

Terms and Conditions

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 **"Accessories"** means any and all plant, equipment and accessories provided with the Equipment at the time of hire, or as otherwise specified in the Schedule.
- 1.2 **"Additional Charges"** means any other amounts payable to Munganya as set out in this Contract.
- 1.3 **"Commencement Date"** means the date set out in the Schedule.
- 1.4 **"Contract"** means the deed between Munganya and the Hirer, consisting of the following documents:
 - (a) these terms and conditions;
 - (b) the Schedule; and
 - (c) any annexures to these documents.
- 1.5 **"Deposit"** means the deposit specified in the Schedule.
- 1.6 **"Dry Hire"** means the lease of the Equipment to the Hirer without an Operator provided by Munganya.
- 1.7 **"Equipment"** means the equipment (including any Accessories) specified in the Schedule.
- 1.8 **"Fees"** means the Hire Fee, the Operator Fee and any other Additional Charges.
- 1.9 **"Guarantor"** means the person or persons specified in the Schedule.
- 1.10 **"Hire Fee"** means the hire fee, and any other applicable rates, set out in the Schedule.
- 1.11 **"Hire Period"** means the period of hire specified in the Schedule, starting on the Commencement Date.
- 1.12 **"Hirer"** means the person, firm, organisation or corporation specified in the Schedule, and includes the Hirer's officers, employees and contractors.
- 1.13 **"Munganya"** means Munganya Pty Ltd (ACN 658 362 246) as trustee for Munganya (ABN 25 658 362 246), its successors and permitted assigns.
- 1.14 **"Location"** means the site on which the Equipment is to be used, as specified in the Schedule.
- 1.15 **"Loss"** means any claim, action, damage, loss, liability, cost, charge or expense.
- 1.16 **"Major Repairs"** means any maintenance or repairs for the Equipment which costs more than the value set out in the Schedule for a Minor Repair.
- 1.17 **"Major Service"** means any major service conducted at the applicable Servicing Periods, in accordance with manufacturer's recommendations and any Operating Instructions.
- 1.18 **"Minor Repairs"** means any maintenance or repairs for the Equipment, equal or less than the amount set out in the Schedule.
- 1.19 **"Minor Service"** means any minor service conducted at the applicable Servicing Periods, in accordance with manufacturer's recommendations and any Operating Instructions.
- 1.20 **"Operating Instructions"** means any operating instructions or manual provided to the Hirer with respect to the Equipment.
- 1.21 **"Operator"** means the person or person(s) provided by Munganya to operate the Equipment for the purpose of a Wet Hire.
- 1.22 **"Operator Fee"** means the operator fee for the provision of the Operator, as set out in the Schedule.
- 1.23 **"Pre-Inspection Report"** means a report provided by Munganya to the Hirer, on or before the Commencement Date, in regard to the condition of the Equipment prior to the Commencement Date.
- 1.24 **"Schedule"** means the schedule included with these terms and conditions and incorporated into this Contract.
- 1.25 **"Servicing Period"** means the accumulated hourly usage of the Equipment by the Hirer as specified in the manufacturer's manual of the Equipment, or as otherwise specified in the Schedule. Where neither the manufacturer's manual or the Schedule specifies the Servicing Period, then it will be every 250 hours for Minor Services and every 1000 hours for Major Services.
- 1.26 **"Single Shift Maximum Hours"** has the meaning given in the Schedule.
- 1.27 **"Stand-by Rate"** means the Stand-by Rate set out in the Schedule.
- 1.28 **"Wear Materials"** has the meaning given in the Schedule.
- 1.29 **"Wet Hire"** means the lease of the Equipment to the Hirer with an Operator or labour by Munganya.

2. GRANT AND HIRE PERIOD

2.1 Wet or Dry Hire

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Munganya agrees to lease the Equipment to the Hirer on either a Dry Hire or Wet Hire basis as set out in the Schedule.

2.2 Hire Period

- (a) The Hirer shall lease the Equipment for the Hire Period.
- (b) Munganya may, in its discretion, agree to extend the Hire Period in writing.

3. CHANGE IN CONTROL

- 3.1 The Hirer shall give Munganya not less than fourteen (14) days prior written notice of any proposed change of ownership of the Hirer and/or any other change in the Hirer's details (including, but not (14) days prior written notice of any proposed change of ownership of the Hirer and/or any other change in the Hirer's details (including, but not limited to, changes in the Hirer's name, address, contact details, or business practice).

- 3.2 The Hirer shall be liable for any Loss incurred by Munganya as a result of the Hirer's failure to comply with this clause.

4. FEES AND PAYMENT

4.1 Fees and Deposit

- (a) The Hirer shall pay the Fees in accordance with this Contract.
- (b) Where required, the Hirer shall pay the Deposit on or before the Commencement Date. Munganya reserves the right not to provide the Equipment to the Hirer if the Hirer fails to pay the Deposit in full.
- (c) Where the Schedule sets out minimum hours for any Equipment and in any given month the Hirer uses the Equipment for less than the minimum hours, then the Hirer must pay Munganya the Hire Fee for that Equipment as if it was used for the minimum hours. The minimum hours will be reduced pro-rata where the Hire Period commences or ends partway through the month, or where the Equipment is unavailable due to any negligence by Munganya. Any hours of use above the minimum hours will be charged at the relevant Hire Fee and will not roll over to the following month.
- (d) The Fees may be varied by Munganya from time to time by way of thirty (30) days' written notice being provided to the Hirer by

Munganya. Where the Schedule specifies a fixed hire start and hire end date, the Fees cannot be varied under this clause during that fixed period.

4.2 Payment

- (a) The Fees shall be payable strictly in accordance with the following terms:

- (i) the Fees are payable within thirty (30) days of the date of each invoice provided to the Hirer by Munganya, without set off or deduction;
- (ii) the Hirer must pay the Fees by electronic funds transfer to a bank nominated by Munganya, or such other method of payment as agreed between the parties; and
- (iii) the Hirer shall pay interest at the rate of 10% per annum on all outstanding monies owing to Munganya calculated on a daily basis from the due date for payment until the actual date of payment.

- (b) If the Hirer defaults in payment of any Fees when due, the Hirer shall indemnify Munganya from and against all costs and disbursements incurred by Munganya in pursuing the debt including legal costs on a full indemnity basis and Munganya's collection agency costs.

- (c) Where the Hirer is required to make payment to Munganya (whether in connection with this Hire Contract or not), the Hirer indemnifies and will keep indemnified Munganya for any and all Loss to Munganya relating to or in connection with any payment not being received by Munganya, including (but not limited to) any Loss caused by cyber crime, social engineering or hacking.

4.3 Hirer's other payments

Unless otherwise agreed by the parties in writing, the Hirer must pay all repair and operating expenses in respect of the Equipment including (without limitation) the cost of fuel and lubricant, the cost of replacement parts and accessories and the costs of complying with any other requirements referred to in this Contract.

4.4 Daily Rates and Double Shifting

Unless otherwise agreed and made explicit in the Schedule, all daily rates are for a single shift only. Where the Hirer uses the Equipment

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- in excess of the Single Shift Maximum Hours, they must in addition to the daily rate:
- (a) pay the hourly rate specified in the Schedule for any hours in excess of the Single Shift Maximum Hours; and
- (b) perform additional servicing for the Equipment as reasonably directly by Munganya, at the Hirer's cost in all things.

5. DELIVERY AND INSTALLATION

5.1 Delivery

- (a) Unless otherwise agreed, transportation costs to and from the Location, including the supply of additional labour, equipment, materials, transportation expenses and other requirements are at the cost of the Hirer.
- (b) Unless otherwise specified, the Hirer is responsible for the supply of all necessary craneage, labour and other handling equipment to offload, assemble, erect, dismantle and load the Equipment at the Location.
- (c) Delivery of the Equipment is taken to occur at the time that Munganya delivers the Equipment to the Hirer's nominated address, even if the Hirer is not present at the address, or when the Equipment is collected by the Hirer (as the case may be).
- (d) Delivery of the Equipment to a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purposes of this Contract.
- (e) Munganya may deliver the Equipment by separate instalments, which shall be invoiced and paid for in accordance with the provisions in this Contract (the date of delivery of the first instalment of the Equipment shall be deemed to constitute delivery and commencement of hire of the Equipment).
In the event that the Hirer is unable to accept delivery of the Equipment, as arranged between the Hirer and Munganya, then Munganya shall charge, and the Hirer shall pay, Munganya's actual costs plus a 10% handling fee for redelivery of the Equipment.
- (g) Any time or date provided by Munganya to the Hirer is an estimate only. The Hirer must still accept delivery of the Equipment even if late and Munganya will not be liable for any Loss incurred by the Hirer as a result of the delivery being late.

- (h) In the event that the Hirer cancels delivery of the Equipment the Hirer shall be liable for any and all Loss suffered or incurred (whether direct or indirect) by Munganya in connection with such cancellation.

5.2 Prior Inspection

- (a) Munganya shall provide to the Hirer a Pre-Inspection Report on or prior to the Commencement Date.
- (b) Subject to clause 5.2(c), the Hirer agrees as between the Hirer and Munganya that the Hirer, on taking delivery of the Equipment, or collecting the Equipment, it will accept the Equipment on an "as is" basis with all faults and defects (if any), including those set out in the Pre-Inspection Report.
- (c) If the Equipment is hired on a Dry Hire or Wet Hire basis, the Equipment will be deemed to have been accepted as suitable for the Hirer's purposes unless the Hirer has provided Munganya with written notification to the contrary within 36 hours of the delivery or collection of the Equipment (Defects Notice). The failure to provide such notice will irrevocably constitute acceptance of the Equipment by the Hirer for all purposes of this Contract and will bind the Hirer absolutely that the Equipment has been fully and unconditionally accepted by the Hirer for the purposes of this Contract.
- (d) Munganya must attend to repairs of any defects outlined in the Defects Notice within:
 - (i) 24 hours of receipt of the Defects Notice where the Location is within the Perth Metropolitan area; or
 - (ii) 72 hours of receipt of the Defects Notice where the Location is outside the Perth Metropolitan area.
- (e) The Hirer acknowledges that Munganya may acquire or will acquire the Equipment for the sole purpose of this Contract. Accordingly, if the Hirer fails to accept the Equipment in accordance with this clause 5, the Hirer will pay Munganya as and by way of liquidated damages the sums the Hirer would have been liable to pay under this Contract had the Hirer accepted the Equipment and then immediately returned it to Munganya.

5.3 Mobilisation and Demobilisation

- (a) For the purpose of mobilisation or demobilisation of the Equipment:

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- (i) the Hirer shall provide full access to Munganya at the Location, or any other site on which the Equipment is located, for the mobilisation or demobilisation and collection of the Equipment; and
- (ii) if there are any delays due to free access not being available, then the Hirer shall be liable for and indemnify (and keep indemnified) Munganya from any Loss suffered or incurred (whether direct or indirect) by Munganya in connection with such delay.
- (b) Unless agreed otherwise, the Hirer will be responsible for mobilisation and demobilisation. If the Hirer fails to return the Equipment to Munganya as is required under this Contract (whether as required through demobilisation or failure to provide access to the Equipment), the Hire Fee will continue to be payable until the Equipment has been returned or access is provided as required.
- (c) If installation, mobilisation, demobilisation or delivery is to be undertaken by Munganya, Munganya shall be entitled to recover, and the Hirer shall pay, all associated reasonable costs, plus a margin of 20%.
- (d) On the expiry of the Hire Period, the Hirer may request to continue to hold the Equipment pending extension of the Hire Period, transfer to another site or any other reason. If Munganya (in its absolute discretion) agrees, then the Hirer may continue to hold the Equipment subject to these terms and condition and pay the Stand-by Rate (**Holding Over**). Holding Over can be terminated at any time by either party with 30 days written notice. If the Equipment is used for any reason other than mobilisation or demobilisation, then Holding Over will cease, and the full Hire Fee will be payable from that date until terminated by either party with 30 days' written notice.

6. SERVICE & MAINTENANCE

Munganya will supply consumable lists, service part lists and service sheets with thorough information to conduct the Major/Minor Service for each machine on hire to the Hirer.

6.1 Major Service

- (a) Subject to this clause 6, the Hirer must, unless otherwise specified as the responsibility of Munganya in the Schedule, at its own expense and at every Servicing Period, undertake a Major Service in accordance with all manufacturer's recommendations and specifications, Operating Instructions and guidelines or other reasonable directions of Munganya given from time to time and otherwise ensure the Equipment and the accessories is in proper working order, condition and in good substantial repair. Full copies of all service sheets and evidence of such servicing must be provided immediately to Munganya on request.
- (b) Where any Major Service falls due shortly after the Commencement Date, Munganya may supply service kits to reduce the expenses for any Major Services.
- (c) Where Major Services are the responsibility of the Hirer and the Equipment is demobilised, the Hirer must pay Munganya the expected costs of the next Major Service, as reasonably determined by Munganya, but reduced to the percentage of hours accrued by the Hirer between Major Services. For example, if a Major Service is due every 1000 hours, and the Hirer has used 100 hours, then the Hirer must pay 10% towards the next Major Service.

6.2

Minor Service

Subject to this clause 6, the Hirer must, unless otherwise specified as the responsibility of Munganya in the Schedule, at its own expense and at every Servicing Period, undertake a Minor Service in accordance with all manufacturer's recommendations and specifications, Operating Instructions and guidelines or other reasonable directions of Munganya given from time to time and otherwise ensure the Equipment is in proper working order and condition and in good substantial repair. Full copies of all service sheets and evidence of such servicing must be provided immediately to Munganya on request.

6.3

General

- (a) Unless otherwise agreed, the Hirer shall: complete the manufacturer's oil sampling analysis at every oil change period, or as otherwise directed by Munganya, on all

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- compartments in the Equipment and provide SOS sampling records to Munganya, or to any other party as directed by Munganya, within 24 hours of completing the oil sampling analysis, or as otherwise directed by Munganya;
- (b) complete daily servicing and pre-start checks, supply and apply all fuel, oil, lubricants, water, grease, coolant and other consumables necessary for the operation, service and maintenance of the Equipment.
- (c) promptly replace all parts which may from time to time become worn out, lost, stolen, compulsorily acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence. All replacement parts will be the property of Munganya;
- (d) clean the Equipment on a regular basis, and when directed by Munganya;
- (e) inspect, maintain and repair all tyre/rims, including (but not limited to) damage, checking correct PSI pressure, ensuring correct steering tyres, correct balance of tyres, o rings, replacement, fitting, carnage, disposal and excessive wear;
- (f) repair all GETs, including (but not limited to) buckets, rock breakers, cutting edges, moldboards, scarifiers and ripper tynes;
- (g) prepare the Equipment for operation at a Location where salt damage may occur;
- (h) be responsible for attending to all Major Repairs, where requested at the owner's cost;
- (i) be responsible for attending to all Minor Repairs, at the Hirer's cost; and
- (j) do, repair or undertake any other thing as indicated in this Contract;
- (k) keep complete and proper records with respect to the obligations of the Hirer specified in this clause and provide such records to Munganya on demand;
- (l) not remove any accessories provided with the Equipment and maintain those accessories at the Hirer's cost in good working order; and
- (m) ensure that all data collected by the Equipment and any accessories, including any OEM Electronic Technician and Service Information System is not tampered with, corrupted or delete and the Hirer indemnifies and will keep indemnified Munganya against

- any Loss caused by the Hirer's breach of this clause. All data collected by the Equipment and any accessories is owned by Munganya.
- 6.4 Munganya reserves the rights to take possession of the Equipment, at the Hirer's cost in all things, in the instance that the Hirer fails to comply with any conditions in clause 6.1 or if Munganya wishes to implement its own servicing or undertake Major Repairs to the Equipment and the Hirer must promptly provide the Equipment to Munganya (or its agents or subcontractors) for such purpose.
- 6.5 The Hirer shall be liable for any and all costs and expenses for wear and tear in connection with the Hirer or the Operator's use of the Equipment's ground engaging tools, tyre wear, track wear, undercarriage wear, GETs, brake wear, blade wear, bucket wear, tray wear and any other kind of wear set out in the Schedule including (but not limited to any Wear Materials). This will be presented and expensed as measure in and measure out to the Hirer.

7. DAMAGE

- 7.1 Except in the case where the Equipment is hired on a Wet Hire basis or where any damage is caused to the Equipment by reason of the negligence of the Operator, the Hirer must provide written notice as soon as practicable to Munganya in the event that there is any significant or serious damage or disrepair to the Equipment (including any corrosion or damage to the Equipment caused by salt water) or the operation of the Equipment.
- 7.2 Where the Equipment is damaged, Munganya reserves the right to:
 - (a) provide notice to the Hirer requiring the Hirer to immediately repair or service the Equipment in accordance with Munganya's directions and at the Hirer's sole cost (and whereby all Fees and any other amounts payable under this Contract shall continue to be payable by the Hirer);
 - (b) terminate the Contract; or
 - (c) have the Equipment repaired by Munganya (or its contractors) at the Hirer's cost (including any mobilisation, demobilisation, salvage and transport costs and whereby all Fees and any other amounts payable under this Contract shall continue to be payable by the Hirer).

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7.3 The Hirer shall be liable for and shall indemnify Munganya for any Loss suffered or incurred by Munganya, either directly or indirectly, in connection with any damage of the Equipment whatsoever or howsoever caused during the period of hire of the Equipment by the Hirer.

7.4 Any obligation on Munganya with respect to Major Repairs is subject to this clause 7. This clause 7 applies to all damage, except damage directly caused by:

- (a) fair, wear and tear to the Equipment as a result of ordinary use by a prudent operator in accordance with the obligations in this Contract; or
- (b) the Operator or Munganya.

8. OBLIGATIONS

8.1 General

The Hirer must, whether it is hiring the Equipment on a Dry Hire basis or Wet Hire basis:

- (a) use the Equipment in a skilful and proper manner and only for the purposes and within the capacity for which the Equipment was designed;
- (b) ensure that any person using or operating the Equipment operates the Equipment safely and in accordance with the Operating Instructions and all relevant statutes, laws, regulations, by-laws and requirements of any authority that apply to the Equipment;
- (c) ensure that all persons operating the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Munganya upon request;
- (d) ensure that the Equipment is stored safely and securely and is protected from theft, seizure or damage;
- (e) comply in all respects with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Equipment, including the obtaining of any required permits or authorisations required for the use of the Equipment;
- (f) not in any way part with possession of the whole or part of the Equipment, nor sell, assign, mortgage, pledge, sub-lease, lend,

grant a 'security interest' in or otherwise deal with the whole or part of the Equipment without the express written consent of Munganya;

- (g) inform Munganya immediately if the Equipment or any items or part of the Equipment are stolen, lost, destroyed or damaged;
- (h) not remove or cover up any plates or other marks that Munganya may affix or cause to be affixed to the Equipment to indicate that the Equipment is the property of Munganya;
- (i) not undertake any modifications to the Equipment without Munganya's prior approval; and
- (j) keep complete and proper records with respect to the obligations of the Hirer specified in this clause 8 and provide such records to Munganya on demand.

8.2 Wet Hire

(a) The Hirer must, at all times when hiring the Equipment on a Wet Hire basis:

- (i) not separately contract with an Operator or any other Munganya employee for any services that may be directly competing with those offered by Munganya unless specifically agreed in writing by Munganya;
- (ii) pay the Stand-by Rate where:
 - (a) the Equipment is not used or cannot be used due to any reason, other than for the negligence of Munganya or the Operator; and
 - (b) an Event described in clause 12.1 occurs;
- (iii) pay Munganya a 'spotters' fee of a single payment of \$2,000.00, in the event that the Hirer employs, contracts or engages the Operator (in any capacity) within three (3) months of the expiration or termination of this Contract;
- (iv) provide all safety, Location and site induction and other relevant and lawful training to the Operator;
- (v) at the Hirer's cost, arrange for all and any accommodation and travel, as and when required by Munganya, for the Operator to conduct the Wet Hire services.

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- (b) The Operator must:
 - (i) Always comply with the Hirer's directions and instructions, provided that such directions and instructions are safe, lawful and reasonable; and
 - (ii) not take any directions or Instructions from any third party, unless authorised by the Hirer and Munganya.
- (c) Munganya will not be liable for any direct or indirect Loss incurred by the Hirer as a result, or in connection with, the operation of the Equipment by the Operator in accordance with any direction given by the Hirer, its staff, its contractors or its clients.
- (d) In the event the Hirer requests to convert the hire of the Equipment from a Wet Hire basis to a Dry Hire basis, Munganya may in its sole discretion:
 - (i) agree to do so provided that the Hirer will
 - be:
 - A. subject to all Dry Hire conditions under this Contract; and
 - B. liable for all and any travel costs associated with an Operator returning to Munganya's premises;
 - (ii) terminate this Contract.

9. UNSAFE EQUIPMENT

- 9.1 Where the Equipment becomes unusable or unsafe to use, the Hirer must:
 - (a) immediately stop using the Equipment;
 - (b) take all necessary steps to prevent injury to the Hirer or any other persons or property as a result of the condition of the Equipment;
 - (c) take all necessary steps to prevent any further damage to the Equipment; and
 - (d) not repair or attempt to repair the Equipment without Munganya's prior written approval.
- 9.2 Where the Equipment is hired on a Wet Hire basis and the Equipment becomes unusable or unsafe to operate, Munganya reserves the right to immediately stop using the Equipment and take reasonable steps to re-engage the Equipment as soon as practicable.

10. MUNGANYA'S OBLIGATIONS

- Munganya shall:
 - (a) ensure that the Equipment, if required, remains licensed and registered during the Hire Period;

- (b) ensure that the insurances specified in clause 14 are effected and maintained during the Hire Period; and
- (c) be responsible for any repairs specified in Item 9 of the Schedule, if any.

11. SUSPENSION

- 11.1 Without prejudice to any other remedies Munganya may have, if at any time the Hirer is in breach of any obligation (including those relating to payment) under this Contract, Munganya may (in its discretion):
 - (a) suspend the provision of the Equipment for hire by the Hirer or take back the Equipment for any amount of time until such breach (including payment of any outstanding amount) has been remedied; or
 - (b) in Munganya's discretion, terminate this Contract by providing 2 business days' notice to the Hirer (provided the Hirer has not remedied the breach to Munganya's satisfaction within those 2 business days).
- 11.2 Munganya will not be liable for any Loss whatsoever suffered, or alleged to be suffered, by the Hirer or by any person claiming through the Hirer for the suspension of the hire of the Equipment or termination of this Contract in accordance with clause 11.1.

12. FORCE MAJEURE

- 12.1 A party (Affected Party) is not liable for any delay or failure to perform an obligation under this Contract (other than to pay any amount payable under this Contract) caused by:
 - (a) an act of God;
 - (b) war, terrorism, riot, insurrection, vandalism, pandemic or sabotage;
 - (c) strike, lockout, ban, limitation of work or other industrial disturbance; or
 - (d) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.
- 12.2 The Affected Party must notify the other party as soon as is practicable of any anticipated failure caused by an event referred to in clause 12.1 (Event).
- 12.3 The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event.
- 12.4 Notwithstanding any other provision contained in this Contract, and for the avoidance of doubt, for the duration of the

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Event the Hirer is liable to pay Munganya the applicable Stand-by Rate.

13. TITLE

13.1 The Hirer acknowledges that in all circumstances Munganya retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and the Equipment is not deemed to be a fixture.

13.2 The Hirer is not authorised to pledge Munganya's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

14. INSURANCE

14.1 Munganya's insurance

Munganya shall maintain:

- (a) third party risks insurance against all third party risks including liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by law by a policy insuring for the benefit of Munganya;
- (b) public risk insurance relating to the Equipment for an indemnity (including damage to property of any person) of not less than \$20,000,000.00;
- (c) motor vehicle insurance and/or plant and equipment insurance as required by Munganya;
- (d) transit insurance; and
- (e) any other insurances reasonably required by Munganya from time to time.

14.2 The Hirer must reimburse Munganya for the costs and expenses with respect to the same insurances specified in this clause 14.1 on demand.

14.3 Hirer's insurance

The Hirer must, at the Hirer's cost, take out and maintain:

- (a) full comprehensive mobile plant and equipment insurance for offroad and a fully comprehensive motor vehicle insurance for on road equipment (at its sole cost) covering loss, theft, damage or destruction (including whilst in Transit) of the Equipment for an amount not less than the market replacement value of the Equipment. The hirer will be solely responsible for any excess or deductible;
- (b) third party liability insurance against all third-party risks including liability for damage or injury of any kind to any property or person

and also against other risks to the full extent required by law.; The policy shall extend to cover damage to property for any unregistered item or item being used as a tool of trade, with a limit of \$20,000,000, the policy shall contain a principal indemnity extension and waiver of subrogation in favour of Munganya, the Hirer will be solely responsible for any excess or deductible ;

- (c) any other insurance Munganya reasonably requires the Hirer to take out and maintain or required by law for the Hirer to take out and maintain and ensure that Munganya is listed as an interested party (as owner of the Equipment) on such policies. The Hirer must provide all certificates of currency for such insurances on demand within 5 days of any request. Failure by the Hirer to provide Munganya with any certificates of currency, in accordance with this clause, will result in a damage waiver of 12.5% being charged to the Hirer.

14.4 If any of the Equipment is damaged or destroyed, Munganya is entitled to receive all insurance proceeds payable for the Equipment, in full and without deduction. The production of these terms and conditions by Munganya is sufficient evidence of Munganya's rights to receive the insurance proceeds without the need for any person dealing with Munganya to make further enquiries.

15. PERSONAL PROPERTY SECURITIES ACT

15.1 For the purposes of this clause 15, "PPSA" means the Personal Property Securities Act 2009 and the Personal Property Securities Regulations 2010, as amended from time to time.

15.2 If the Equipment may be subject to the PPSA, then Munganya may effect and maintain registration of a 'security interest' (as that term is defined in the PPSA) in the Equipment and the proceeds arising in respect of any dealing in the Equipment. The Hirer must do anything (such as obtaining consents and signing documents) which Munganya requires for the purpose of:

- (a) creating and registering Munganya's security interest including (but not limited to) providing details of any item of collateral sufficient to complete registration of the

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- security interest in accordance with the PPSA;
- (b) ensuring that Munganya's security interest is and remains enforceable, perfected and otherwise effective under the PPSA;
 - (c) enabling Munganya to gain first priority (or any other priority agreed to by Munganya in writing) for its security interest; and
 - (d) enabling Munganya to exercise its rights in connection with the security interest or the PPSA.
- 15.3 Munganya's rights under this Contract are in addition to and not in substitution for Munganya's rights under any other law (including the PPSA) and Munganya may choose whether to exercise rights under this Contract, and/or under such other law, in its discretion. For the avoidance of doubt, any security interest that Munganya may have in the Equipment will attach to 'proceeds' in accordance with the PPSA.
- 15.4 To the extent that Chapter 4 of the PPSA applies to any security interest under this Contract, the following provisions of the PPSA are "contracted out" of in accordance with section 115 of the PPSA and shall not apply: sections 95, 96, 121(4), 130, 129(2), 132(3)(d), 132(4), 135, 142 and 143.
- 15.5 In addition to any rights conferred upon Munganya under the PPSA, the Hirer agrees and acknowledges that in addition to those rights, Munganya shall, if the Hirer is in default of this Contract, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods (including the Equipment), not only under those provisions under the PPSA but also, as additional and independent rights under this Contract. The Hirer agrees that Munganya may exercise any of its rights under this clause 15.5 in any way it deems fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 15.6 Pursuant to section 157(3) of the PPSA, the Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property pursuant to section 157(1) of the PPSA.
- 15.7 Munganya and the Hirer agree not to disclose information of the kind that can be requested under section 257(1) of the PPSA.
- 15.8 The Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' in the Equipment without the express written consent of Munganya.
- 15.9 The Hirer must not lease, hire, sub-hire, bail, lend or part with possession of the Equipment (Sub-hire) without the express written consent of Munganya, the Sub-hire must be in writing and in a form acceptable to Munganya and must be expressed to be subject to the rights of Munganya under this Contract. The Hirer must not vary the Sub-hire arrangement or terms without Munganya's consent in writing.
- 15.10 The Hirer must ensure that the Hirer is provided at all times (and where the Hirer requests) 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 Equipment.
- 15.11 The Hirer must take all steps including registration under the PPSA, 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 PPSA;
 - (b) enabling the Hirer to gain (subject always to the rights of Munganya) first priority (or any other priority agreed by Munganya in writing) for the security interest;
 - (c) enabling Munganya and the Hirer to exercise their respective rights in connection with the security interest.
- 15.12 To assure the Hirer's performance of its obligations under this clause 15 and this Contract, the Hirer hereby gives to Munganya an irrevocable power of attorney to do anything Munganya considers the Hirer should do under this Contract, Munganya may recover from the Hirer the cost of doing anything under this clause 15, including registration fees.
- 15.13 The Hirer indemnifies and shall keep indemnified Munganya from any Loss incurred by or in connection with, either directly or indirectly, the Hirer's failure to comply with this clause 15 or in connection with the loss of the Equipment whilst on hire to the Hirer.

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16. LIABILITIES, WARRANTIES, REPRESENTATIONS AND CONDITIONS

- 16.1 To the extent that the Commonwealth, State and Territorial laws permit:
- (a) all express and implied conditions, terms, warranties and representations which are not expressly contained in this Contract are hereby excluded;
 - (b) any warranty, condition, description or representation, whether express or implied, as to the description, state, quality, merchantability or fitness of the Equipment for the purpose for which it is hired is hereby excluded; and
 - (c) Munganya shall not be responsible or liable to the Hirer, whether on grounds of breach of contract, contractual duty or negligence, for any loss or damage that the Hirer may directly or indirectly sustain or suffer arising from or in connection with:
 - (i) any defects in or miscalculation, breakdown or failure of performance of the Equipment, and the Hirer hereby exonerates and releases Munganya from all claims and demands in respect thereof; or
 - (ii) the termination of this Contract by Munganya.
- 16.2 The Hirer warrants and represents that:
- (a) the Hirer has full power and authority to execute this Contract and to perform and observe all of its terms and provisions;
 - (b) this Contract has been duly executed by the Hirer and is a legal and binding deed enforceable against it in accordance with the terms of this Contract and notwithstanding any other title or description in the Contract, it is executed as a deed;
 - (c) the Hirer has disclosed to Munganya all facts, circumstances and other information of which the Hirer knows or should reasonably know relating to the hire of the Equipment and which are material to, or may have an effect on, Munganya;
 - (d) the Hirer holds all licences, permits and authorities required to operate the Equipment; and
 - (e) the hire of the Equipment will not breach any law or requirement or direction of any authority.

- 16.3 Where Munganya provides the Hirer with a Topcon, Trimble or similar device, Munganya is not responsible for and the Hirer releases Munganya for any Loss arising from the co-ordinates and frequencies being incorrect or inaccurate. The Hirer must rectify any issue of this kind at its own cost.

17. INDEMNITY

- 17.1 Without limiting any other indemnity given by the Hirer under this Contract, the Hirer shall indemnify (and keep indemnified) Munganya (including its officers, employees and its Related Entities (as that term is defined in the *Corporations Act 2001* (Cth))) from and against any and all Loss (including all legal costs on a full indemnity basis) which may be incurred or suffered by Munganya, either directly or indirectly, arising from or in connection with any one or more of the following:
- (a) the breach by the Hirer of a material term or any of the Hirer's obligations under this Contract;
 - (b) the termination of this Contract;
 - (c) the recovery of any amount owing by the Hirer to Munganya under this Contract;
 - (d) any claims or demands made by Munganya by reason of any loss, injury or damage which may be suffered by any person from the provision of the Equipment for hire;
 - (e) the use of the Equipment, whether or not arising from any negligence, failure or omission of the Hirer or any other persons;
 - (f) loss, theft or damage to the Equipment howsoever caused, and whether or not such loss, theft or damage is attributable to any negligence, failure of omission of the Hirer.

18. TERMINATION

- 18.1 **Termination by Munganya**
Without prejudice to any other remedies Munganya may have, Munganya may terminate this Contract:
- (a) in accordance with clause 7.2 of this Contract;
 - (b) in accordance with clause 8.2 of this Contract;
 - (c) in accordance with clause 11.1 of this Contract;
 - (d) at any time, the Hirer is in breach of any obligation (including those relating to payment) under this Contract;

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- (e) the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;
- (f) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer;
- (g) by way of thirty (30) days written notice to the Hirer.

18.2 Costs and expenses

The Hirer must, on demand, reimburse Munganya for all costs, charges, expenses, fees, disbursements (including all legal costs on an indemnity basis) paid or incurred by Munganya as a result of or incidental to:

- (a) any breach, default or repudiation of this Contract by the Hirer; and
- (b) the exercise or attempted exercise of any right, power, privilege, authority or remedy of Munganya under or by virtue of this Contract, including all amounts incurred in preparation and service of a notice under this Contract and in repossessing the Equipment from the Hirer under the terms of this Contract and an enforcing this Contract generally.

18.3 Return of Equipment

- (a) Upon the expiration or termination of this Contract pursuant to this Contract, the Hirer must, subject to any alternative arrangements agreed in writing between the parties, immediately deliver the Equipment to Munganya:

- (i) at the Hirer's expense;
- (ii) in the same condition as the Equipment was originally delivered to the Hirer; and
- (iii) with a full tank of fuel.

- (b) If the Hirer fails to return the Equipment to Munganya as is required under this Contract or when requested to do so, then Munganya or Munganya's agent may (as the invitee of the Hirer) enter upon and into the Location, or any land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

- 18.4 The Hirer indemnifies and will keep indemnified Munganya from and against

any Loss which may be incurred or suffered by Munganya, either directly or indirectly, arising from or in connection with Munganya exercising its rights under this clause 18.

- 18.5 Munganya will not be liable to the Hirer for any Loss whatsoever the Hirer howsoever suffers because Munganya has exercised its rights under this clause.

19. CHARGE

- 19.1 Despite anything to the contrary contained herein or any other rights which Munganya may have howsoever, the Hirer and each of the Guarantors charges their interest in any property in the name of the Hirer or the Guarantor with the due payment of any monies and interest owing to Munganya by the Hirer, and consent to Munganya registering an absolute caveat against the interest in any such property or properties to further secure the repayment of those monies and interest payable to Munganya pursuant to this Contract.

20. GUARANTEE

- 20.1 In consideration of the provision of the Equipment for hire to the Hirer, the Guarantor (or where there is more than one Guarantor, each of the Guarantors):

- (a) unconditionally and irrevocably guarantees and continues to guarantee to Munganya that the Hirer will:

- (i) pay the Fees and all other amounts to be paid under this Contract in accordance with the terms of this Contract and any other amount owing by the Hirer to Munganya (whether under this Contract or otherwise);
- (ii) comply with all the other terms of this Contract on its part to be complied with; and

- (b) as separate undertakings:

- (i) agrees to indemnify and keep indemnified Munganya against any liability, loss, claims, actions, suits, demands, costs, expenses, including all legal costs and expenses, suffered or incurred by Munganya arising from or in connection with any breach of this Contract; and

- (ii) as principal debtor, agrees to pay to Munganya on demand an amount equal to any liability, loss, claim, action, suit, demand,

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- cost, expense referred to in the preceding paragraph (b)(i).
- 20.2 The guarantee and indemnity specified in clause 20.1 continues in force until the Hirer complies with all of its obligations under this Contract.
- 20.3 The Guarantor agrees to pay to Munganya on demand Munganya's costs and expenses, including legal costs, relating to any action taken under this guarantee and indemnity.
- 21. GOODS AND SERVICES TAX**
- 21.1 Any expressions used in this clause, and which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth), have the same meaning in this clause.
- 21.2 Unless otherwise expressly stated, all amounts payable under this Contract are exclusive of GST.
- 21.3 If GST is imposed on any supply made under or in accordance with this Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Contract.
- 22. CREDIT REPORTING**
- 22.1 The Hirer consents to Munganya:
- (a) obtaining any credit reports it requires from applicable credit reporting agencies;
 - (b) providing information to a credit reporting agency for the purpose of obtaining such credit reports.
- 22.2 Munganya will not be liable for any Loss suffered or incurred by the Hirer as a result of, or in connection with, Munganya's dealings with credit reporting agencies for the purpose of this clause 22.
- 23. GENERAL**
- 23.1 The failure by Munganya to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Munganya right to subsequently enforce that provision.
- 23.2 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia the state in which Munganya has its principal place of business and are subject to the exclusive jurisdiction of the courts of Western Australia.
- 23.4 Munganya shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by Munganya of these terms and conditions (alternatively Munganya's liability shall be limited to damages which under no circumstances shall exceed the Fees).
- 23.5 The Hirer shall not be entitled to set off against, or deduct from the Fees, any sums owed or claimed to be owed to the Hirer by Munganya nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.6 Munganya may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.
- 23.8 Munganya will not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond its reasonable control.
- 23.9 Any special conditions stated in the Schedule shall apply to this Contract and in the event of any inconsistency with the terms of this Contract, the special conditions shall prevail.
- 23.10 This Contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter.
- 23.11 This Contract may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.
- 23.12 Munganya will comply with and use personal information as set out in its privacy policy available on its website and the National Privacy Principles in all dealings with the Hirer or the Guarantor's information.