

## Equipment Hire Agreement

### TERMS AND CONDITIONS

#### The parties agree

#### 1. Definitions

In this Agreement:

**Accident** means an unintended and unforeseen incident, including:

- (a) a collision between the Equipment and another vehicle or object, including animals and roadside infrastructure;
- (b) rollovers; or
- (c) a weather event, including hail Damage, that results in Damage or Third-Party Loss.

**Agreement** means the agreement between Alya Access and the Customer for the hire of the Equipment, consisting of:

- (a) the Credit Application;
- (b) any Special Conditions;
- (c) the Hire Schedule; and
- (d) these Terms and Conditions.

**Alya Access** means Alya Access Pty Ltd ABN 46 650 653 991 of 80 Lipton Dr, Thomastown VIC 3074.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Victoria.

**Claims** includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgements either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

**Credit Application** means the Hire Now application made available on <https://alyaaccess.applyeasy.com.au/Credit/introduction>.

**Customer** means the person, firm, organisation, partnership, corporation or other entity (including trust) hiring the Equipment from Alya Access as identified in the Credit Application, the Invoice or any document supplied by Alya Access to the Customer.

**Damage** means:

- (a) any loss or damage in relation to the costs of new Equipment;
- (b) any loss or damage to the Equipment including its parts, components and accessories, that is not Fair Wear and Tear;
- (c) towing and salvage costs;
- (d) assessing fees; and
- (e) Loss of Use.

**Defaulting Party** has the meaning given in clause 15.1.

**Equipment** means the item or equipment hired to the Customer in accordance with this Agreement.

**Fair Wear and Tear** means minor damage, in the reasonable opinion of Alya Access, caused by ordinary day-to-day use of the Equipment in compliance with the Agreement. Any damage to the windscreen, headlights, lights or tyres that makes any of the Equipment unroadworthy is not Fair Wear and Tear.

**Handover Date** means the date the Equipment will be delivered or collected as notified by Alya Access.

**Hire Charges** means the fees and charges shown in the Invoice determined in accordance with the Hire Schedule which are payable by the Customer to hire the Equipment and any other amounts for any variations that are necessary or requested by the Customer.

**Hire Period** means the term specified in the Invoice.

**Hire Schedule** means the hire or fee schedule provided to the Customer by Alya Access which sets out the equipment available for hire and relevant pricing.

**Insolvency Event** means, in relation to a person, any of the following:

- (a) the person, being an individual, becomes bankrupt;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (e) the holder of a security interest takes possession of any assets of the person or exercises any power of sale;
- (f) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 30 days after being made; and
- (g) any event that is analogous or has a substantially similar effect to any of the events specified in this definition.

**Invoice** means an invoice issued by Alya Access to the Customer, including particulars of the Equipment to be supplied to the Customer and the Hire Period

and such other information as Alya Access may require.

**Liability** includes all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description (including, without limitation, costs actually paid or payable by a party to its legal representatives, whether or not assessed under a retainer or costs agreement).

**Location** means the address the Equipment will be delivered as notified by the Customer.

**Loss** means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental including:

- (a) stamp duties, GST any other taxes or duties;
- (b) tolls, fines, penalties, levies or charges;
- (c) fuels and consumables;
- (d) debt collection costs and/or legal costs; and/or
- (e) such other amount charged by Alya Access' insurer regarding any age or circumstance as notified by Alya Access to the Customer.

**Loss of Use** means Alya Access's loss calculated on a daily or weekly basis at the daily rate or weekly rate shown in the Invoice or any other document produced by Alya Access to the Customer because the Equipment is being repaired or replaced, or if it is written off as a result of an Accident or if deemed by Alya Access to be beyond reasonable repair, or it has been stolen, lost or destroyed.

**New Return Date** means the date the Customer advises Alya Access the Equipment is no longer required and Alya Access issues the Customer with an return number in accordance with clauses 3.2.2 or 3.2.3.

**Non-Defaulting Party** has the meaning given in clause 15.1.

**Personal Information** has the meaning given in the *Privacy Act 1988* (Cth).

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

**PPSR** means the Personal Property Securities Register estimated pursuant to the PPSA.

**Return Date** means:

- (a) the date the Equipment will be returned or collected specified in the Invoice;
- (b) if the Customer is returning the Equipment, when it returned the Equipment to Alya Access; or
- (c) if Alya Access is collecting the Equipment, when the Equipment is collected by Alya Access,

whichever is earlier.

**Security Interest** has the meaning given in the PPSA.

**Security Holder** has the meaning given in clause 10.2.1(a).

**Security Property** means all goods that are supplied by Alya Access to the Customer (whether now or in the future) including the Equipment.

**Special Conditions** means any special conditions specified in the Credit Application and/or Invoice

**Terms and Conditions** means these terms and conditions.

**Third-Party Loss** means loss or damage to third party property, including other motor vehicles and any claim for third party loss of income.

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## 2. Licence and Hire Period

- 2.1 Alya Access grants a licence to the Customer to use the Equipment for the Hire Period.
- 2.2 The Hire Period may only be extended for one or more definite periods and in each case, this can only be done if the Customer requests it and if Alya Access agrees.
- 2.3 If Alya Access permits the Customer to continue hiring the Equipment after the expiry of the Hire Period then (but without prejudice to any other right or remedy of the parties):
  - 2.3.1 this Agreement will continue on the same terms and conditions on a monthly basis; and
  - 2.3.2 the monthly agreement may be terminated by either party giving to the other one months' written notice which may expire on any day.

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## 3. Hire and return of Equipment

- 3.1 **Hire and return**
  - 3.1.1 In consideration of the Customer agreeing to pay the Hire Charges, Alya Access agrees to hire to the Equipment to the Customer for the Hire Period, subject to the terms and conditions contained in this Agreement.
  - 3.1.2 Alya Access hires the Equipment to the Customer at its absolute discretion and may refuse to hire to the Customer for reasons, including for failing to provide adequate identification and perceived safety risks.
  - 3.1.3 On and from the Handover Date, Alya Access will give the Customer, and the Customer will take, possession of the Equipment.
  - 3.1.4 The Invoice will specify how the Equipment will be physically provided to the Customer, which will be either:
    - (a) the Customer will collect or cause the Equipment to be collected from and return or cause the Equipment to be returned or cause to be returned to Alya Access; or
    - (b) only if offered by Alya Access, the Customer will request Alya to collect or

cause to be collected form and deliver or cause to be delivered the Equipment.

- 3.1.5 All costs for the transport, collection, delivery and return of any Equipment between Alya Access and the Customer must be paid for by the Customer, unless otherwise stated in the Invoice.
- 3.1.6 The Customer (or a representative of the Customer) must be physically present at the Location when the Equipment is being delivered or collected by Alya Access pursuant to clause 3.1.4(b).

### 3.2 Delivery and collection dates and times

- 3.2.1 Delivery and collection dates and times are estimates only. Alya Access will use reasonable endeavours to notify the Customer of any delay in delivering, collecting or installing the Equipment, and advise the Customer of the new proposed time or date. If delivery, installation or collection of the Equipment is suspended or delayed due to the Customer's action or inaction, the Customer must reimburse Alya Access for any reasonable loss and expenses caused by the delay, including waiting fees.
- 3.2.2 When the Customer no longer requires the Equipment prior to the Return Date and the Equipment is available for collection by Alya Access, the Customer must contact Alya Access during Alya Access's business hours and provide one Business Day written notice of the Customer's intention to return the Equipment.
- 3.2.3 Provided the return number is allocated, and access is granted to enable collection of the Equipment (if applicable), Hire Charges will cease from the New Return Date. If the equipment is not returned on the New Return Date or access is not granted to Alya Access to collect the Equipment, Hire Charges will continue to apply until Alya Access is able to collect the Equipment.
- 3.2.4 Where there is no specified Hire Period, Alya Access may require return of the Equipment within 2 Business Days of notice to the Customer at its discretion.

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## 4. Inspection of the Equipment

- 4.1 The Customer acknowledges that upon initial delivery of the Equipment at the Location, and on each occasion that Equipment is collected and replaced with new Equipment during the Hire Period, the Customer must inspect the Equipment to satisfy itself as to the condition, quality and safety of the Equipment, its fitness for the Customer's purpose and its compliance with its description.
- 4.2 The Customer must give written notice to Alya Access of any fault, defect or damage of the Equipment within 24 hours of collection or delivery of

the Equipment (as applicable). If no written notice is given by the Customer pursuant to this clause, Alya Access is entitled to assume the Equipment was received in good working order and condition.

- 4.3 Alya Access will inspect the Equipment upon its return to Alya Access and notify the Customer in writing of any fault, defect or damage to the Equipment or any fuel charge.
- 4.4 Subject to Fair Wear and Tear, if the Equipment is not returned to Alya Access in proper working order and condition and in good and substantial repair, the Customer will be charged Alya Access's reasonable costs to bring the Equipment back to this condition.

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## 5. Guarantee

Alya Access may, at its discretion, require the Customer to procure a guarantee of its obligations under the Agreement in the format set out in the Credit Application.

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## 6. Use of Equipment

- 6.1 The Customer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time during the Hire Period without the prior written approval of Alya Access.
- 6.2 The Customer remains responsible and liable to Alya Access irrespective of any sub-hire agreement or arrangement entered into by the Customer.
- 6.3 The Customer is liable to Alya Access for the acts and omissions of any sub-hirer and the employees, agents, contractors and officers of the subhirer as if they were acts or omissions of the Customer.
- 6.4 The Customer agrees that before accepting the Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment without relying upon the skills or judgment of Alya Access or any person purporting to act on its behalf.
- 6.5 The Customer must:
  - 6.5.1 at all times keep and maintain the Equipment properly, in proper working order and condition and in good and substantial repair. Alya Access will make due allowance for Fair Wear and Tear;
  - 6.5.2 operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions whether supplied by Alya Access or posted on the Equipment;
  - 6.5.3 operate, maintain and store the Equipment with due care and diligence and only in accordance with recognised methods and standards for Equipment of its type;
  - 6.5.4 ensure persons operating or erecting the Equipment are suitably instructed, trained and qualified in its safe and proper use and all persons operating the Equipment wear suitable clothing and protective equipment as required or recommended by relevant laws,

- applicable industry standard and the manufacturer of the Equipment or Alya Access;
- 6.5.5 not remove any Equipment from the Location at any time during the Hire Period unless it has obtained the prior written consent of Alya Access;
- 6.5.6 where possible, ensure that the Equipment is placed off-road and must not cause an obstruction to public roads or otherwise;
- 6.5.7 must not attach any Equipment to any property without Alya Access' prior written consent. If Equipment is attached to land, the Equipment will not become a fixture and may be removed by Alya Access in accordance with these Terms and Conditions;
- 6.5.8 not do or cause anything to be done that may endanger the safety or condition of the Equipment and must use all reasonable measures to protect the Equipment against theft and vandalism;
- 6.5.9 display and maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment;
- 6.5.10 immediately advise Alya Access if any Equipment is lost, stolen, Damaged or destroyed;
- 6.5.11 ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
- 6.5.12 return of the Equipment to Alya Access with a full tank of fuel; and
- 6.5.13 not, without the prior written consent of Alya Access:
- (a) make any alternations or additions to the Equipment; or
  - (b) remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Equipment;
  - (c) remove the Equipment from the Location.
- 6.6 The Customer is responsible for ensuring that any person collecting or taking delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so.

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## 7. Equipment breakdown or damage

- 7.1 In the event that the Equipment breaks down, is damaged (whether in an Accident or otherwise) beyond Fair Wear or Tear, or becomes unsafe to use during the Hire Period, the Customer must:
- 7.1.1 immediately stop using the Equipment and notify Alya Access in writing;

- 7.1.2 take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- 7.1.3 take all steps necessary to prevent any further damage to the Equipment; and
- 7.1.4 not repair or attempt to repair the Equipment without the prior written consent of Alya Access.
- 7.2 In the event that the Equipment breaks down, is damaged or becomes unsafe to use (through no act or omission of the Customer including misuse, recklessness and negligence), Alya Access will:
- 7.2.1 repair the Equipment or provide suitable substitute Equipment when reasonably possible after being notified by the Customer provided any employees, servants, agents or subcontractors of Alya Access are allowed access to the Location during business hours;
- 7.2.2 not impose Hire Charges for that portion of the Hire Period the Equipment could not be used, nor charge the costs associated with any repair or replacement of the Equipment; and
- 7.2.3 not be liable for any expenditure, damages, losses, costs or inconvenience incurred by the Customer arising from a breakdown of the Equipment, however caused, including as a result of Alya Access requiring time to assess, repair and/or replace the Equipment.

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## 8. Lost or stolen Equipment

- The Customer is responsible for the Equipment and any accessory and tools during the Hire Period. If the Equipment is lost, stolen or destroyed during the Hire Period due to any act or omission of the Customer, the Customer is liable to Alya Access for and must indemnify Alya Access for:
- 8.1.1 the full cost of replacing the Equipment with new equipment;
- 8.1.2 any insurance excess or fees payable by Alya Access to its insurers (which as at the date of the Terms and Conditions, Alya Access excess for Plant & Equipment Insurance is \$5,000);
- 8.1.3 any other reasonable costs incurred by Alya Access arising from or in connection with the loss or theft to the Equipment including Hire Charges, Claim, Damage and/or Loss until the replacement value is paid to Alya Access.

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## 9. Compliance with laws and safety obligations

- 9.1 The Customer must comply in all respects with all applicable laws, regulations, requirements and rules necessary (including, without limitation, the *Environment Protection Act 2017* (Vic)) and all policies and procedures in respect of the Location for the safe and lawful use and operation of the Equipment.

- 9.2 The Customer must provide Alya Access with all information and documentation required by the relevant authority or any other laws, regulations, requirements and rules to enable Alya Access to lawfully provide its Equipment Hire services.
- 9.3 The Customer must ensure that all safety information and operating instructions supplied with the Equipment are observed by those operating the Equipment.
- 9.4 The Customer must attach to the Equipment any safety signs supplied with the Equipment so that these are clearly visible to those operating the Equipment.

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## 10. Title and risk in the Equipment

### 10.1 Title and risk

10.1.1 Risk in the Equipment passes to the Customer:

- (a) on each occasion that Alya Access delivers Equipment to the Customer, at the point when the Equipment is placed at the Location; and
- (b) on each occasion that the Customer collects Equipment from Alya Access, at the point when the Customer collects the Equipment from Alya Access's premises.

10.1.2 Alya Access retains full title to all Equipment at all times and notwithstanding:

- (a) the delivery or collection of the Equipment to or by the Customer;
- (b) the possession and use of the Equipment by the Customer; and/or
- (c) the temporary attachment of the Equipment to any land or buildings to facilitate the use of the Equipment.

10.1.3 Nothing in these Terms and Conditions provides the Customer with any title or interest in any Equipment. The Customer is mere bailee of the Equipment, with a right only to use the Equipment in accordance with and pursuant to these Terms and Conditions. The Customer must not, and must not attempt to:

- (a) sell or offer for sale, assign, mortgage, pledge, charge, encumber any Equipment or any part thereof;
- (b) lend, lease, sub-lease, on-hire, part with possession of, or otherwise dispose of or deal with any Equipment; or
- (c) conceal or alter any Equipment or make any addition to any Equipment.

10.1.4 The Customer acknowledges that no representation, express or implied, written or oral has been made by or on behalf of Alya

Access to the Customer that any Equipment may be purchased from Alya Access by the Customer or any related body corporate or any nominee of the Customer at any time.

### 10.2 Security

10.2.1 The Customer acknowledges and agrees that:

- (a) Alya Access may grant a Security Interest in the Equipment in favour of a third party (**Security Holder**) without the Customer's consent. The exercise of any rights by the Security Holder under a Security Interest will not constitute a breach or default under these Terms and Conditions; and
- (b) the Customer's rights in respect of the Equipment are expressly subject and subordinate to the rights of the Security Holder (under the Security Interest, at law or otherwise). Nothing in these Terms and Conditions in any way limits, reduces, varies or otherwise qualifies the rights of the Security Holder under or in connection with any Security Interest, any other document connected with any Security Interest and the Security Holder will be entitled to exercise all of its rights under or in respect of the Security Interest to the same extent as if these Terms and Conditions had not been entered into.

10.2.2 If a Security Interest becomes enforceable:

- (a) Alya Access may by notice to the Customer terminate these Terms and Conditions and upon such notice the Customer's right to possess and use the Equipment automatically ceases and the Customer must surrender possession and control of the Equipment to the Security Holder or Alya Access, notwithstanding that the Customer may not be in breach or default of its obligations under these Terms and Conditions; and
- (b) the Security Holder or Alya Access may enter any premises where the Equipment is located to exercise the rights of the Security Holder or Alya Access under these Terms and Conditions, any Security Interest or at law including, if the need arises, the right to remove the Equipment from the Location. The Customer agrees to obtain all necessary consents from the owner, occupier and other interested persons (such as any mortgage) of the relevant premises where the Equipment is located to enable the Security Holder and Alya Access to exercise its rights under this clause.

- 10.2.3 The Customer agrees to execute any documents and do all things necessary required by Alya Access to register a mortgage or security interest or other security interest over any real property or other asset, at the request of Alya Access. The Customer must indemnify Alya Access in connection with the preparation and registration of any such mortgage or security documents. The Customer also consents unconditionally to Alya Access lodging a caveat or caveats noting its interest in any caveatable property.

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## 11. Hire Charges and payment

### 11.1 Hire Charges

- 11.1.1 The Customer must pay Alya Access the Hire Charges for the entire Hire Period.
- 11.1.2 Alya Access may render Invoices to the Customer at the Handover Date or at completion of the Hire Period or periodically throughout the Hire Period, at its sole discretion.
- 11.1.3 All Invoices must be paid for in accordance with the payment terms specified in the Invoice, or if no payment terms are specified, within 30 days of the date of the Invoice.
- 11.1.4 Equipment hired for at least 6 days in a 7 day continuous period, will be charged at the weekly rate. The Hire Period includes public holidays irrespective of whether the Equipment is being used by the Customer or not.
- 11.1.5 The weekly Equipment rates are based upon the following usage:
- (a) Monday to Friday, 7:00am to 5:00pm;
  - (b) Saturday to Sunday, 7:00am to 3:00pm.
- 11.1.6 If the Customer hires the Equipment for the weekly rate, the Equipment is taken to be hired based on a 56-hour working week (**First Working Week**). If the Customer uses the Equipment outside of the First Working Week, the Customer will be charged for another shift (**Second Working Week**) and be liable to pay double the weekly rate.
- 11.1.7 Due to the size and complexity of the Equipment, Alya Access reserves the right to charge a minimum period of hire for certain types of Equipment. If Alya Access exercises its right to charge a minimum period of hire of one day, the Equipment is taken as hired between the hours Alya Access of 7.00 am and 5.00 pm (**First Daily Rate**). If the Customer uses the Equipment outside of the First Daily Date, the Customer will be charged for another shift (**Second Daily Rate**) and be liable to pay double the daily rate.

### 11.2 Changes to fees and charges

- 11.2.1 Alya Access may, subject to clause 11.2.2, vary the Hire Charges from time to time during the Hire Period by providing the Customer with 10 Business Days' notice of any such change.
- 11.2.2 Alya Access may vary the fees and charges specified in the Hire Schedule:
- (a) to reflect, on a pass through basis, any increases or changes in Alya Access's operating costs;
  - (b) to reflect, on a pass through basis, any increases to, or new, levy's payable or associated with the hire of the Equipment; and
  - (c) to adjust its fees and charges annually in proportion with any movement in the latest Consumer Price Index (All Groups – Weighted Average) published by the Australian Bureau of Statistics.
- 11.2.3 The Hire Schedule may contain details of any discounts, rebates, incentives and additional terms and conditions relating to the fees and charges applicable under this Agreement.

### 11.3 Payments

- 11.3.1 All payments payable under this Agreement must be made in cash, direct debit, bank cheque, credit card or credit, or by any other method agreed between the parties.
- 11.3.2 If Alya Access has approved the Customer to pay the Hire Charges for the Equipment on credit, the Customer must pay the Hire Charges within 30 days of the date the Credit Application has been approved.
- 11.3.3 Notwithstanding that Alya Access has approved the Customer to pay the Hire Charges for the Equipment on credit, Alya Access may still require the Customer to pay the Hire Charges in full on the Handover Date and prior to Alya Access releasing the Equipment to the Customer, in its sole discretion.
- 11.3.4 If payment is made by credit card, the Customer is responsible for any credit card fees charged by Alya Access.
- 11.3.5 The Customer authorises Alya Access to capture and store their credit card details and/or pre-authorise an amount set out on the Handover Date to cover potential future Hire Charges incurred by the Customer.
- 11.3.6 The Customer must pay all amounts due to Alya Access:
- (a) without set-off, deductions, counter-claims or conditions; and

- (b) in available cleared funds to the bank account of Alya Access nominated on the Invoice.
- 11.3.7 Alya Access may charge the Customer interest on any unpaid amount payable by the Customer under this Agreement at the rate of 2.5% per annum from the due date until the date of payment. Interest accrues daily, may be capitalised by Alya Access daily and is payable on demand.
- 11.3.8 The Customer must pay to Alya Access any additional fees or charges that become payable by the Customer to Alya Access under the terms of this Agreement on demand by Alya Access.
- 11.3.9 Without limiting the ability of Alya Access to recover all amounts owing to it, the Customer authorises Alya Access to charge any amounts owing by the Customer to any credit account or credit card held with Alya Access pursuant to a Credit Application.
- 11.3.10 Alya Access reserves its rights under security of payment legislation.
- 11.3.11 The Customer acknowledges and agrees that there is no sale or other disposal of title to fuel under this Agreement and that Alya Access shall be exclusively entitled to claim any fuel tax credits.

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## 12. GST

- 12.1 In this clause 12 words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.
- 12.2 Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.
- 12.3 If GST is payable in respect of any supply made by Alya Access under this Agreement then, subject to clause 12.4, the Customer will pay to Alya Access an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply that is to be provided under the Agreement.
- 12.4 Alya Access must provide a tax invoice to the Customer before Alya Access will be entitled to payment of the GST payable under clause 12.3.

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## 13. PPSA

- 13.1 The Customer acknowledges that pursuant to these Terms and Conditions it grants to Alya Access a Security Interest in the Security Property.
- 13.2 The Customer consents to Alya Access effecting a registration on the PPSR (in any manner Alya Access considers appropriate) in relation to the Security Interest arising under or in connection with this Agreement (including as a purchase money security interest) and the Customer agrees to provide

all reasonable assistance required by Alya Access to facilitate this.

- 13.3 The Customer waives the right to receive a verification statement or a financing change statement under the PPSA unless the notice is required by the PPSA and cannot be excluded.
- 13.4 To the extent permitted by section 115 of the PPSA, the parties contract out of all of the provisions of Chapter 4 of the PPSA.
- 13.5 Alya Access retains any rights of enforcement arising on the PPSA, under this Agreement, or otherwise, including but not limited to a right to seize the collateral under section 123 of the PPSA.

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## 14. Privacy

- 14.1 Alya Access may provide details of this Agreement to a credit reporting agency for the purpose of:
- 14.1.1 obtaining a credit report; and
- 14.1.2 allowing the credit agency to maintain a file, in respect of the Customer.
- 14.2 Alya Access will endeavour to take reasonable steps to protect the Personal Information provided by the Customer in accordance with the *Privacy Act 1998* (Cth) Australian Privacy Principles.

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## 15. Termination

### 15.1 Immediate termination

- 15.1.1 Either party (**Non-Defaulting Party**) may terminate this Agreement immediately by providing written notice to the other party (**Defaulting Party**) if:
- (a) the Defaulting Party breaches a material term of this Agreement;
- (b) the Defaulting Party breaches a non-material term of this Agreement and fails to remedy that breach within a reasonable period of time (which need not be more than 5 Business Days) of being notified in writing by the Non-Defaulting Party; or
- (c) the Defaulting Party is the subject of an Insolvency Event or if it is a partnership, is dissolved or if it is a natural person, dies.

15.1.2 Alya Access may terminate this Agreement immediately by providing written notice to the Customer:

- (a) if the Customer fails to return any Equipment to Alya Access; or
- (b) the Customer sells or closes its business or relocates the Equipment without written notice to Alya Access.

## 15.2 Consequences of termination

- 15.2.1 At the end of this Agreement (whether as a result of termination or expiry):
- (a) the Customer must cooperate with Alya Access to enable Alya Access to promptly collect any Equipment that remains in the possession of the Customer as soon as possible, and failing agreement with the Customer, Alya Access may enter any premises at which the Equipment is located and collect the Equipment and Alya Access will not be trespasser if it does so;
  - (b) Alya Access must provide the Customer with any outstanding Invoices relating to the hire of Equipment and upon being invoiced by Alya Access, such amount will be immediately due and payable by the Customer; and
  - (c) the Customer must immediately pay any other amount outstanding and owing by the Customer to Alya Access under this Agreement.
- 15.2.2 The Customer grants in favour of Alya Access an irrevocable licence to enter upon its premises, without prior notice, to repossess the Equipment.
- 15.2.3 The termination of this Agreement does not affect any right of action or other remedy which the Customer or Alya Access has before termination in respect of any prior breaches of this Agreement, including any breach which is the ground of termination.
- 15.2.4 All of the rights and obligations of each party to this Agreement which are expressed to survive termination of this Agreement, or which by their nature or context are intended to survive termination of this Agreement, will survive the termination of this Agreement.

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## 16. Insurance

- 16.1 Upon risk in the Equipment passing to the Customer and until all monies owed under this Agreement by the Customer are paid to Alya Access, the Customer must take out and maintain adequate to cover to cover all liabilities incurred as a result of the use of the Equipment.
- 16.2 If new Equipment cannot be sourced, Alya Access may replace the Equipment with a suitable substitute.
- 16.3 Evidence in the form of a Certificate of Currency for the policy and any renewal must be given to Alya Access at its request and in any event no later than 7 days after the expiry date of the previous Certificate of Currency (where applicable).
- 16.4 Insurance cover must include Alya Access as an insured party.

- 16.5 The Customer is responsible for any excess and any other costs associated with any insurance taken out by the Customer under this clause and the Customer is responsible for any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss Alya Access suffers as a result of not being able to hire the Equipment.

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## 17. Warranties and Indemnity

- 17.1 The Customer represents and warrants to Alya Access that:
- 17.1.1 if the Customer is a corporation, it is a registered company and has full power and authority to enter into this Agreement;
  - 17.1.2 it is not the subject of an Insolvency Event;
  - 17.1.3 it is aware of all laws and legal requirements in relation to the Equipment and its hire;
  - 17.1.4 it uses the Equipment at its own risk; and
  - 17.1.5 it has inspected the Equipment in accordance with clause 4 and is of the opinion that the Equipment is safe and suitable for the activities of the Customer.
- 17.2 The Customer agrees to use and possess the Equipment at its own risk. The Customer agrees that Alya Access bears no responsibility or liability for any Loss to any of the Customer's property (including the Equipment).
- 17.3 To the fullest extent permitted by law, the Customer indemnifies Alya Access on demand from and against any Claim it may suffer or Liability it may incur arising directly or indirectly as a result of or in connection with:
- 17.3.1 Damage or loss of the Equipment by the Customer; or
  - 17.3.2 unpaid Invoices,
- except to the extent such Claim or Liability is caused by any acts or omissions of Alya Access, its employees, agents or contractors, or their negligence.

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## 18. Limitation of Liability

- 18.1 The Australian Consumer Law (as embodied in the *Competition and Consumer Act 2010* (Cth) and other State and Territory consumer protection acts) provides certain statutory guarantees in respect of consumer contracts, which cannot be excluded, restricted or modified.
- 18.2 If the Customer is deemed to be a 'consumer' under the Australian Consumer Law, to the extent permitted by law, if Alya Access fails to comply with a guarantee applying under The Australian Consumer Law (or equivalent State based legislation), Alya Access's liability is limited, at the discretion of Alya Access, to:
- 18.2.1 in respect of goods, the replacement of the goods, the supply of equivalent goods or the



- payment of the costs of replacing the goods;  
or
- 18.2.2 in respect of services, the re-supply of the services by Alya Access or the cost of the re-supply of the services.
- 18.3 Subject to clauses 18.1, 18.2 and 18.5, to the fullest extent permitted by law, Alya Access excludes all implied representations, warranties, terms and conditions of any kind whatsoever (whether implied by common law, statute or otherwise) and the application or availability of any statutory rights (including any implied representations, warranties, terms or conditions or any statutory guarantees) in respect of this Agreement and the Equipment.
- 18.4 Subject to clauses 18.1, 18.2 and 18.5, to the fullest extent permitted by law, Alya Access will not, in any circumstances, be liable to the Customer for any Claim suffered by the Customer or Liability incurred by the Customer arising directly or indirectly as a result of or in connection with:
- 18.4.1 the Customer's possession and use of the Equipment, including any loss or damage in respect of personal injury, death, or damage to property associated with such possession and use of the Equipment by the Customer; and
- 18.4.2 any indirect or consequential loss or damage which:
- (a) means loss or damage which does not arise naturally, according to the usual course of things, from the relevant breach of contract or tortious duty or other relevant act or omission, whether or not that loss or damage may reasonably be supposed to have been in the contemplation of the parties, when they entered into this Agreement, as the probable result of that breach, act or omission; and
- (b) without limiting clause 18.4.2(a), includes loss of profit, anticipated loss of profit, loss of revenue, loss of opportunity, loss of business or market share, loss of goodwill or reputation, wasted expenditure and/or loss of data.
- 18.5 Nothing in this clause shall exclude or in any way limit Alya Access's liability for:
- 18.5.1 death or personal injury caused by Alya Access's negligence or that of its employees, agents or contractors (as applicable);
- 18.5.2 fraud or fraudulent representations;
- 18.5.3 acts of wilful default or neglect; or
- 18.5.4 any other liability to the extent the same may not be excluded or limited as a matter of law.

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## 19. Notices

### 19.1 Delivery of notice

- 19.1.1 A notice or other communication given to a party under this Agreement must be in writing and in English, and must be delivered to the party by:
- (a) delivering it personally to the party;
- (b) leaving it at the party's address set out in the notice details;
- (c) posting it by prepaid post to the party at the party's address set out in the notice details; or
- (d) email to the party's email address set out in the notice details.
- 19.1.2 If the person to be served is a company, the notice or other communication may be served at the company's registered office.

### 19.2 Notice details

- 19.2.1 The notice details of each party are set out on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties according to this clause).
- 19.2.2 Any party may change its notice details by giving notice to the other parties.

### 19.3 Time of service

- 19.3.1 A notice or other communication is taken to be delivered:
- (a) if delivered personally or left at the person's address, upon delivery;
- (b) if posted within Australia to an Australian address:
- (i) using express post, 2 Business Days after posting; and
- (ii) using any other prepaid post, 6 Business Days after posting;
- (c) if posted to an address in a different country, 10 Business Days after posting; and
- (d) if delivered by email, at the time the email left the sender's email system, unless the sender receives notification that the email was not received by the recipient.
- 19.3.2 Despite clause 19.3.1, a notice or other communication which is received after 5.00pm or on a non-business day (each in the place of receipt), is taken to be delivered at 9.00am on the next business day in the place of receipt.

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## 20. Governing law

This Agreement is governed by the law applying in Victoria and the parties submit to the exclusive jurisdiction of the courts of Victoria.

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## 21. Interpretation

### 21.1 Words and headings

In this Agreement, unless expressed to the contrary:

- 21.1.1 words denoting the singular include the plural and vice versa;
- 21.1.2 the word 'includes' in any form is not a word of limitation;
- 21.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 21.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Agreement; and
- 21.1.5 no rule of construction applies to the disadvantage of the party preparing this Agreement on the basis that it prepared or put forward this Agreement or any part of it.

### 21.2 Specific references

In this Agreement, unless expressed to the contrary, a reference to:

- 21.2.1 a gender includes all other genders;
- 21.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 21.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 21.2.4 writing includes writing in digital form;
- 21.2.5 'this Agreement' is to this Agreement as amended from time to time;
- 21.2.6 '\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 21.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Agreement;
- 21.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 21.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 21.2.10 a person includes the legal personal representatives, successors and permitted

assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and

- 21.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.
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## 22. General

### 22.1 Amendment of terms

- 22.1.1 Alya Access may amend these Terms and Conditions from time to time. If these Terms and Conditions are amended, Alya Access will provide the Customer written notice of the amendment at the email address supplied by the Customer and display the updated terms and conditions on Alya Access's website at <https://alyaaccess.com.au/> or display the amended terms and conditions at its premises.
- 22.1.2 The Customer continued use of the Equipment constitutes acceptance of the amended terms and conditions. If you do not agree to any amendments, you must stop using and return the Equipment.
- 22.1.3 If the amended terms and conditions are material, you may cancel your hire. We may ask you to substantiate a request to terminate under these circumstances, acting reasonably.

### 22.2 Counterparts

This Agreement may be executed in counterparts, all of which taken together constitute one document.

### 22.3 Entire agreement and no reliance

- 22.3.1 This Agreement and any Invoice issued by Alya Access under this Agreement:
  - (a) constitutes the entire agreement between the parties about equipment hire from Alya Access; and
  - (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation relating to equipment hire from Alya Access that was imposed, given or made by a party (or an agent of a party) prior to entering into this Agreement excluding a party's liability for previous false, misleading or deceptive statements or misrepresentations (whether written or oral).
- 22.3.2 To the fullest extent permitted by law, the Customer acknowledges that in entering into this Agreement the Customer has not relied

on any representations made by Alya Access (or its agents or employees) other than matters expressly set out in this Agreement.

#### 22.4 **Standing offer**

These Terms and Conditions operate as a 'standing agreement' and each Invoice shall constitute a separate contract for supply of the Equipment between the parties. Alya Access may enforce its rights under these Terms and Conditions or Invoice, multiple Invoices or the Terms and Conditions as a whole.

#### 22.5 **Credit**

Any credit accommodation granted by Alya Access to the Customer may be reviewed at any time without notice and credit withdrawn. The Agreement may be terminated, and the Customer will owe to Alya Access any amounts owing until the Equipment is back in the possession of Alya Access.

#### 22.6 **Liability**

If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.

#### 22.7 **Severability**

22.7.1 Any provision of this Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

22.7.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Agreement that is unlawful or unenforceable will be severed from this Agreement and the remaining provisions continue in force.

#### 22.8 **Waiver**

The failure of a party at any time to insist on performance of any provision of this Agreement is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Agreement.

#### 22.9 **Further assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

#### 22.10 **Survival and enforcement of indemnities**

22.10.1 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

22.10.2 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

#### 22.11 **No merger**

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion of the transactions contemplated by this Agreement.

#### 22.12 **Business Day**

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

#### 22.13 **Electronic execution**

22.13.1 Consent to electronic execution - A party may sign this Agreement, and any variations to it, by electronic means where permitted by law. Each other party consents to that party signing by electronic means.

22.13.2 Counterpart if electronic execution used - The parties agree that if any party signs this Agreement under clause 22.13.1, then:

- (a) an electronic form of this Agreement with that party's electronic signature(s) appearing will constitute an executed counterpart; and
- (b) a print-out of this Agreement with that party's electronic signature(s) appearing will also constitute an executed counterpart.

#### 22.14 **Survival**

Clauses 5, 8, 10, 11, 17, 18, 19, 20 and this 22.14 survive termination or expiration of these Terms and Conditions

#### 22.15 **Special Conditions**

To the extent that there is any inconsistency between the Special Conditions and the Agreement, the Special Conditions will prevail.