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MASTER HIRE AGREEMENT TERMS

This is an agreement between Adapt Hire Rentals Pty Limited ACN 664147746 / ABN 37664147746 (**Adapt Hire**) or any relevant related body corporate of Adapt Hire, and the Hirer identified in the *Application for Commercial Credit Account and Master Hire Agreement* (**Credit Application**) or the *Hirer Identification and Master Hire Agreement* (**Cash Identification**) (as the case may be). This document states the terms on which Adapt Hire will hire Plant to the Hirer now or in the future.

1. Definitions

1.1 In these Conditions:-

(a) "**Commencement Date**" means the date and time when the Hirer takes possession of the Plant.

(b) "**Hire Charge**" means the amount shown in (or calculated in accordance with) the Hire Schedule payable by the Hirer to hire the Plant.

(c) "**Hire Period**" means the period between the Commencement Date and the Termination Date.

(d) "**Hire Schedule**" means a document which Adapt Hire may require the Hirer to sign (or accept in a way Adapt Hire requires) including particulars of Hirer, Plant and Hire Period and such other information as Adapt Hire may decide to require.

(e) "Limited Liability Waiver" or "LLW" means the liability waiver to limit the Hirer's liability for loss, damage or theft as set out in clause 9.

(f) "Limited Liability Waiver Excess" has the meaning given to it in clause 9.1

(g) "Limited Liability Waiver Fee" means the fee set out in the Hire Schedule payable by the Hirer to Adapt Hire for the Limited Liability Waiver.

(h) "**Plant**" means equipment including any kind of equipment suitable for earth moving and construction including but not limited to excavators, dump trucks, loaders, water trucks, compactors, air compressors, tippers and all other tools, consumables, accessories and parts.

(i) "**Termination Date**" means the date and time when the Hirer must return the Plant to the possession of Adapt Hire.

(j) any terms defined in the Credit Application, Cash Identification or the Hire Schedule have the same meaning in this Master Hire Agreement.

2. Agreement to Hire and Hire Period

2.1 If the Hirer wishes to hire Plant the Hirer must complete and sign (or otherwise accept in the manner required by Adapt Hire) a Hire Schedule and such other documents as Adapt Hire may require.

2.2 Adapt Hire agrees to rent and the Hirer agrees to take the Plant on hire for the Hire Period in accordance with the terms of this document and the Hire Schedule. Any alterations to the Hire Period must be approved by Adapt Hire in writing prior to the Termination Date.

2.3 Unless otherwise agreed by Adapt Hire, the minimum Hire Charge must be for a period of four hours.

2.4 The Hirer acknowledges that Adapt Hire has rights to the Plant and in any circumstances title of the Plant will not pass to the Hirer.

2.5 Each Hire Schedule is not a separate contract but forms a part of this agreement, together with any other contractual documents. Adapt Hire may decline or accept a Hire Schedule for particular Plant in its absolute discretion.

3. Hire Charges

3.1 The Hirer must make payment of the hire of the Plant in accordance with the rates specified in the Hire Schedule. Adapt Hire in its sole discretion may charge on a daily rate, weekly rate, monthly rate basis (or any other basis).

3.2 In the event that the Hire Charge is not completed on the Hire Schedule, the standard rates published by Adapt Hire, which can be accessed at Adapt Hire's premises or by enquiry of Adapt Hire, will apply.

3.3 Depending on the duration of the Hire Period and the amount of time the Hirer uses the Plant during the Hire Period, additional charges may apply. If the Hire Period is for a duration of:-

(a) five days or less, and the Plant is used in excess of eight hours on any day, then the Hirer must pay Adapt Hire additional charges calculated on a pro rata basis for each additional hour or part thereof at the daily rate;

(b) for a duration of one month or less, and the Plant is used in excess of 40 hours in any five day week (Monday to Friday), then the Hirer must pay Adapt Hire additional charges calculated on a pro rata basis for each additional day or part thereof at the weekly rate;

(c) for a duration of greater than one month, and the Plant is used on more than 28 different days, then the Hirer must pay Adapt Hire additional charges calculated on a pro rata basis for each additional week or part thereof at the monthly rate.

3.4 Where meters are mounted on the Plant they may be used by Adapt Hire to determine the time the Plant was in use by the Hirer unless otherwise stated in the Hire Schedule. A Hire Charge based on hourly use will be calculated for part of an hour. Where the meter is found not to be working either during or at the Termination Date then Adapt Hire will, acting reasonably, estimate the hours used.

3.5 The Hire Charge does not include cartage, fuel, blade wear, tip wear (rippers, cultivators, etc.)

3.6 In addition to the Hire Charge, the Hirer must pay:-

(a) for any consumables, fuel or trade materials consumed or used in connection with the hire;
(b) for any replaceable parts of Plant such as (but not limited to) 'teeth' and cutting edges on buckets and chisels on rock breakers, which in the sole discretion of Adapt Hire has undergone rapid wear as a result of the Hirer's use;
(c) for any reasonable costs incurred by Adapt Hire to remedy the breach of the Hirer's obligations including but not limited to cleaning and repairing of the Plant upon return;
(d) any applicable levies, fines penalties and any other government charges arising out of the Hirer's use of the Plant during the Hire Period; and
(e) the Theft and Limited Liability Waiver charge (if agreed in the Hire Schedule).

3.7 Where the Hire Period is not for a fixed period for which a Hire Charge has been agreed, Adapt Hire may amend the Hire Charge or any related charges payable under a particular Hire Schedule by giving the Hirer at least seven (7) days' notice in writing before the change occurs. In the event notice is given advising that the Hire Charge will be increased, the Hirer may, at its cost, return the Plant to Adapt Hire, or request that it be collected by Adapt Hire before the increase in the Hire Charge commences. If the Hirer does not wish to agree a fixed hire period at the outset but is concerned at a possible increase to the Hire Charge under this clause, the Hirer should discuss this with authorised Adapt Hire personnel.

3.8 The Hirer acknowledges and agrees that where the Hire Period exceeds a period of two calendar months then in the event of the Hirer purporting to terminate this agreement before the Termination Date the Hirer must pay to Adapt Hire liquidated damages calculated in either of the following manner to be decided at the sole discretion of Adapt Hire:
(a) 20% of the whole of the Hire Charge paid or payable by the Hirer to Adapt Hire from the Commencement Date to the date of the said purported termination it being agreed by the parties that having regard to the length of the period of hire such liquidated properly reflect the reasonable losses of Adapt Hire in the event of early termination; or
(b) Adapt Hire's reasonable estimation of its lost rental and other costs and expenses incurred as a result of early termination.

3.9 In the event that the Hirer also hires an operator of the Plant the hire charges of the operator in accordance with the Hire Charge specified in the Hire Schedule and the charge out rate as specified in the Hire Schedule per operator and will be charged by the hour.

4. Payment of Hire Charges

1.1 **Where the Hirer makes payment by credit or debit card, it warrants that it is the card holder or authorised user of such credit or debit card and gives authorisation to Adapt Hire to debit from the card all applicable Hire Charges. The Hirer further acknowledges and agrees that Adapt Hire:**
(a) **is authorised to obtain credit or debit card details in writing or over the phone or by any other form of voice communication from the Hirer;**
(b) **accepts no liability of any kind for any loss suffered or incurred by the Hirer due to incorrect or incomplete card details having been provided to Adapt Hire by the Hirer Hirer and may charge the Hirer and debit from the card any fees or charges incurred by Adapt Hire with any credit card issuer or payment processor as a result of incorrect credit card details being provided;**
(c) **will take reasonable steps to ensure the security and confidentiality of the Hirer's credit or debit card details and will use such details only for the purpose of payment of the services provided to the Hirer;**
(d) **will charge a processing fee to all amounts charged; and**
(e) **is permitted to share, process and store the Hirer's card details with third party payment processors used by Adapt Hire from time to time such as Westpac Banking Corporation's payWave Portal.**

1.2 Except where Adapt Hire dispenses with this requirement a deposit and/or bond as specified in the Hire Schedule must be paid by the Hirer to Adapt Hire by the Commencement Date.

1.3 Trade Customers must make payment of any invoice issued by Adapt Hire within 30 days of the date of the statement. Invoices will be issued on a monthly basis.

1.4 Hirers that are not Trade Customers must make payment of the invoice issued by Adapt Hire prior to the Commencement Date.

1.5 In the event of default by the Hirer in the payment of any amount due, the Hirer will be liable to pay interest on the gross amount outstanding at the rate of 2.00% per month calculated daily from the date on which payment was due until the date on which payment is received in full.

1.6 For Trade Customers, credit may not be extended on overdue accounts at Adapt Hire's discretion.

1.7 Adapt Hire may decline to give a Trade Customer credit at any time, for any reason. If Adapt Hire does so, all amounts that the Trade Customer owes to Adapt Hire on any account become immediately payable.

1.8 The Hirer remains liable for the payment of all:
(a) validly issued invoices, even if the amount exceeds the credit limit requested by the Hirer; and
(b) Hire Charges and any losses suffered by Adapt Hire, if the Plant is unusable because the Hirer has failed to adhere to its obligations under clauses 6.1(a)-(c), (g)-(i), (k) and (l), and such obligation is unaffected by any shortfall in the Hirer's insurance cover for such costs.
(c) The Hirer's liability under clauses 4.8, 6.1(n), 9.5 or any other provision of this agreement continues even if there is any shortfall in the Hirer's insurance cover for such liabilities. For example, if the Hirer has insurance cover for 'lost revenue' for 12 weeks and an insurance claim takes longer than 12 weeks to settle, the Hirer will remain liable for any loss suffered by Adapt Hire if the insurance is inadequate to cover that loss whether during or beyond the 12 week cover period.

2. GST

(a) In this clause:
(i) the expression "GST" means goods and services tax and includes any other tax in the nature of a tax on the supply of goods and services;
(ii) the expression "Supply" means any form of supply whatsoever and includes any supply within the meaning of any legislation imposing or relating to the imposition of a GST.
(b) Where any Supply under this agreement is or becomes subject to a GST an amount equal to the GST paid or payable in respect of the Supply will be added to the consideration for that supply under this agreement and must be paid at the same times unless it is clear that the consideration is already GST-inclusive.

(c) Each party agrees to do all things, including providing invoices and other documents necessary to assist the other party to claim any credit, set-off or refund of any GST paid or payable under this agreement.

3. Responsibilities of Hirer

3.1 The Hirer must:-

(a) prior to entering into this agreement determine, using the Hirer's sole judgment, the condition, suitability and fitness of the Plant for the purpose for which the Hirer requires the Plant;
(b) use the Plant in a skilful and proper manner and only for the purpose and within the capacity for which it was designed;
(c) ensure that the Plant is operated by a suitably qualified and (where necessary) licensed operator and used within its rated capacity;
(d) comply at its own expense, with all industrial and workplace health and safety laws, both state and commonwealth, which may apply to the Plant or its use;
(e) prior to entering into this agreement , take out at its own cost and maintain for the Term policies of insurance for third party and public liability, indemnity cover of not less than the full new replacement cost of the Plant, and any other policies which may be directed by Adapt Hire from time to time;
(f) provide all operators of the Plant with appropriate and prudent safety clothing and equipment and all manuals and instructions (written and oral) for the safe operation of the Plant;
(g) at its own expense, clean, fuel, lubricate, check water and oil and keep the Plant in good condition;
(h) not undertake any repair, servicing, alteration, modification or tampering with the Plant without the prior written consent of Adapt Hire.
(i) not alter or make any additions to the Plant, including, without limitation, alter, make any additions to, deface or erase any identifying mark, plate or number or any clock, or meter.
(j) acknowledge that pre-arranged major servicing may be carried out by Adapt Hire during normal working hours during the Hire Period;
(k) replace all flat and/or damaged tyres or tracks;
(l) store the Plant safely and securely and protected from theft damage seizure or loss;
(m) in the event that any repair or servicing appears necessary to the Plant the Hirer must:
  (i) immediately cease using the Plant;
  (ii) take all steps necessary to prevent injury occurring to any persons or property as well as to the Plant;
  (iii) advise Adapt Hire immediately, initially by telephone and forthwith thereafter in writing (by facsimile transmission or by email); and
  (iv) not repair or attempt to repair the Plant.
(n) indemnify Adapt Hire against all liability, claims, loss, costs and expenses (including without limitation legal fees, costs and disbursements on a full indemnity basis) in respect of any breach of this agreement by the Hirer and death or injury to persons, and/or loss or damage to property, arising out of the delivery, use, servicing, storage or possession of the Plant during the Hire Period however arising, whether from negligence of the Hirer or any other matter within the Hirers control;
(o) retain possession of the Plant at all times and must not, without Adapt Hire's prior written consent, part with the possession of the Plant or in any way assign the benefits of this agreement or the use of the Plant to any third party;
(p) accept responsibility and fully reimburse Adapt Hire for the cost of freight to retrieve Plant which Adapt Hire (acting reasonably) deems to be abandoned or is not being properly safeguarded;
(q) immediately on request by Adapt Hire advise Adapt Hire of the whereabouts of the Plant and allow Adapt Hire (its agents, servants or contractors) to inspect and test the Plant and for such purposes the Hirer, where legally entitled, hereby gives or will, if not legally entitled, use reasonable efforts to procure from the premises owner, an irrevocable consent and licence to Adapt Hire allowing Adapt Hire and its servants agents and contractors as agent of the Hirer, to enter upon any premises where the Plant or any part of the Plant may be to take possession of and remove the Plant;
(r) on termination of this agreement, ensure that the Plant is in the same clean condition and good working condition as at Commencement Date; and
(s) pay to Adapt Hire all or any costs and expenses incurred enforcing Adapt Hire's rights and the Hirer's obligations under this agreement including, but not limited to, any cheque fees, any legal fees and disbursements incurred by Adapt Hire for any court proceedings taken against the Hirer by Adapt Hire.

3.2 In the event that the hire includes the hire of an operator to operate the Plant, the Hirer acknowledges that:

(a) the operator will be under the Hirer's direction and control and will comply with all reasonable and lawful directions of the Hirer;
(b) Adapt Hire will not seek to direct or supervise any of the work being undertaken by the operator;
(c) Adapt Hire will not be liable for any acts or omissions of the operator provided that the operator is acting under the Hirer's direction and control; and
(d) the Hirer must not allow any other person to operate the Plant without Adapt Hire's prior consent.

4. Stand-Down

4.1 If the Hirer wishes to Stand Down an item of Plant, the Hirer must lodge a request for Stand-Down:

(a) before 9:30 am on each day that the Stand-Down is required; and
(b) by emailing sales@adapthire.com.au.

4.2 No Stand Down will be provided where the request is made:

(a) for:
  (i) mere non-usage by the Hirer including where that occurs because the Plant is unusable because the Hirer has failed to adhere to its obligations under clauses 6.1(a)-(c), (g)-(i), (k) and (l);
  (ii) operator absence; or
  (iii) site delays outside of Adapt Hire's control; or
(b) by telephone call, SMS or other mobile message service(s); or

(c) after 9:30 am on the day on which the Stand-Down is required. Adapt Hire may, in its sole discretion, review and approve a Stand Down request lodged after 9:30 am.

4.3 If a Stand Down request is approved, Adapt Hire will:
(a) notify the Hirer that the Stand Down is approved; and
(b) quote the relevant date for each approved Stand Down on each monthly invoice, with the relevant discount applied.

4.4 If a Stand Down has been approved but is not quoted on a monthly invoice:
(a) the Hirer must notify Adapt Hire within 7 days of the date of the invoice and the relevant date of the approved Stand Down not shown on the invoice;
(b) Adapt Hire will issue a corrected invoice to the Hirer within 7 days of notification if it is reasonably satisfied that there has been an error.

4.5 All approved Stand Downs will be verified by GPS tracking records on the next business day.

5. Loss of or Damage to Plant

5.1 If the Plant breaks down, is damaged so it is inoperable, or becomes unsafe to use during the Hire Period, the Hirer must immediately notify Adapt Hire, cease using the Plant and must not repair or attempt to repair the Plant. The Hirer must also ensure that the Plant will not suffer further damage and that no person or property will be injured as a result of the damage to the Plant.

5.2 If the Plant is lost or stolen, the Hirer must immediately notify Adapt Hire and the police if appropriate.

5.3 The Hirer accepts full responsibility for any loss or damage occurring to the Plant (other than damage arising as a consequence of a negligent act or omission by Adapt Hire) for the Hire Period. The cost of any replacement or repairs or loss of Plant resulting from loss or damage will be payable by the Hirer. The Hirer must notify Adapt Hire immediately if the Plant is lost or damaged and must immediately comply with any reasonable request by Adapt Hire relating to Adapt Hire's enquiries into the loss of and/or damage to the Plant.

5.4 Without limiting the generality of clause 8.3, the Hirer will be liable for the full cost of repairs to or the replacement of the Plant where the loss or damage has been caused by:-
(a) misuse abuse, or overloading including overloading of motors or any other part of the plant;
(b) the Plant not stored in a safe place;
(c) contravention of the conditions of this contract;
(d) violation of any law or regulation;
(e) damage to tyres and tubes by punctures or cuts;
(f) lack of lubrication or other routine servicing by the Hirer;
(g) locating, using, loading, unloading transporting the Plant on or over water, wharves, bridges or vessels of any kind;
(h) damage caused by exposure to any corrosive substance;
(i) negligence of the Hirer where the Hirer has failed by intent or lack of due care to take all responsible precautions to protect the Plant from loss or damage;
(j) consumption of alcohol and/or drugs; or
(k) loss or damage to tools, grease guns, hoses electric cords and all other similar accessories; or

6. Limited Liability Waiver

6.1 The Limited Liability Waiver is not insurance, but an agreement by Adapt Hire to limit the Hirer's liability in certain circumstances for loss, theft, or damage to the Plant to an amount called the Limited Liability Waiver Excess ("Excess"). The Excess is explained below in clause 9.7. Please note the limitations set out in clause 9.7.

6.2 Subject to clause 9.3 the Limited Liability Waiver Fee will be automatically charged to the Hirer in addition to the Hire Charges and will be set out in the Hirer Schedule. The Limited Liability Waiver Fee is calculated as a percentage of the Hire Charge.

6.3 The Limited Liability Waiver Fee is not required to be paid from the date Hirer provides Adapt Hire with a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Plant during the Hire Period for an amount not less than the replacement value of the Plant. If a current, valid, Certificate of Currency (COC) is not provided, the default policy is to apply the Waiver charge until such time as the COC is received.

6.4 Notwithstanding clause 9.3, Hirer must pay the Limited Liability Waiver Fee for that portion of the Hire Period where a certificate of currency is not provided ("Uninsured Period") and Hirer is not entitled to any credit and/or reimbursement of the Limited Liability Waiver Fee charged and/or paid that relates to the Uninsured Period. Hirer is responsible for any excess and any other costs associated with its own insurance.

6.5 Hirer is and remains responsible for any shortfall in repair or replacement costs of the Plant following payment of any amount received under hirer's Insurance, including any loss Adapt Hire suffers as a result of not being able to hire the Plant.

6.6 Where Hirer has paid the Limited Liability Waiver Fee, Adapt Hire will waive its right to claim against the Hirer for loss, theft or damage to the Equipment if:
(a) for theft, Hirer has promptly reported the incident to the police and provided Adapt Hire with a written police report;
(b) the Hirer co-operates with Adapt Hire and provides Adapt Hire with the details of the incident, including any written or photographic evidence Adapt Hire reasonably requires;
(c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 9.8; and
(d) Adapt Hire has been paid the Limited Liability Waiver Excess.

6.7 The Limited Liability Waiver Excess for the various circumstances is the amount calculated as follows:
(a) (replacement) where the Plant is lost or damaged beyond repair, the amount equal to the greater of:
(i) $2,500; or
(ii) 15% of the new replacement cost,
(b) (repair) where the Plant is lost or party damaged and can be repaired, the amount equal to the greater of:
(i) $2,500; or
(ii) 15% of the repair cost,
(c) (theft) where the Plant is stolen or the subject of a mysterious disappearance, the amount equal to the greater of:
(i) $5,000; or
(ii) 15% of the new replacement cost,

6.8 Even if the Hirer has paid the Limited Liability Waiver Fee, Adapt Hire does not waive any of its right to claim against Hirer for loss, theft or damage to the Plant and the Limited Liability Waiver does not apply to loss or damage:

(a) caused as a result of the Hirer's breach of a clause in this agreement or which has been caused by the Hirer's negligent act or omission;
(b) caused as a result of the Hirer failing to take reasonable precautions to protect the Plant and mitigate against any loss or damage to the Plant;
(c) caused to the Plant in violation of any law or by misappropriation or wrongful conversion of the Plant by the Hirer;
(d) resulting from misuse, abuse, overloading, or exceeding the rated capacity or improper servicing, maintenance, or repairs of the Plant by the Hirer;
(e) caused by the exposure of the Plant to corrosive substances, salt water or toxic materials;
(f) to accessories such as air conditioning, hoses, batteries, cables and lights and cabin and glass, battery, gas cylinder, fork tynes and seat;
(g) occurring while the Plant is being transported over water, wharves, bridges or vessels of any kind or otherwise in transit including loading and unloading;
(h) caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance; or
(i) caused by the overloading of Plant or any components of the Plant;
(j) caused by vandalism;
(k) to motors or other electrical Plant or components within the Plant caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leas with electrical Plant;
(l) to tyres or tubes;
(m) to windscreens, mirrors, glass or Perspex; or
(n) arising in circumstances where a claim has been made by or against a third party.

7. Exclusion of Warranties

7.1 Subject to this agreement and any express provisions contained herein all guarantees, conditions, warranties, terms, undertakings, or representations whether express or implied (by statute or otherwise) are excluded to the maximum extent permitted by law.

7.2 Nothing in this agreement excludes restricts or modifies any right or remedy or any guarantee term condition warranty undertaking inducement or representation implied by any legislation which cannot be excluded or limited.

7.3 Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation which cannot be excluded, ('Non-Excludable Provision'), and Adapt Hire may limit the Hirer's remedy for a breach of the Non-Excludable Provision, then Adapt Hire's liability for breach of the Non-Excludable Provision is limited to (at Adapt Hire's election):

(a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
(b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

7.4 Adapt Hire will not be liable for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Hirer have incurred, amounts that the Hirer is liable to its customers for or any loss suffered by third parties.

7.5 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this agreement.

7.6 Adapt Hire will not be liable to the Hirer for any acts or omissions of any person supplied by Adapt Hire where that person is acting under the Hirer's direction and control during the Term and will be indemnified against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

8. Signatory's Warranty as to Agency from Hirer

8.1 Where this agreement is signed by a person on behalf of the Hirer (but the signatory is not the Hirer named in the schedule on the first page of this agreement):

(a) The person signing the agreement warrants to Adapt Hire that he or she has the full authority of the Hirer to enter into this agreement; and
(b) By signing this agreement, the person signing this agreement on behalf of the Hirer is and will remain personally liable hereunder until all obligations of the Hirer have been fully met or any monies due under this agreement by the Hirer to Adapt Hire have been paid; and
(c) The person signing this agreement on behalf of the hirer acknowledges that Adapt Hire enters into this contract in reliance upon the warranty given in clause 11.1(a) and the acknowledgment of personal liability set out in clause 11.1(b) hereof.

9. Personal Property Securities Act ('PPSA')

9.1 This clause applies to the extent that Adapt Hire's interest in respect of a hire provided for in this agreement is a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.

9.2 Adapt Hire may register any actual impending or likely security interest. The Hirer may not make any Claim against Adapt Hire in respect of any registration even if it is determined that Adapt Hire should not have registered a security interest. The Hirer must do anything (such as obtaining consents and signing documents) which Adapt Hire requires for the purposes of:

(a) ensuring that Adapt Hire's security interest is enforceable, perfected and otherwise effective under the PPS Law;
(b) enabling Adapt Hire to gain first priority (or any other priority agreed to by Adapt Hire in writing) for its security interest; and
(c) enabling Adapt Hire to exercise rights in connection with the security interest.

9.3 The rights of Adapt Hire under this document are in addition to and not in substitution for Adapt Hire's rights under other law (including the PPS Law) and Adapt Hire may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Adapt Hire's security interest will attach to proceeds.

9.4 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, and the PPS Law allows waiver of any requirement for Adapt Hire to give notice, allow time or provide an account, the Hirer hereby provides its waiver.

9.5 To the extent they apply, the following provisions of the PPS Law; section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Adapt Hire. Hirer agrees that in addition to those rights, Adapt Hire will, if there is default by Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that Adapt Hire may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

9.6 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. This waiver also extends to any verification statement in respect of security interests arising or provided for under security agreements prior to the date of this agreement.

9.7 Adapt Hire and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Adapt Hire the benefit of section 275(6)(a) and Adapt Hire will not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

9.8 The Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Plant other than with the express written consent of Adapt Hire. The Hirer must not lease, hire, bail or give possession ('sub-hire') of the Plant to anyone else unless Adapt Hire (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Adapt Hire and must be expressed to be subject to the rights of Adapt Hire under this agreement. Hirer may not vary a sub-hire without the prior written consent of Adapt Hire (which may be withheld in its absolute discretion).

9.9 The Hirer must ensure that Adapt Hire is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Plant.

9.10 The Hirer must take all steps including registration under PPS Law as may be required to:

(a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;

(b) enabling the Hirer to gain (subject always to the rights of Adapt Hire) first priority (or any other priority agreed to by Adapt Hire in writing) for the security interest; and

(c) enabling Adapt Hire and the Hirer to exercise their respective rights in connection with the security interest.

9.11 To assure performance of its obligations under this agreement, the Hirer hereby gives Adapt Hire an irrevocable power of attorney to do anything Adapt Hire considers the Hirer should do under this agreement. Adapt Hire may recover from Hirer the cost of doing anything under this clause 12, including registration fees.

10. Termination of agreement

10.1 Adapt Hire may terminate this agreement, without notice, if the Hirer commits any breach of this agreement and fails to remedy that breach within 5 days of receiving notice of the breach, or if the Hirer commits any act of bankruptcy, or being a company an application is made or resolution is passed for its winding up, entering into administration or a receiver is appointed to any of its assets, or if any execution or distress must be levied upon the Plant, or if any judgment against the Hirer remains unsatisfied for 7 days or more, or if the Hirer makes an assignment or compromise for the benefit of its creditors, or it ceases to carry on business.

10.2 Adapt Hire may terminate this agreement at any time for convenience by giving the Hirer 30 days notice in writing. Termination under this clause 13.2 does not terminate any hire of particular Plant for an agreed period which is still running at the date of the notice of termination.

10.3 Termination of this agreement does not affect any accrued rights or liabilities of either party nor does it affect any provision which is expressly or by implication intended to operate after termination. In particular (but without limiting the generality of the foregoing) all or any monies due and payable under this agreement by the Hirer to Adapt Hire must be paid in accordance with these terms and conditions.

10.4 Upon termination of this agreement Adapt Hire (its agents, servants or contractors) will be entitled to take possession of the Plant and for this purpose the Hirer hereby gives irrevocable consent and licence to Adapt Hire (its agents, servants or contractors) to enter upon any land or premises of the Hirer, or any other place (as the agent of the Hirer) where the Plant may be located and the Hirer indemnifies Adapt Hire in respect of any claims, damages or expenses made against or incurred by Adapt Hire arising out of any action taken under this clause.

11. Force Majeure

11.1 Subject to clause 14.2neither party will be liable for a failure or delay in performing its obligations under this agreement to the extent that such failure or delay is due to causes beyond their reasonable control including but not limited to fire, flood, earthquake, utility failures, supply failures, transport delays, explosions, elements of nature, or act of God; riot, civil disorder, rebellion or revolution, acts of war or terrorism.

11.2 Nothing in clause 14.1 limits or excludes the Hirer's responsibility and liability under this agreement for Plant that is lost, stolen or damaged during the Hire Period or has broken down or become unsafe to use as a result of the Hirer's conduct or negligence.

12. General

12.1 This agreement may be executed using any electronic means and the parties intend that such electronic means of execution will legally bind the parties to the terms of this agreement with the same effect as if the signature was an original signature.

12.2 No variation of these conditions will be binding on Adapt Hire unless signed by Adapt Hire. The terms in this agreement may be changed by Adapt Hire from time to time by Adapt Hire giving notice of the change to the Hirer. Notice is deemed given (whether or not actually received) when Adapt Hire sends notice of the amendment to the Hirer at any address (including an email address) supplied by the Hirer. The varied conditions will only apply to any Hire Schedules issued by the Hirer and accepted by Adapt Hire after the date of the notice.

12.3 Adapt Hire may give notice to the Hirer transferring this agreement and all rights and obligations under it to any transferee designated by Adapt Hire and upon such notice being given this agreement will be deemed novated and transferred to the transferee with effect from the date notified by Adapt Hire and the Hirer and transferee from that date will be bound to each other under the terms of this Agreement.

12.4 Any document or notice to given to or served on the Hirer by Adapt Hire may be served by leaving it at or posting it to the address of the Hirer stated in the Contract.

12.5 If any of the terms or conditions of this agreement is or becomes void or unenforceable for any reason that part will be severed from these conditions which will remain in full force and effect.

12.6 If there is any conflict between these terms and conditions and the Hire Schedule, then the terms contained in the Hire Schedule will prevail to the extent of the inconsistency.

12.7 This Contract is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which may hear appeals therefrom.