

## Hire agreement—Terms and conditions

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This Hire Agreement (the "Hire Agreement") is made and entered on the Date of Hire Agreement, between TRILITY Solutions Pty Ltd ABN 88 009 395 340 ("TRILITY") and the Hirer (collectively referred to as the "Parties").

The Parties agree as follows:

1. **TRILITY** agrees to hire the following item(s) to the Hirer and agrees to provide the Equipment in good working order.
2. **TERM:** The Hire Agreement will start on the Start date specified in item 6 of Hire Schedule and will end on the End date specified in item 6 of the Hire Schedule .
3. **HIRE AGREEMENT PAYMENTS:** The Hirer agrees to pay to TRILITY Hire Fee each month in advance on the first day of each month. If the Hire Agreement Term does not start on the first day of the month or end on the last day of a month, the Hire Fee will be prorated accordingly. TRILITY will issue invoices for each payment.
4. **LATE CHARGES:** If any amount under this Agreement is more than 7 days late, Hirer agrees to pay the Late Charge in addition to the Hire Charge.
5. **SECURITY DEPOSIT:** Prior to taking possession of the Equipment, Hirer shall deposit with TRILITY, in trust, the Security Deposit as security for the performance by Hirer of the terms under this Agreement and for any damages caused by Hirer or Hirer's agents to the Equipment during the Term. TRILITY may use part or all of the Security Deposit to repair any damage to Equipment caused by Hirer or Hirer's agents. However, the Hirer's liability is not limited to the Security Deposit amount and Hirer remains liable for any damage to the Equipment or liability in excess of the Security Deposit. Hirer shall not apply or deduct any portion of any security deposit from the last or any month's Hire Fee. Hirer shall not use or apply any such security deposit at any time in lieu of payment of Hire Fee. If Hirer breaches any terms or conditions of this Agreement, Hirer shall forfeit any Security Deposit, as permitted by law.
6. **DELIVERY:** The Party specified in item 10 of the Hire Schedule is responsible for arranging loading and transportation including all expenses and costs:
  - (a) at the beginning of the Term, of shipping the Equipment to Hirer's premises; and
  - (b) at the end of the Term, of shipping the Equipment back to TRILITY's premises.
7. **DEFAULTS:** If the Hirer fails to perform or fulfill any obligation under this Agreement, the Hirer shall be in default of this Agreement. Subject to any statute, ordinance or law to the contrary, Hirer shall have seven (7) days from the date of notice of default by TRILITY to cure the default.

In the event Hirer does not cure a default, TRILITY may at TRILITY's option:

- (a) cure such default and the cost of such action may be added to Hirer's financial obligations under this Agreement; or
- (b) declare Hirer in default of the Agreement.

If Hirer shall become insolvent, cease to do business as a going concern or if a petition has been filed by or against Hirer under the Bankruptcy Act or similar federal or state statute, TRILITY may immediately declare Hirer in default of this Agreement. In the event of default, TRILITY may, as permitted by law, take possession of the Equipment. TRILITY may, at its option, hold Hirer liable for any difference between the Hire Fee that would have been payable under this Agreement during the balance of the unexpired term and any Hire Fee paid by any successive Hirer if the Equipment is re-let minus the cost and expenses of such reletting. In the event TRILITY is unable to re-let the Equipment during any remaining term of this Agreement, after default by Hirer, TRILITY may at its option hold Hirer liable for the balance of the unpaid Hire Fee under this Agreement if this Agreement had continued in force.

8. **POSSESSION AND SURRENDER OF EQUIPMENT:** Hirer shall be entitled to possession of the Equipment on the Start date of the Term. At the expiration of the Hire Agreement Term, Hirer shall surrender the Equipment to TRILITY by delivering the Equipment to TRILITY or TRILITY's agent in good condition and working order, ordinary wear and tear excepted, and otherwise as it was at the commencement of the Agreement.
9. **USE OF EQUIPMENT:** Hirer shall only use the Equipment in a careful and proper manner and will comply

with all laws, rules, ordinances, statutes and orders regarding the use, maintenance of storage of the Equipment. The Hirer must only use the Equipment at the Location/s.

- 10. CONDITION OF EQUIPMENT AND REPAIR:** Hirer or Hirer's agent must inspect the Equipment upon taking possession and except to the extent notified otherwise to TRILITY within 24 hours of taking possession, acknowledges that the Equipment is in good and acceptable condition.
- 11. MAINTENANCE, DAMAGE AND LOSS:** Hirer will, at Hirer's sole expense, keep and maintain the Equipment clean and in good working order and repair during the Hire Agreement Term. In the event the Equipment is lost or damaged beyond repair, Hirer shall pay to TRILITY the replacement cost of the Equipment; in addition, the obligations of this Agreement shall continue in full force and effect through the Hire Agreement Term.
- 12. INSURANCE:** Hirer shall be responsible to maintain insurance on the Equipment with losses payable to TRILITY against fire, theft, collision, damage and other such risks as are appropriate or specified by TRILITY. Upon request by TRILITY, Hirer shall provide proof of such insurance.
- 13. ENCUMBRANCES, TAXES AND OTHER LAWS:** Hirer shall keep the Equipment free and clear of any liens or other encumbrances and shall not permit any act where TRILITY's title or rights may be negatively affected. Hirer shall be responsible for complying with and conforming to all laws and regulations relating to the possession, use or maintenance of the Equipment. Furthermore, Hirer shall promptly pay all taxes, fees, licenses, and governmental charges, together with any penalties or interest thereon, relating to the possession, use or maintenance of the Equipment.
- 14. TRILITY'S REPRESENTATIONS:** TRILITY represents and warrants that it has the right to Hire Agreement the Equipment as provided in this Agreement and that Hirer shall be entitled to quietly hold and possess the Equipment, and TRILITY will not interfere with that right as long as Hirer pays the Hire Fee in accordance with this Hire Agreement and performs its other obligations under this Hire Agreement.
- 15. OWNERSHIP:** The Hirer acknowledges that TRILITY owns the Equipment and in all circumstances. TRILITY retains title to the Equipment even if the Hirer goes into liquidation or becomes bankrupt during the Term.
- 16. PPS LAW**

This clause applies to the extent that this Contract provides for 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. TRILITY may register any actual or impending security interest in respect of any dealing in the Equipment. The Hirer must do anything (such as obtaining consents and signing documents) that TRILITY may require for the purposes of ensuring that TRILITY's security interest is enforceable, perfected and otherwise effective under the PPS Law.

The Hirer agrees to the extent permitted by PPS Law, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement: section 95 (notice of removal of accession to the extent it requires TRILITY to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires TRILITY to give a notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135, (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

- 17. SEVERABILITY:** If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.
- 18. ASSIGNMENT:** Neither this Agreement nor Hirer's rights hereunder are assignable except with TRILITY's prior, written consent.
- 19. BINDING EFFECT:** The covenants and conditions contained in the Agreement shall apply to and bind the Parties and the heirs, legal representatives, successors and permitted assigns of the Parties.
- 20. GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of

the State of Western Australia. The parties agree to the non-exclusive jurisdiction of the courts of Western Australia.

**21. NOTICE:** Any notice required or otherwise given pursuant to this Agreement shall be in writing and sent to the contact and email address specified in Item 12 of the Hire Schedule.

A Party may change such addresses from time to time by providing notice to the other Party.

**22. ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both TRILITY and Hirer.

**23. CUMULATIVE RIGHTS:** TRILITY's and Hirer's rights under this Agreement are cumulative and shall not be construed as exclusive of each other unless otherwise required by law.

**24. WAIVER:** The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The acceptance of Hire Fee by TRILITY does not waive TRILITY's right to enforce any provisions of this Agreement.

**25. INDEMNIFICATION:** Except for damages, claims or losses due to TRILITY's negligent acts or omissions, the Hirer, to the extent permitted by law, indemnifies and holds TRILITY and TRILITY's employees, free and harmless from any liability for losses, claims, injury to or death of any person, including Hirer, or for damage to property arising from Hirer using and possessing the Equipment or from the acts or omissions of any other person or persons, using or possessing the Equipment during the Term.

## **26. ADDITIONAL TERMS AND CONDITIONS**

The special conditions set out in Item 13 of the Hire Schedule (if any) shall apply to this Hire Agreement.

## **27. AMENDMENT**

These Terms of Hire may be changed by TRILITY from time to time by TRILITY giving notice of the amendment to the Hirer. Notice is deemed given (whether or not actually received) when TRILITY does any of the following:

- (a) sends notice of the amendment to the Hirer at any address (including an email address) supplied by the Hirer; or
- (b) publishes the amended terms on its website TRILITY [www.TRILITY.com.au](http://www.TRILITY.com.au).

Changes to these Terms of Hire will only apply to Hire Agreements entered into after the change occurs.

## **28. DEFINITIONS**

Capitalised terms have the following meanings where used in this Hire Agreement:

**Date of Hire Agreement** means the date specified in Item 2 of the Hire Schedule,

**Equipment** means the equipment described in Item 4 of the Hire Schedule,

**Hirer** means the Party specified in Item 3 of the Hire Schedule,

**Hire Fee** means the monthly rate/s specified in Item 7 of the Hire Schedule,

**Hire Schedule** means the schedule attached to this Hire Agreement,

**Late Charge** means the amount specified in Item 8 of the Hire Schedule,

**Location/s** means the location or locations (if more than one) specified in Item 5 of the Hire Schedule,

**Security Deposit** means the amount specified in Item 9 of the Hire Schedule,

**Term** means the period commencing on the Start date specified in Item 6 of the Hire Schedule and ending on the End date specified in Item 6 of the Hire Schedule.

**EXECUTED** as an Agreement by the Parties.

**TRILITY:**

\_\_\_\_\_

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)

**HIRER:**

\_\_\_\_\_

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)

**HIRE SCHEDULE**

<b>Item 1</b> Hire Agreement Number	Hire Agreement Number	
<b>Item 2</b> Date of Hire Agreement	Date of Hire Agreement	
<b>Item 3</b> Hirer	Company Name ABN/ACN Address  Telephone Email	
<b>Item 4</b> Equipment	Description of Equipment	
<b>Item 5</b> Location/s where Equipment will be used	Location/s where Equipment will be used	
<b>Item 6</b> Term (CI 2)	Start date: <u>DD/MM/YYYY</u> End date: <u>DD/MM/YYYY</u>	
<b>Item 7</b> Hire Fee (CI 3)	If weekly: \$ <u>amount</u> /week plus GST If monthly: \$ <u>amount</u> /month plus GST	
<b>Item 8</b> Late Charge (CI 4)	<u>percentage</u> % of Hire Fee per week or month plus GST	
<b>Item 9</b> Security Deposit (CI 5)	Amount	
<b>Item 10</b> Party responsible for delivery from and return of Equipment to TRILITY's premises (CI 6) <i>(tick option)</i>	Hirer <input type="checkbox"/> TRILITY <input type="checkbox"/>	
<b>Item 11</b> Hirer's Plant and Equipment Insurance Policy details (CI 12)	Policy number: Policy number	Expiry date: DD/MM/YYY
<b>Item 12</b> Address for Notices	<b>Hirer</b> Contact: Contact name	<b>TRILITY</b> Contact: Contact name
	Email: Contact's email	Email: Contact's email
<b>Item 13</b> Additional terms and conditions		