

**1. INTERPRETATION**

**1.1 Definitions**

**Definitions**

The following definitions apply in this agreement:

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

**"Annual Subscription Fee"** means the annual fee specified in the Schedule associated with access to LOSCAM Live.

**"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 is able to register a financing statement under the PPSA.

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

- (a) in relation to a Hirer that is a company:
  - (i) any related company as that term is defined in section 2(3) of the Companies Act;
  - (ii) a director or Substantial Shareholder of the company or any related company;
  - (iii) the spouse or any blood or adoptive relative of any natural person mentioned in (ii); or
  - (iv) any company, 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 legal or 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.

**"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.

**"Companies Act"** means the Companies Act 1993 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 4.1(b), and does not include GST.

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

**"Default GST"** means any interest, late payment penalty, or shortfall penalty, or other sum imposed on LOSCAM under the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of any supply made under this agreement but does not include any such sum levied against LOSCAM by reason of a default by LOSCAM after payment of the GST to LOSCAM by the Hirer.

**"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 brand or mark as described in the Schedule.

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**"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 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, pandemic, war, terrorism, embargoes, riot or civil disturbances, lock outs, strikes or other labour disputes or industrial action.

**"GST"** means Goods and Services Tax arising pursuant to the GST Act.

**"GST Act"** means the Goods and Services Tax Act 1985.

**"Hire Charges"** mean the applicable hire charges for the hire of Equipment by the Hirer.

**"Hirer"** means the person, firm, company 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, without limitation:

- (a) in the case of a company, the appointment of a liquidator or voluntary administrator;
- (b) in the case of an individual, becoming or being declared bankrupt or entering into a deed of arrangement with creditors under any applicable law; and
- (c) in any case:
  - (i) the appointment of a trustee, receiver, receiver and manager, statutory manager or similar officer to the company or individual, or of an agent for a mortgagee in respect of any property;
  - (ii) making an assignment for the benefit of or entering into a composition or arrangement with creditors; or
  - (iii) becoming or being deemed or declared insolvent under any applicable law or being unable to pay debts as they fall due.

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

**"LOSCAM"** means Loscam (New Zealand) Limited.

**"LOSCAM Live"** means the web based portal providing access to information relating to the Track and Trace Devices the Hirer hires pursuant to this agreement.

**"LOSCAM Online"** means the web based portal providing access to information relating to the Hirer's account with LOSCAM including Equipment on hire.

**"LOSCAM Online Terms and Conditions"** mean the terms and conditions that apply to the Hirer's access to LOSCAM Online and LOSCAM Live from time to time, which can be found on LOSCAM's website at [Terms of Use \(loscam.com\)](https://www.loscam.com/terms-of-use).

**"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.

**"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 equipment and any related charges remain the responsibility of the Hirer.

**"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 1999.

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

the Hirer which includes among other things, the Equipment Charges.

**"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.

**"Security Interest"** has the meaning set out in section 17 of the PPSA.

**"Service Charges"** means any amounts charged by LOSCAM to the Hirer as set out in the Schedule related to the Hirer's access to the Software (as applicable) and the provision of services by LOSCAM to the Hirer in connection with its hire of the Equipment including but not limited to the Account Service Fee and any applicable Annual Subscription Fee.

**"Software"** means any software or functionality made accessible to the Hirer including LOSCAM Online and LOSCAM Live.

**"Subsidiary"** has the meaning set out in section 5 of the Companies Act and **"Subsidiaries"** has a corresponding meaning.

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

**"Taxes"** means all 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 7, the date of termination of this agreement in accordance with clause 8 or clause 9 or as specified in the Schedule, whichever is the earlier.

**"Third Party Software"** means any software or web portal not provided, or made available, by LOSCAM that is used by the Hirer.

**"Track and Trace Device"** means an item of Equipment, being a tracking device, hired to the Hirer by LOSCAM or otherwise affixed to other Equipment hired to the Hirer by LOSCAM, to assist the Hirer to track and trace Equipment or other items or equipment of the Hirer.

**"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 11.1 and 11.2.

**"Transfer On"** in respect of a unit of Equipment means a transfer of the hire of that unit to the Hirer by another person in accordance with clause 11.3.

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

**1.2 Rules for Interpreting this Agreement**

In this agreement, unless the context otherwise requires:

- a) A reference to:
  - (i) legislation (including subordinate

- (i) 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 the Schedule and any other 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) If a word is defined, another part of speech has a corresponding meaning.
- e) 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) LOSCAM grants to the Hirer a non-transferable, non-exclusive, end user licence to use, until such time as this agreement is terminated, any Software specified in the Schedule. Any such licence is subject to the payment of all relevant Service Charges and the Hirer's acceptance of the applicable terms and conditions of access and use (including the LOSCAM Online Terms and Conditions).
- 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 Days after being requested 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 is being accessed by, the Hirer. Subject to clause 10 in respect of Equipment, the Hirer must ensure that:

- a) none of the Equipment is sold or otherwise disposed of;
- b) possession of the Equipment 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.

#### 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 and indemnifies LOSCAM from all Loss or damage suffered by it and LOSCAM caused or contributed to by the use of the Third Party Software.

#### 2.5 Stopping and/or Suspension of Accounts

- a) LOSCAM may, at any time and at its absolute sole discretion, by written notice to the Hirer, stop or suspend an account.
- b) Where an account has been stopped or suspended:
- (i) 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; and
  - (ii) LOSCAM reserves the right to suspend the Hirer's access to the Software (or any part of it).
- 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. ARRANGEMENTS IN RESPECT OF TRACK AND TRACE DEVICES

- a) The following provisions apply if any Equipment on hire to the Hirer comprises or has a Track and Trace Device fitted to it.
- b) Track and Trace Devices may be hired and used as individual items of Equipment on hire or may be fitted onto another item of Equipment on hire to the Hirer.
- c) Track and Trace Devices will attract a Daily Hire Rate when hired as individual items of Equipment. Where Track and Trace Devices are fitted onto another item of Equipment on hire to the Hirer, the cost of hire of the Track and Trace Device will form part of the Daily Hire Rate for that Equipment (as set out in the Schedule). The Hirer acknowledges that there may be an increased Daily Hire Rate for an item of Equipment with a Track and Trace Device fitted, and agrees to pay the applicable Daily Hire Rate for the Equipment.
- d) LOSCAM is not responsible or liable for ensuring that any Track and Trace Device or other item of Equipment is fit for purpose or otherwise meets the requirements of the Hirer.
- e) The Hirer acknowledges and agrees that tracking information and data relating to Track and Trace Devices on hire (or Equipment to which Track and Trace Devices are fitted) is only made available via LOSCAM Live. Subject to the payment of an Annual Subscription Fee by the Hirer as set out in the Schedule and this agreement, LOSCAM will provide the Hirer with access to LOSCAM Live.
- f) Access to LOSCAM Live is subject to the LOSCAM Online Terms and Conditions and otherwise subject to the terms set out in this agreement.
- g) The Hirer acknowledges and agrees that the accuracy and availability of information and data via

LOSCAM Live is contingent on a number of variables outside of LOSCAM's control, including without limitation third party service providers, as well as the timing of the Transfer Off transaction in the case of a Transfer Off from another customer. The Hirer acknowledges and agrees that LOSCAM is not liable or responsible if data and information is either unavailable via LOSCAM Live or is inaccurate or incomplete.

- h) The Hirer acknowledges and agrees that there may be a delay between the date and time on which items of Equipment (being Track and Trace Device or to which Track and Trace Devices are fitted) are transferred into the possession of the Hirer from another Approved Account Holder and the date and time on which LOSCAM processes the transfer. The Hirer may not be able to access information and data in connection with such Equipment via LOSCAM Live for a period of up to 24 hours after the Equipment is transferred to it, and the Approved Account Holder that transfers the Equipment to the Hirer may be able to access information and data via LOSCAM Live related to the Equipment during that 24 hour window (even after the Equipment is physically transferred to the Hirer). To the extent permitted by law, LOSCAM accepts no responsibility or liability to the Hirer for any Loss suffered by the Hirer in connection with this process or any delay in LOSCAM processing the transfer.
- i) The Hirer must not affix, fit or otherwise attach any tracking device to any Equipment on hire to it.

#### 4. PAYMENT OBLIGATIONS

##### 4.1 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, or duties; and
  - (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 8.

##### 4.2 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 Date of Transfer of that unit; and
  - (iii) in the case of Unrecoverable Equipment, on the Day LOSCAM receives payment from the Hirer in accordance with clause 10.4(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).

A Dehire relating to a Track and Trace Device or an item of Equipment to which a Track and Trace Device is fitted will only be effective once LOSCAM confirms that the correct item has been returned (with reference to the records of LOSCAM and any barcode or other identifier on the item).

#### **4.3 Transportation**

Subject to clause 11, the Hirer is responsible for collecting the Equipment from, and returning the Equipment to, the Depot.

#### **4.4 Timing of Payments**

Unless the Schedule provides otherwise, and subject to clause 5.2(b), all charges, including Equipment Charges and Service Charges, are due and payable on or before the 20<sup>th</sup> day of the month following the date of the invoice for the relevant period.

#### **4.5 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 5) within the period specified in clause 4.4, the Hirer must pay to LOSCAM on demand:

- a) interest on the amount outstanding at the rate which is 5% above the maximum business overdraft base rate published by the Bank of New Zealand on its website from time to time which will be calculated on a daily basis; and
- b) the administration fee specified in the Schedule.

### **5. GST AND OTHER TAXES**

#### **5.1 Rules for Interpreting this Clause**

The words in clause 5 have the same definitions as the GST Act unless otherwise defined in clause 1.1.

#### **5.2 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 the relevant invoice to which the supply relates and some other date notified by LOSCAM to the Hirer.

#### **5.3 GST Indemnity**

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

#### **5.4 GST on Claims and Expenses**

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 a 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.

### **6. INVOICES**

#### **6.1 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 10.4(b),

which, taken together, will constitute the Hirer's closing balance of Equipment as at the end of the invoice period. Invoices will also contain details of any other Equipment Charges or Service Charges payable by the Hirer.

#### **6.2 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, amounts 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, amounts, transactions and calculations unless the Hirer, within 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, amounts, transactions and calculations so stated 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 within the 40 Business Days prior to the last Day of the invoice period if LOSCAM 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, amounts or calculations are in dispute and the reason for the dispute.

#### **6.3 Credit Balances**

##### **a) Equipment**

If for any reason 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. 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 apply the Credit against any positive invoice figure 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. LOSCAM is under no obligation to reinstate the amount and may do so at its sole discretion.

##### **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 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, or offset against any LOSCAM accounts that the invoice amount was not originally reversed on.

#### **6.4 Overpayment**

The Hirer must notify LOSCAM of any overpayment made by or adjustment, credit or refund due to the Hirer within six 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 month period.

**7. 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.

**8. TERMINATION**

**8.1 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 4.2 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 10.4(b). The Hirer acknowledges and agrees that access to any Software made available to the Hirer by LOSCAM will be terminated as of the Termination Date. Hire Charges will continue to accrue on such Equipment until it is returned to the Depot or until a payment is made under clause 10.4(b), in addition to the above, upon such termination:

- a) the Equipment returned in accordance with this clause must be in good order and condition; and
- b) the Hirer must, at its own expense, 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
- c) if the Hirer fails to return all Equipment in accordance with this clause:
  - (i) LOSCAM may repossess Equipment and otherwise exercise its rights under clause 15 and charges will continue to accrue on such Equipment until it is returned to the Depot or until a payment is made under clause 10.4(b) for Unrecoverable Equipment; and
  - (ii) if the Equipment is not repossessed for any reason, clause 10.4(b) will apply.

**8.2 Amounts owing**

Upon notice of termination of this agreement under clause 8.1, all amounts owing by the Hirer to LOSCAM will be due and payable on the date of termination.

**9. EVENTS OF DEFAULT**

**9.1 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 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.

**9.2 Consequences**

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

- a) all amounts owing by the Hirer to LOSCAM will be due and payable;
- b) the Hirer must, at its own expense, comply with its obligations with respect to the return of the Equipment, set out in clause 8.1;
- c) the Equipment returned in accordance with paragraph (b) must be in good order and condition;
- d) the Hirer must, at its own expense, 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
- e) if the Hirer fails to return all Equipment in accordance with paragraphs (a) - (d):
  - (i) LOSCAM may repossess any Equipment and otherwise exercise its rights under clause 15 and clause 9.2(b) shall continue to apply; and
  - (ii) if the Equipment is not repossessed for any reason, clause 10.4(b) will apply.

**10. DAMAGE TO AND LOSS OF EQUIPMENT**

**10.1 Condition of Equipment**

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 was in good order and condition and was accepted by the Hirer.

**10.2 Obligation Not to Deface Equipment**

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.

**10.3 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.

**10.4 Damage to and Loss of Equipment**

The Hirer is liable for all damage to, and loss of, Equipment 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 4 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 10.4(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 any other amount.

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

## **11. TRANSFER OF EQUIPMENT**

### **11.1 Transfers Off**

- a) The Hirer may only transfer the hire of Equipment to an Approved Account Holder in accordance with clauses 11.1 and 11.2 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 and that the Approved Account Holder is able to accept the relevant Equipment prior to the Transfer Off of any Equipment.
- c) LOSCAM will reject any purported transfer of the hire of Equipment which is not in accordance with clauses 11.1 and 11.2 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.

### **11.2 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.

### **11.3 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 Charges and other Equipment 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.

### **11.4 Transactions**

Notwithstanding anything in this clause 11, if 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 if LOSCAM reasonably believes that a Transaction or purported Transaction is fraudulent, LOSCAM may reject or reverse such Transaction or purported Transaction.

### **11.5 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.

### **11.6 Transfer to Non Account Holders**

If any Equipment hired by LOSCAM to the Hirer is transferred to persons that are not Approved Account Holders, including Associated Persons who are not Approved Account Holders, the Hirer is responsible for all such Equipment in accordance with this agreement even though that Equipment is not in the Hirer's possession or control.

## **12. LIMITATION ON LIABILITY**

### **12.1 Exclusion of Warranties**

Subject to clause 12.5, 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 12 be implied into this agreement by law or otherwise are expressly negated and excluded.

### **12.2 Limitation of Liability**

Subject to clause 12.5, the liability of LOSCAM, its officers, employees and agents for all Loss related to the hire of Equipment and use of the Software pursuant to any of the non-excludable rights referred to in clause 12.1 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.

### **12.3 Exclusion of Liability**

Subject to clause 12.5, LOSCAM will not be liable for:

- any Loss arising from the non-supply of Equipment or Software;
- the Hirer's use of the Software including but not limited to any loss of data, inaccuracy of data or unavailability of the Software or any data contained in it or any matter that impacts on the accuracy of the data collected or stored by or in the Software;
- any Loss to products, inventory or other items placed on or near or arising from the use of the Equipment;
- any Loss suffered or incurred by the Hirer in connection with the data or information generated by the Track and Trace Devices as made available to the Hirer through the Software; or
- 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.

### **12.4 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.

### **12.5 Consumer Guarantees Act**

Without limiting clause 12.1, Hirer acknowledges and agrees that if Hirer is acquiring (or holding itself out as acquiring) the Equipment and Services for use in trade then, to the maximum extent permissible by law, the New Zealand Consumer Guarantees Act 1993 does not apply to the supply by LOSCAM of the Equipment and Services under this agreement.

## **13. 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.

## **14. 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.

## **15. ACCESS TO EQUIPMENT**

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 and any information associated with this agreement, and, if requested by LOSCAM, the Hirer must deliver the Equipment 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.

**16. PPSA****16.1 Acknowledgement and ratification by the Hirer**

The Hirer acknowledges that the Equipment supplied by LOSCAM is under hire to the Hirer, and as such the Hirer grants to LOSCAM a purchase money security interest (PMSI) in the Equipment supplied, which shall be registered by LOSCAM on the Personal Property Securities Register (PPSR).

**16.2 Obligations of the Hirer**

The Hirer:

- a) must, at LOSCAM's request, promptly execute any documents, provide all necessary information and do anything else required by LOSCAM to ensure that the PMSI constitutes a Perfected Security Interest (as that term is defined in the PPSA) and which will have priority over all other Security Interests in the Equipment anywhere;
- b) must indemnify, and upon demand reimburse, LOSCAM for all fees and expenses incurred in registering a financing statement or financing change statement on the PPSR under this agreement;
- 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 (except to the Hirer's customers in the ordinary course of its business) 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 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.

**16.3 Waiver by the Hirer**

The Hirer agrees, to the extent permitted by law, that the Hirer shall have no rights under the following provisions of Part 9 of the PPSA:

- a) receive a notice under section 114(1)(a);
- b) receive a statement of account under section 116;
- c) receive notice of any proposal of LOSCAM to retain collateral under section 120(2);
- d) object to any proposal of LOSCAM to retain collateral under section 121;
- e) not have goods damaged in the event that LOSCAM were to remove an accession under section 125;
- f) not be reimbursed for damage caused when a secured party removes an accession under section 126;
- g) refuse permission to remove an accession under section 127;
- h) receive notice of the removal of an accession under section 129;
- i) apply to the Court for an order concerning the removal of an accession under section 131; and
- j) reinstate the contract under section 133.

The Hirer further agrees that where LOSCAM has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply. The Hirer waives its right under the PPSA to receive a copy of any Verification Statement (as that term is defined in the PPSA).

**17. AMENDMENT AND ASSIGNMENT****17.1 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 8.

**17.2 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.

**18. 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.

**19. GENERAL****19.1 Notices**

A notice or invoice under this agreement is only effective if it is in writing and either delivered personally to the last notified address of the addressee or sent to the addressee by pre-paid mail or electronic mail. If delivered personally, the notice or invoice is taken to have been rendered or served at the time of delivery. If sent by pre-paid mail, the notice or invoice is taken to have been rendered or served on the 5th Business Day following the day of postage. If a notice or invoice is sent by electronic mail, it is taken to have been served or rendered on the Business Day on which it was dispatched, provided that the sender does not receive a response indicating that the recipient is out of the office or that the message has not otherwise been received. Any notice received after 4.00pm (local time in the place of receipt) on that Business Day or on a non-Business Day will be deemed to have been received on the next Business Day.

**19.2 Insurance**

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

**19.3 Liability for Expenses**

- a) 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).

**19.4 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.

**19.5 Operation of Indemnities**

- 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.

**19.6 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.

**19.7 Time is of the Essence**

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

**19.8 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.

**19.9 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.

**19.10 Governing Law and Jurisdiction**

This agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

**19.11 Counterparts**

This agreement may be executed in counterparts (which may be facsimile or pdf copies) each of which when taken together shall constitute an original.