCAM on demand a reasonable service fee for the removal of all labels, wrapping and debris from Equipment; and
- ed) if the Hirer fails to return the Software and all Equipment in accordance with paragraphs (a) and (b):
  - (i) LOSCAM may repossess the Software and Equipment and otherwise exercise its rights under clause 14 and clause 8.2(b) shall continue to apply;
  - (ii) if the Equipment is not repossessed for any reason, clause 9.4(b) will apply; and
  - (iii) if the Software is not repossessed for any reason, clause 9.4(c) will apply.

## 9. DAMAGE TO AND LOSS OF EQUIPMENT OR SOFTWARE

### 9.1 Condition of Equipment and Software

Collection of Equipment by the Hirer from the Depot, another LOSCAM account holder or any other person will be conclusive evidence that, at the time of collection, the Equipment and Software (if applicable) was in good order and condition and was accepted by the Hirer.

### 9.2 Obligation Not to Deface Equipment and Software

The Hirer must not deface, cover, remove or interfere with any logo, trademark, name or other identifying mark, feature, colour or printing on any Equipment or Software.

### 9.3 Obligation Not to Contaminate Equipment

The Hirer must not permit or cause any Equipment to, and will take all reasonable steps to ensure that the Equipment does not, become contaminated by hazardous, corrosive, toxic, radioactive or any other dangerous substance.

### 9.4 Damage to and Loss of Equipment and Software

The Hirer is liable for all damage to, and loss of, Equipment and Software on the following terms:

- a) Subject to paragraph (b), where Equipment is damaged, the Hirer must pay to LOSCAM on demand the cost of repair or replacement cost as determined by LOSCAM at its absolute sole discretion.
- b) If the Equipment is Unrecoverable Equipment, the Hirer must pay to LOSCAM the cost of replacing the Unrecoverable Equipment with new Equipment. ~~ALL HIRE AND OTHER CHARGES WILL CONTINUE TO ACCRUE TO THE HIRER FOR THE UNRECOVERABLE EQUIPMENT, AND CLAUSE 3~~

~~WILL OTHERWISE APPLY NOTWITHSTANDING THAT THE EQUIPMENT MAY NOT BE IN THE POSSESSION OF THE HIRER, UNTIL THE DAY LOSCAM RECEIVES THE TOTAL AMOUNT PAYABLE UNDER THIS CLAUSE. All hire and other charges will continue to accrue to the hirer for the Unrecoverable Equipment, and clause 3 will otherwise apply notwithstanding that the equipment may not be in the possession of the hirer, until the day LOSCAM receives the total amount payable under this clause.~~ This clause 9.4(b) is a continuing obligation and survives the termination of this agreement. The Hirer agrees that this clause and the cost of replacing the Unrecoverable Equipment with new Equipment is a genuine pre-estimate of damages. This means that the Hirer understands and agrees that when LOSCAM has to replace Unrecoverable Equipment the Hirer will have to pay for new Equipment and that the Hirer agrees to pay for the cost of new Equipment together with an amount equal to any GST payable by LOSCAM without deduction or set off against of any other amount.

~~c) Where the Software is lost or damaged, the Hirer must pay to LOSCAM all resultant loss or damage incurred or suffered by LOSCAM.~~

~~dc)~~ In all instances, the Equipment remains the property of LOSCAM and the Hirer must return the Equipment to a Depot.

## 10. TRANSFER OF EQUIPMENT

### 10.1 Transfers Off

a) The Hirer may only transfer the hire of Equipment to an Approved Account Holder in accordance with clauses 10.1 and 10.2 and the transfer of the hire of Equipment to a person that is not Approved Account Holder, which includes Associated Persons that are not Approved Account Holders, is strictly prohibited.

b) It is the responsibility of the Hirer to confirm that a proposed transferee is an Approved Account Holder prior to the Transfer Off of any Equipment.

~~c) A Transfer Off will take effect on the Effective Date of Transfer.~~

~~cd)~~ LOSCAM will reject any purported transfer of the hire of Equipment which is not in accordance with clauses 10.1 and 10.2 and Equipment Charges will continue to accrue for any Equipment the subject of such purported transfer, and clause 3 will continue to apply notwithstanding that the Equipment is no longer in the Hirer's possession or control.

### 10.2 Notification of Transfers Off

The Hirer must obtain the proposed transferee's written consent prior to the Transfer Off of any Equipment and must provide a Notification of Transfer to LOSCAM within 40 Business Days of the relevant Transfer Off.

### 10.3 Transfers On

The Hirer acknowledges and agrees that it will be liable to pay to LOSCAM the hire and other charges for any Equipment which is the subject of a Transfer On. For the avoidance of doubt the Hirer will be liable to pay to LOSCAM the hire and other charges for any Equipment which is the subject of a Transfer On notwithstanding that LOSCAM may not hold a notice signed by the Hirer accepting the Transfer On. ~~A Transfer On will take effect on the Effective Date of Transfer.~~

### 10.4 Transactions

Notwithstanding anything in this clause 10, ~~LOSCAM may, in its absolute and sole discretion, reject or reverse any purported Transaction if LOSCAM is of the view that the purported Transaction was or is to be effected other than in good faith and for a proper purpose, including, without limiting the generality of the foregoing, where if~~

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the Hirer knows or ought reasonably to know that the quantity of Equipment on the Hirer's account does not or will not accurately reflect the number of units of Equipment in the Hirer's possession or control or ~~where the counterparty the subject of the~~ if LOSCAM reasonably believes that a Transaction or purported Transaction has suffered or is likely to suffer an Insolvency Event fraudulent, LOSCAM may reject or reverse such Transaction or purported Transaction.

### 10.5 Unauthorised Possession of Equipment

The Hirer acknowledges and agrees that it will not possess any equipment, the legal title of which belongs to LOSCAM either in accordance with Clause 2.3 or which can be reasonably identified as belonging to LOSCAM, other than in accordance with these terms and conditions. The Hirer also agrees to notify LOSCAM where another party attempts an unauthorised transfer.

### 10.6 Transfer To Associated Persons Non Account Holders

If any Equipment ~~in~~ hired by LOSCAM to the Hirer's possession ~~Hirer~~ is transferred to persons that are not Approved Account Holders, including Associated Persons who are not Approved Account Holders, the Hirer ~~shall remain liable~~ is responsible for all ~~charges and fees associated with the Equipment transferred, including under clause 9.4(b) for each item of Unrecoverable Equipment, notwithstanding that such Equipment may no longer be in accordance with this agreement even though that Equipment is not~~ in the Hirer's ~~Hirer's~~ possession ~~and the Hirer agrees to indemnify LOSCAM for any loss or damage to the Equipment transferred to those Associated Persons and the Hirer shall remain liable for any and all loss and damage suffered by LOSCAM from such transfer including but not limited to costs associated with transport of Equipment to and from LOSCAM's Depot.~~ control.

## 11. LIMITATION ON LIABILITY

### 11.1 Exclusion of Warranties

Subject to clause 11.5, all warranties, conditions, liabilities or representations (other than any being or giving rise to non-excludable rights under any law) which might but for this clause 11 be implied into this agreement by law or otherwise are expressly negated and excluded.

### 11.2 Limitation of Liability

Subject to clause 11.5, the liability of LOSCAM, its officers, employees and agents for all Loss related to the hire of Equipment pursuant to any of the non-excludable rights referred to in clause 11.1 is, to the extent legally permitted, limited at LOSCAM's option, to the repair of the relevant Equipment or Software or supply of equivalent Equipment or Software or the payment of the respective costs thereof.

### 11.3 Exclusion of Liability

Subject to clause 11.5, LOSCAM will not be liable for:

- a) any Loss arising from the non-supply of Equipment or Software to the Hirer;
- b) any Loss to products, inventory or other items placed on or near or arising from the use of the Equipment; or
- ~~cb)~~ any Remote Loss whatsoever and howsoever arising even if such Remote Loss or damage is attributable in any way to negligence on the part of LOSCAM, its officers, employees or agents.

### 11.4 Hirer's Release and Indemnity

The Hirer releases and indemnifies LOSCAM, its officers, employees and agents to the fullest extent permitted by law from all actions, claims and demands of every kind arising out of the use or condition of any Equipment or Software including any which may arise directly or indirectly out of any Loss to property or death of or injury to any person of whatever nature or kind.

### 11.5 Consumer Guarantees

Where the Consumer Guarantees apply to Equipment and Software supplied under this agreement, nothing in this agreement, including clauses 11.1 to 11.3, will be interpreted as attempting to exclude, restrict or modify:

- a) the operation of any applicable provisions of the

- b) Australian Consumer Law;
- c) any liability of LOSCAM for failing to comply with any of the Consumer Guarantees; or
- d) the right of the Hirer to make a claim under or in respect of any applicable provisions of the Australian Consumer Law.

**12. GUARANTEE AND BANK GUARANTEE**

The Hirer must, if requested to do so by LOSCAM, procure one or more persons acceptable to LOSCAM to provide a guarantee, including without limitation a bank guarantee, in favour of LOSCAM of the due performance of this agreement by the Hirer, in a form and substance required by LOSCAM.

**13. HIRER'S WARRANTY**

The Hirer warrants that all information supplied to LOSCAM in connection with this agreement whether before or after the date of this agreement, is true and correct in all respects. The Hirer will immediately notify LOSCAM in writing of any change in such information.

**14. ACCESS TO EQUIPMENT OR SOFTWARE**

LOSCAM will at all times have the right to enter the Hirer's premises immediately and without notice to any person to conduct a stocktake of Equipment, inspect, recover or repossess the Equipment or the Software and any information associated with this agreement, and, if requested by LOSCAM, the Hirer must deliver the Equipment or the Software at its own expense to the Depot. The Hirer grants to LOSCAM an irrevocable licence to enter the Hirer's premises without incurring liability to the Hirer or any person claiming through the Hirer for the tort of trespass, negligence or payment of any compensation whatsoever. Notwithstanding the foregoing, where LOSCAM in its absolute sole discretion determines it necessary to remove goods from Equipment for whatever reason, LOSCAM shall not be liable for any loss or damage to any goods resulting from such removal and the Hirer shall indemnify LOSCAM for any liability incurred by LOSCAM in respect of any loss or damage resulting from such removal.

**15.—PPSA****15.1 Acknowledgement and ratification by the Hirer**

~~The Hirer acknowledges that these terms and conditions create a security interest under the PPSA. The Hirer acknowledges that it has received value as at the Commencement Date. The Hirer has not agreed to postpone the time for attachment of the security interest granted to LOSCAM under these terms and conditions.~~

**15.2 Obligations of the Hirer**

The Hirer:

- a) ~~must, at LOSCAM's request, promptly execute any documents and do anything required to register LOSCAM's security interest in the Equipment under the PPSA;~~
- b) ~~must indemnify, and upon demand reimburse, LOSCAM for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register;~~
- c) ~~must keep full and complete records of the Equipment;~~
- d) ~~must not without the prior written consent of LOSCAM, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Equipment or any interest in them (or purport or attempt to purport to do such thing) or permit any lien over the Equipment;~~
- e) ~~without limiting any other right LOSCAM may have, must immediately return the Equipment if requested to do so by LOSCAM following non-payment of any amount owing by the Hirer to LOSCAM or following breach of any other obligation of the Hirer to LOSCAM;~~
- f) ~~gives LOSCAM the right to inspect the Equipment or any part of it at all reasonable times;~~
- g) ~~must not change its name, address or contact~~

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~~details without providing LOSCAM with prior written notice; and~~

- h) ~~must not register a financing change statement or a change demand without the prior written consent of LOSCAM.~~

**15.3 Waiver by the Hirer**

~~So far as is permitted by the PPSA, the Hirer waives its right:~~

- a) ~~to receive a copy of any verification statement or financing change statement or a statement of account on sale of the Equipment;~~
- b) ~~to receive any notice required under the PPSA, including a notice that LOSCAM intends to sell the Equipment or to retain the Equipment on enforcement of the security interest granted to LOSCAM;~~
- c) ~~to object to a proposal by LOSCAM to retain the Equipment in satisfaction of any obligation owed by the Hirer to LOSCAM; and~~
- d) ~~where any Equipment becomes an accession as defined in the PPSA, to not have any goods damaged when LOSCAM removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession, under the PPSA.~~

**16.15. AMENDMENT AND ASSIGNMENT****16.15.1 Amendment**

LOSCAM and the Hirer acknowledge that LOSCAM may by written notice to the Hirer amend these terms and conditions from time to time. Notwithstanding the foregoing, if the Hirer hires more Equipment from LOSCAM or the Hirer takes a Transfer On or if the Hirer pays the next invoice the Hirer receives from LOSCAM after LOSCAM has provided notice of the amendments, any of these actions will mean the Hirer accepts and is bound by the amended terms and conditions. If the Hirer does not accept the amendments, the Hirer must within 7 days after LOSCAM has provided notice of amendments notify LOSCAM in writing to close the Hirer's account and the Hirer must immediately return all Equipment in accordance with clause 7.

**16.215.2 Assignment**

The Hirer must not assign or purport to assign any of its rights under this agreement without the prior written consent of LOSCAM. LOSCAM may assign its rights under this agreement by written notice to the Hirer.

**17.16. FORCE MAJEURE**

If any obligation of LOSCAM under this agreement is affected by Force Majeure, LOSCAM will promptly notify the Hirer of the nature and extent of the circumstances of the Force Majeure. Notwithstanding any other provision of this agreement, LOSCAM will not be in breach or otherwise be liable for any delay in the performance or the non-performance of its obligations under this agreement to the extent that the delay or non-performance is due to any Force Majeure of which LOSCAM has notified the Hirer. The time for performance of that obligation by LOSCAM will be extended to take into account the Force Majeure.

**18.17. GENERAL****18.17.1 Notices**

A notice or invoice under this agreement is only effective if it is in writing and either left at the last notified address of the addressee or sent to the addressee by mail, by fax or electronic mail. If sent by mail, the notice or invoice is taken to have been rendered or served on the Business Day following the day of postage. If a notice or invoice is sent by fax, it is taken to have been served or rendered when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within 8 Business Hours after that transmission, the recipient informs the sender that it has not received the entire notice when the addressee receives it in full and in legible form. If a notice or invoice is sent by electronic mail, it is taken to have been served or

rendered on a given Business Day if the information system states that it was received before 4.00pm (local time in the place of receipt) on that Business Day, otherwise on the next Business Day.

## ~~18.2~~17.2 Insurance

Within seven ~~(7)~~ days of request by LOSCAM, the Hirer must provide a Certificate of Currency to LOSCAM.

## ~~18.3~~17.3 Liability for Expenses

- a) ~~Subject to clause 15.2(c), e~~ Each party must pay its own expenses incurred in negotiating, signing and registering this agreement.
- b) The Hirer must indemnify LOSCAM against, and must pay LOSCAM on demand the amount of, any costs and expenses incurred by LOSCAM in enforcing this agreement (including legal costs on a solicitor and own client basis).

## ~~18.4~~17.4 Operation of this Agreement

- a) This agreement represents the entire agreement between LOSCAM and the Hirer about this subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- b) Any right that a person may have under this agreement is in addition to, and does not replace or limit, any other right that the person may have.
- c) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

## ~~18.5~~17.5 Operation of Indemnities

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- a) Each indemnity in this agreement survives the expiry or termination of this agreement.
- b) A party may recover a payment under an indemnity in this agreement before it makes the payment in respect of which the indemnity is given.

## ~~18.6~~17.6 Exclusion of Contrary Legislation

Any legislation that adversely affects an obligation of the Hirer, or the exercise by LOSCAM of a right or remedy, under or relating to this agreement is excluded to the full extent permitted by law.

## ~~18.7~~17.7 Time is of the Essence

Time is of the essence in respect of the Hirer's obligations under this agreement.

## ~~18.8~~17.8 Set Off

The Hirer must not set off any amount required to be paid by the Hirer to LOSCAM against any amount required to be paid by LOSCAM to the Hirer pursuant to this agreement.

## ~~18.9~~17.9 Confidentiality

The Hirer acknowledges that the terms and conditions on which LOSCAM hires Equipment to the Hirer (including details of daily hire and compensation rates) is confidential information belonging to LOSCAM and accordingly agrees to keep the terms of this agreement, including any rate schedule, confidential and shall not disclose or make available to any third party a copy of this agreement any account application form or any rate schedule.

## ~~18.10~~17.10 Governing Law and Jurisdiction

This agreement is governed by the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.



**Signing**

By the Hirer

By signing and returning this page to LOSCAM, Hirer acknowledges that it has received and read the terms and conditions of hire and Schedule forming part of this document and agrees to be bound by their provisions.

**Company/Partnership**

SIGNED FOR AND ON BEHALF OF:

.....  
 (Name of Company / Partnership & ABN)  
 by its duly Authorised Representative

.....  
 (Signature of duly Authorised Representative)

.....  
 (Print name of Authorised Representative)

in the presence of:

.....  
 (Signature of Witness)

.....  
 (Print name of Witness)

**Trust (Company Trustee)**

SIGNED FOR AND ON BEHALF OF:

.....  
 (Name of Company Trustee)  
 AS TRUSTEE FOR THE

.....  
 (Signature of duly Authorised Representative)

.....  
 (Name of Trust & ABN)

.....  
 (Print name of Authorised Representative)

by its duly Authorised Representative

In the presence of:

.....  
 (Signature of Witness)

.....  
 (Print name of Witness)

**Trust (Individual Trustee)**

SIGNED BY:

.....  
(Name of Individual Trustee)

AS TRUSTEE FOR THE

.....  
(Signature of Individual Trustee).....  
(Name of Trust & ABN).....  
(Print name of Individual Trustee)

In the presence of:

.....  
(Signature of Witness).....  
(Print name of Witness)**Sole Trader**

SIGNED BY:

.....  
(Name of Sole Trader & ABN).....  
(Signature of Sole Trader)

---

**By LOSCAM**

SIGNED BY:

.....  
(Signed by LOSCAM).....  
(Print Name)