

# MASTER SERVICES AGREEMENT

## SERVICE DESCRIPTION



### SERVICE DESCRIPTION: EQUIPMENT RENTAL

#### PART A - SERVICE & SITE DETAILS

Refer to the Pricing Schedule for site details.

This Service Description sets out the specific terms of our agreement relating to the rental of equipment by us to you.

#### PART B – PRICING

You agree to pay the Charges set out in the Pricing Schedule.

#### PART C – SPECIFIC TERMS

##### 1. RENTAL AND PAYMENT

- 1.1 **Rental:** During the Rental Period, you will rent the Rental Equipment from us for the Rental Amount.
- 1.2 **Obligation to Pay:**
  - (a) We will invoice you for the Rental Amount monthly in advance, except that our first invoice for each item of Rental Equipment will include the Rental Amount for the broken period from the Rental Commencement Date.
  - (b) You agree to pay each invoice by the date specified on the invoice with your obligation to pay the Rental Amount being unconditional and not subject to set-off, counterclaim, deduction or withholding for any reason (the "Rental Payment Date").
  - (c) Your obligation to pay the Rental Amount and any other moneys due under the Agreement in respect of the Rental Equipment will continue regardless of any defect in, breakdown, accident, loss or theft of, or any damage to, the Rental Equipment or the occurrence of any Unforeseen Circumstance.
- 1.3 **General Gross Up:** If for any reason you are required by law to make a deduction or withholding from a Rental Amount or any other amount payable to us in respect of the Rental Equipment, you will increase the amount payable by you on the next Rental Payment Date, to ensure that we receive the full Rental Amount which you would have paid, had no deduction or withholding been made.
- 1.4 **Late Payment Fee:** If any invoiced amount remains unpaid after the date specified on the invoice, we may charge you interest at the Late Payment Fee on that amount until it is paid in full.
- 1.5 **Payment of Additional Costs:** If:
  - (a) any invoiced amount remains unpaid after the date specified on the invoice and we incur expenses in the course of collecting the overdue amount or repossessing any of the Rental Equipment; or
  - (b) you fail to perform any of your obligations contained in the Agreement and, acting reasonably, we incur expenses in the course of protecting our interest in the Rental Equipment (whether by repossessing any of Rental Equipment or otherwise),then we may invoice you and you agree to pay any such amount reasonably incurred by us.

##### 2. OWNERSHIP OF RENTAL EQUIPMENT

- 2.1 **Owner of Equipment:** You understand that we may not be the owner of the Rental Equipment.
- 2.2 **Agent for Owner:** If we are not the owner of the Rental Equipment:
  - (a) We are not required to tell you this or to provide you with information about the owner.

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- (b) We will be the agent of the owner of the Rental Equipment, and all of our rights under the Agreement in respect of the Rental Equipment will be held on trust by us for the owner, and enforceable by us as the agent of the owner.
- (c) Your rights under the Agreement in respect of the Rental Equipment will be the same as if we were the owner. You will continue to deal with us in the same manner as though we were the owner and will not deal directly with the owner unless we agree to this.
- (d) We may be entitled to payment by the owner of a commission for arranging the rental to you of the Rental Equipment.

### 3. USE OF RENTAL EQUIPMENT

- 3.1 **Use of Rental Equipment:** You agree to use the Rental Equipment only in your business operations and only for the purposes for which it has been designed.
- 3.2 **Your Obligations Regarding Rental Equipment:** In addition to any other obligations you may have under this Agreement in respect of the Rental Equipment, you will:
  - (a) Keep the Rental Equipment in good order and repair and ensure that it is properly operated and serviced. The Rental Equipment will be held by you at your risk from the time it is first delivered to you to the time at which it is delivered back to us (including the entire Rental Period).
  - (b) Not sell, assign, transfer or otherwise dispose of, or encumber, the Rental Equipment in any way.
  - (c) Not modify the Rental Equipment except as provided in clause 4.2.
  - (d) Allow us to inspect the Rental Equipment at any time during normal business hours provided we first give you reasonable notice.
  - (e) Comply with all relevant laws relating to the use of the Rental Equipment.

### 4. REPLACEMENT, ALTERATIONS, MODIFICATIONS AND ADDITION OF PARTS

- 4.1 **Replacement:** You will replace any part of the Rental Equipment which is destroyed, damaged, lost or stolen at any time during the Rental Period.
- 4.2 **Modifications:** If you make any modification to the Rental Equipment without our prior written consent and if this impairs the condition of the Rental Equipment or diminishes its use or value, then we may vary the terms of this Service Description, including the Rental Amount, as we consider appropriate in order to compensate us.
- 4.3 **Treatment of New Parts:** As soon as any part of the Rental Equipment is replaced, modified or added to, the replacement or new part will be treated as part of the Rental Equipment.
- 4.4 **Treatment of Removed Parts:** Any original part of the Rental Equipment which you remove must be replaced by a part of equal or better quality. As soon as any original part of the Rental Equipment is removed, that part will immediately become your property and will no longer be subject to the terms of this Service Description.
- 4.5 **Removal of Parts:** During the Rental Period you may remove any part of the Rental Equipment which you have added in accordance with clause 4.3, provided that:
  - (a) The new part was an addition to, and did not replace, any original part installed in the Rental Equipment.
  - (b) You do not cause any damage to the Rental Equipment or diminish its use or value by removal of the part.
- 4.6 **Failure to Remove:** If you do not remove any part which you have added to the Rental Equipment, that part will be treated as part of the Rental Equipment at the end of the Rental Period.
- 4.7 **Costs:** You will be responsible for the cost of any modification which you make to the Rental Equipment, including any loss which you may suffer as a result.

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### 5. INSURANCE

- 5.1 **Duty to Insure:** Unless we agree that you have the capacity to Self-Insure the Rental Equipment you must, while the Rental Equipment remains at your risk under clause 3.2(a), obtain and maintain insurance (to a value agreed by us) with a reputable insurance company against any loss or damage to the Rental Equipment while under your control (the "Insurance Policies").
- 5.2 **Insurance Policies:** You agree to:
- (a) If requested by us, provide us with a copy of each Insurance Policy, showing that our interest (or the interest of any other owner of the Rental Equipment, as notified to you) has been noted.
  - (b) Pay all premiums under the Insurance Policies and not do or allow anything which may limit or extinguish the cover under those Insurance Policies.
  - (c) Immediately pay us any money which you receive in settlement of any claim under an Insurance Policy.
- 5.3 **Failure to Insure:** On the basis that you are required to insure the Rental Equipment pursuant to clause 5.1 and you fail to insure the Rental Equipment, we may arrange reasonable insurance on a full replacement basis and you will pay us any related premium.

### 6. LOSS OR DESTRUCTION

- 6.1 **Occurrence of Loss or Destruction:** You will immediately notify us if all or any part of the Rental Equipment is lost, stolen or damaged in any way (the "Lost Equipment").
- 6.2 **Consequences of Loss or Destruction:** If we reasonably determine that any Lost Equipment is beyond economic repair:
- (a) You will within 5 Business Days pay us, in respect of the Lost Equipment, the aggregate of:
    - (i) The present value of future Rental Amounts payable in respect of the Lost Equipment calculated by reference to the discount rate advised by us as necessary to achieve a present market value return on such future Rental Amounts; and
    - (ii) The residual value of the Lost Equipment, assumed by us in calculating our return at the Rental Commencement Date.
  - (b) Any insurance proceeds from the Lost Equipment received by us will be applied against any outstanding moneys owing by you to us, with any surplus being paid to you.
  - (c) We will no longer be required to rent the Lost Equipment (or any replacement equipment) to you.
  - (d) If the Lost Equipment is only part of the Rental Equipment, we will reduce the Rental Amount to take into account the Lost Equipment. You will then pay the reduced amount.

### 7. EXCLUSIONS OF LIABILITY

- 7.1 **Exclusion:** If the Rental Equipment does not operate properly or causes any damage, injury or loss to be suffered by you, and if this is a result of a defect in the Rental Equipment, which we could not reasonably have been expected to be aware of or to remedy, we will have no liability to you for this.
- 7.2 **Exclusion:** Except as expressly set out in the Agreement, all express and implied terms and warranties regarding the Rental Equipment are excluded.

### 8. ACKNOWLEDGEMENTS/INDEMNITIES

- 8.1 **Acknowledgments by You:** You acknowledge that:
- (a) You are satisfied that the Rental Equipment is suitable for your purposes.
  - (b) Nothing in the Agreement confers on you title to the Rental Equipment.
- 8.2 **Indemnities:** You will indemnify us at all times against:
- (a) Any loss of or damage to the Rental Equipment including any loss or damage suffered by us as a result of your actions under clause 4.

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- (b) Liability for any death, injury or damage to any person or property which arises in respect of the Rental Equipment or its use.

### 9. TERMINATION OF RENTAL

- 9.1 **Termination by us:** We may terminate the rental of any Rental Equipment under the Agreement, by giving you written notice if any of the following occur:
  - (a) You have failed to comply with an earlier written notice given to you by us specifying a breach of the Agreement relating in any way to the Rental Equipment and (in the case of a breach which is capable of being remedied) requiring you to remedy that breach within 2 Business Days.
  - (b) Any Rental Equipment has been lost, damaged, destroyed or stolen.
- 9.2 **Termination by You:** You may terminate the rental of any Rental Equipment under the Agreement by giving us at least 20 Business Days prior written notice.
- 9.3 **What Happens on Termination of Rental:** Upon the Rental Termination Date:
  - (a) You must immediately return the relevant Rental Equipment to us and comply with any reasonable instructions given by us relating to arrangements for packaging and return. The Rental Equipment is to be returned at your cost, and is to be returned in good working order and undamaged condition (with the exception of reasonable wear and tear).
  - (b) You must immediately pay any Rental Amount or other moneys owing to us in relation to that Rental Equipment at the Rental Termination Date together with (where the Rental Termination Date is earlier than the Rental Expiry Date) the net present value of any future Rental Amounts which would have been payable if the Rental Termination Date had been the same as the Rental Expiry Date. This will be calculated by reference to the discount rate advised by us as necessary to achieve a present market value return on such future Rental Amounts.
  - (c) If you do not return the Rental Equipment to us, we may enter your premises to remove the Rental Equipment.

### 10. EXTENSION OF RENTAL PERIOD

- 10.1 **Notice From You:** If, at least 3 months prior to the Rental Expiry Date, you deliver written notice to us:
  - (a) **Termination:** Of your intention to return the Rental Equipment to us, then provided you return the Rental Equipment to us on or before the Rental Expiry Date in accordance with clause 9.3(a), the rental of that Rental Equipment will be terminated on the Rental Expiry Date.
  - (b) **Extension:** Of your intention to extend the Rental Period by either 12, 24 or 36 months, the Rental Period will be automatically extended (from the old Rental Expiry Date) on the same terms and conditions (except for any change necessary to take into account the new Rental Expiry Date or any other agreed changes).
- 10.2 **Deemed Extension:** If you fail to give notice under clause 10.1(a), or where you have given notice under clause 10.1(a) but you fail to return the Rental Equipment in accordance with clause 9.3(a) on or before the Rental Expiry Date, the Rental Period will be automatically extended until:
  - (a) **Termination by us:** We terminate the rental of the Rental Equipment by giving at least one month's written notice to you (which we may do at any time, requiring return of the Rental Equipment in accordance with clause 9.3(a) on the date specified in such notice).
  - (b) **Termination by You:** You terminate the rental of the Rental Equipment by giving us at least 1 month's prior written notice of your intention to terminate specifying the date of termination and delivering the Rental Equipment to us in accordance with clause 9.3(a) on or before the date specified in such notice.

This clause does not apply if you have given notice of your intention to extend the term under clause 10.1(b).

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11. **PERSONAL PROPERTY SECURITIES ACT 1999 (THE PPSA)**
- 11.1 **Waiver of Rights to Verification Statements:** Pursuant to Section 148 of the PPSA, you waive your rights to be given a copy of any verification statement for any financing statement or financing change statement registered in relation to any security interest relating to or arising from the Agreement (including, without limitation, any financing statement or financing change statement registered pursuant to Part 12 of the PPSA).
- 11.2 **Financing Change Statements:** You agree that:
- (a) you will not give a written demand, or allow any other person to give a written demand, requiring the registration of a financing change statement under the PPSA regarding any security interest relating to or arising from the Agreement;
  - (b) you will not enter into, or allow any other person to enter into, the register of personal property securities, a financing change statement regarding any security interest relating to or arising from the Agreement; and
  - (c) if, notwithstanding clauses 11.2(a) and (b), pursuant to Section 162 of the PPSA you request the discharge or amendment of any financing statement that has been registered under the PPSA in respect of any Rental Equipment, then we shall be entitled to charge you such fee as we may from time to time determine in respect of the processing of that request.
- 11.3 **Change of Contact Details:** You agree that you will not change your name, address or contact details without providing us with at least 20 Business Days prior written notice.
- 11.4 **Further assurances in respect of the PPSA:** You agree that if and when requested by us, you will, at your cost, do all such things as are reasonably necessary to enable us and/or the owner of the Rental Equipment to obtain and maintain, in respect of all Rental Equipment, a security interest in respect of this Agreement that is at all times perfected under the PPSA with the priority required by us, including:
- (a) the provision of such information as we may require in order enable the registration or renewal of registration under the PPSA of any security interest relating to or arising from the Agreement (including, without limitation, registration under Part 12 of the PPSA, if appropriate); and
  - (b) the execution of such further documentation as we may reasonably require for that purpose.
- 11.5 **Inconsistent Provisions of the PPSA:** You agree with us that if the rights and obligations of either us or you under the Agreement are inconsistent with any provision of the PPSA, then to the extent permitted by the PPSA, the relevant provisions of the Agreement (as appropriate) will prevail, with the intent that, the rights and obligations of us and you will be determined by reference to the Agreement, to the maximum extent permitted by law.
- 11.6 **Non-application of Part 9 of the PPSA:** References in this clause 12.6 to provisions contained in Part 9 of the PPSA do not mean that we accept that Part 9 of the PPSA applies to the Agreement. Instead, they are included in case a court holds that Part 9 does apply. If the Agreement is, or is held to be, leases for a term of more than 1 year that secure payment or performance of an obligation, for the purposes of Section 105 of the PPSA, then you:
- (a) agree that any powers given to us under the Agreement or the PPSA may be exercised by us whether or not we or the owner of the Rental Equipment are a first ranking secured party in respect of the relevant Rental Equipment and section 108, 109 and 111(1) of the PPSA are considered amended accordingly;
  - (b) agree that nothing in section 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to the Agreement;
  - (c) waive your rights to:
    - (i) receive a statement of account under Section 116 of the PPSA;
    - (ii) recover surplus under Section 119 of the PPSA;
    - (iii) receive notice of a secured party's proposal to retain collateral under Section 120(2) of the PPSA;
    - (iv) object to a secured party's proposal to retain collateral under Section 121 of the PPSA;

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- (v) not have goods damaged when a secured party removes an accession under Section 125 of the PPSA;
- (vi) refuse permission to remove an accession under Section 127 of the PPSA;
- (vii) receive notice of the removal of an accession under Section 129 of the PPSA;
- (viii) apply to the Court for an order concerning the removal of an accession under Section 131 of the PPSA; and
- (ix) redeem collateral under Section 132 of the PPSA.

## 12. DEFINITIONS AND INTERPRETATION

12.1 **Definitions:** In this Service Description, unless the context otherwise requires:

**Insurance Policies** has the meaning given to it in clause 5.1.

**Late Payment Interest Rate** means 15% per annum.

**Lost Equipment** has the meaning given to it in clause 6.1.

**Rental Amount** means the amount appearing as such in Part B of this Service Description, together with any GST payable on that amount.

**Rental Commencement Date** means the date specified as such in Part A of this Service Description.

**Rental Equipment** means equipment which is being rented to you by us at any time, as specified in Part A of this Service Description.

**Rental Expiry Date** means the date specified in Part A of this Service Description as the last day of the period during which you will rent the Rental Equipment from us.

**Rental Payment Date** has the meaning given to it in clause 1.2(b).

**Rental Period** means, in respect of any Rental Equipment, the period from the Rental Commencement Date to the Rental Expiry Date (inclusive).

**Rental Site** means the Site at which the Rental Equipment is to be located, as set out in Part A of this Service Description.

**Rental Termination Date** means, in respect of any Rental Equipment:

- (a) The Rental Expiry Date; or
- (b) The date of termination under clauses 9.1, 9.2 or 10.2; or
- (c) The date on which the Agreement is terminated,

whichever occurs first.

**Unforeseen Circumstance** means extreme weather conditions, civil disruption, industrial action or any change in legislation or any other circumstance beyond the parties' reasonable control.

12.2 **Interpretation:** In this Equipment Rental Service Description, references to clauses are to clauses in this Service Description (unless stated otherwise).