



RENTAL AGREEMENT

Between Thorn Australia Pty Ltd trading as Thorn Equipment Finance ("TEF")
ABN 63 008 454 439 of PO Box 452, Regents Park NSW 2143 (the "Owner")
And the "Renter" as described in the Schedule ("You").

TAX INVOICE

Rental Agreement No. _____

SCHEDULE

RENTER DETAILS

Name of the Renter in full: _____ ABN: _____
 Address: _____ State: _____ Postcode: _____
 Contact Name: _____ Phone: _____ Fax: _____
 Industry Type: _____ Years Trading: _____ Email: _____
 Location of Goods (if different from above): _____

GOODS DESCRIPTION

Qty	Model	Description	Serial No

RENTAL PAYMENTS

▪ **Rental Instalment**
 Fixed payment (for each Period) comprising of:
 _____ X Payments of (inc. Stamp Duty) \$ _____
 - Term: _____ Periods from the first Payment Date
 - Plus GST \$ _____ - Period: Monthly Fortnightly
Rental Instalment (Total for each period): \$ _____
 ▪ **Documentation Fee** \$ _____

DETAILS OF DIRECTOR/PARTNER/INDIVIDUAL/GUARANTOR

Name in full: _____ Name in full: _____
 Address: _____ Address: _____
 State: _____ Postcode: _____ Date of Birth: _____ State: _____ Postcode: _____ Date of Birth: _____
 Drivers Licence No: _____ Expiry Date: _____ Drivers Licence No: _____ Expiry Date: _____
 Home Owner: Yes No Value: \$ _____ Mortgage: \$ _____ Home Owner: _____ Value: \$ _____ Mortgage: \$ _____

BUSINESS PURPOSE DECLARATION (Only applies if renter is individual or strata corporation)

I/We declare that the goods to be hired by me/us from the lessor are to be hired wholly and predominantly for business purposes.
IMPORTANT
 You should **only** sign this declaration if the goods are hired wholly or predominantly for business purposes.
 By signing this declaration you may **lose** your protection under the National Credit Code.

SIGNATURES

RENTER SIGNATURE

By signing this Agreement, you agree to be bound by this Agreement, including this Schedule and the Terms and Conditions attached to this Schedule.
 If you are a company, this Agreement is executed in accordance with Section 127 of the Corporations Act by authority of the director(s).
 If you are an individual or strata corporation you also make the Business Purpose Declaration above.

Name:	Title:	Signature:	Date:
Name:	Title:	Signature:	Date:
Witness Name:	Title:	Witness Signature:	Date:

GUARANTOR & INDEMNITY

By signing this Agreement, each of the following person(s) (collectively the "Guarantor") agrees to provide a guarantee and indemnity in accordance with the guarantee and indemnity provisions set out in clause 31 of the Terms and Conditions attached to this Schedule. The Guarantor acknowledges having read and understood the Terms and Conditions attached to this Schedule including Clause 31.

Name:	Title:	Signature:	Date:
Name:	Title:	Signature:	Date:
Witness Name:	Title:	Witness Signature:	Date:

Acceptance by TEF – By signing this Agreement the Owner agrees to bound by it* (Office use only)

Name (print):	_____	Authorised Signature:	Date:
Title:	_____		

* The Owner may evidence its acceptance of this Agreement without signing the above through purchasing the Goods for the purposes of this Agreement

PRIVACY NOTICE AND CONSENT

In this document, "you" means:

- each individual applying for equipment finance from Thorn Australia Pty Ltd ABN 63 008 454 439, trading as Thorn Equipment Finance ("TEF") (and "TEF" also means and includes any principal financier if TEF is acting as agent for a principal financier);
- if the application is being made by a company, the company and each director of the company; and
- each person proposing to be a guarantor in respect of the application

1. TEF may collect personal information from you either directly or
2. indirectly. TEF will use, disclose and make accessible your personal information in accordance with its Privacy Policy, the Privacy Act 1988 and the National Privacy Principles.
3. You authorise TEF to give to and seek personal information about your credit arrangements or obtain a consumer or commercial credit report (or both) containing information about you from any credit reporting agency.
4. The personal information which TEF may give or seek includes (where applicable):
 - (a) your name, sex, date of birth, current address and last two addresses, current or last known employer and driver's licence number;
 - (b) the fact that you propose to enter into an equipment finance agreement, the value of the goods, and any obligations you may have under the agreement;
 - (c) that you have drawn cheques for \$100.00 or more which have been dishonoured more than once; and
 - (d) that court judgments and/or bankruptcy orders have been made against you.
5. You authorise TEF to use the credit report, or obtain a further credit report, for the purposes of collecting overdue payments relating to credit owed by you.
6. You authorise TEF to give to and seek credit reports and other information about your credit arrangements from:
 - (a) any credit providers named in any application submitted by you; and
 - (b) any credit providers that may be named in a credit report issued by a credit reporting agency.
7. Your authorisation entitles TEF to exchange information about your credit worthiness, credit standing, credit history and credit capacity.
8. Your authorisation also entitles TEF to give the following information to a credit reporting agency (where applicable):
 - (a) that you are 60 days or more overdue in making a payment to TEF and that steps have been taken to recover all or any part of the amount which you owe; and
 - (b) that in TEF's opinion you have committed a serious credit infringement.
9. Credit reports and other personal information TEF obtains about your credit arrangements from a credit reporting agency or a credit provider may be used by TEF for the following purposes:
 - (a) to assess any application by you;
 - (b) to collect payments that are overdue;
 - (c) to notify a credit provider if you breach any obligations you may have under the equipment finance agreement;
 - (d) to exchange personal information with other credit providers as to the status of your account where you are in breach of a contract with a credit provider;
 - (e) to assess your credit worthiness;
 - (f) to allow a credit reporting agency to create a file about you;
 - (g) to administer your account;
 - (h) to monitor your performance or compliance under any agreement for sale or supply of goods or services connected to provision of credit by TEF; and
 - (i) any other purpose permitted or required by law.
10. You authorise TEF to exchange personal information about you with:
 - (a) any person or organisation named by you in an application submitted by you or provided from time to time;
 - (b) your proposed guarantors; and
 - (c) TEF's collection agents or unrelated debt recovery organisation if you are in breach of this; or
 - (d) TEF's related companies and organisations which service your account or your agreement with TEF.
11. You also authorise your accountant to release and disclose your financial information to TEF or its agents and you authorise government authorities which hold your driver's licence and/or motor vehicle registration information to confirm your address details to TEF or TEF's authorised agents.
12. You authorise TEF, its agents and contractors to use your personal information for marketing, planning and product development purposes by TEF or TEF's related companies.

You can request not to receive direct marketing communications.

13. You authorise TEF to search the Personal Property Securities Register (PPSR) for any registration in respect of which you are a grantor or a secured party of a security interest, and to register on the PPSR all required details for an effective registration of any security interest arising in connection with the equipment finance being applied for.
14. You can request a copy of TEF's Privacy Policy or obtain access to or update your personal information by writing to "The Privacy Officer" at TEF's address.
15. If you provide personal information about another individual you agree that you will inform the individual that personal information about them has been supplied to TEF, why it has been provided and that they can contact TEF to obtain access to or update their personal information or get a copy of TEF's Privacy Policy.
16. If you do not provide the information requested or do not give your authority for the use of the information TEF may decline any application submitted by you.
17. TEF may use or disclose this information before, during or after the term of any agreement with you.

Individual (sole trader or partnership) application

Each to sign

Signature

Print name

Date

Signature

Print name

Date

Company application

Each director to sign

Name of company

ABN

Signature

Print name

Date

Signature

Print name

Date

Print name

Date

Customer Name:

Customer Address:



Thorn Australia Pty Ltd A.B.N. 63 008 454 439
t/a Thorn Equipment Finance
PO BOX 452, Regents Park, NSW 2143

DIRECT DEBIT REQUEST

- To take advantage of this service, complete the direct debit authority which authorises Thorn Australia Pty Ltd to debit your selected account each Payment Date (or at any other time an amount is owing under this contract) and return the form to your nearest store or with your next payment or mail it to the following address: PO BOX 452, REGENTS PARK, NSW 2143
- You will always know in advance the amount to be regularly transferred from your Bank/Financial Institution.

Bank Account Authority - Continuing Automatic Deduction Authority for Rental Payments

To: Thorn Australia Pty Ltd
Direct Debit User ID: 429289

I authorise you to direct debit through the Bulk Electronic Clearing System (BECS) the account described below for any amounts owing in relation to the Contract in accordance with the below Direct Debit Service Agreement and confirm that I am the holder of that account.

Name of Bank or Financial Institution: _____

Branch Name & Address: _____

Account Holders Name: _____

BSB: Bank A/C No.:

ACCOUNT HOLDERS

SIGNATURE: _____ DATE: ____/____/____

DIRECT DEBIT REQUEST SERVICE AGREEMENT

When you sign the Direct Debit Request form you agree:

1. to allow Thorn Australia Pty Ltd to draw your rental amount and any other amounts payable under the contract accompanying this Direct Debit Request or any other contract that you have with us (Contract) from the Bank / Financial Institution account described in the Schedule (Account).
2. to ensure that the Account will contain sufficient clear or available funds to allow the direct debit to proceed. If the direct debit is not honoured by your Bank / Financial Institution, Thorn Australia Pty Ltd will require payment in some other form. Thorn Australia Pty Ltd may re-submit a request to debit this amount along with any other amount that you owe us under the Contract.
3. your Bank / Financial Institution will allow Thorn Australia Pty Ltd to make direct debit from your account.
4. if you need to defer or stop any payment, change your Bank / Financial Institutional details or direct debit amount or suspend or cancel the direct debit you should contact Thorn Equipment Finance Customer Service on 1 800 623 611 or fax 02 9101 5177. Customer Service will need 14 days advance notice to process any change.

Thorn Australia Pty Ltd will ensure that:

1. if you have problem with any direct debit which we make from your Bank / Financial Institution account you may contact Thorn Equipment Finance Customer Service on 1 800 623 611. We will help resolve your problem but if you feel that your problem has not been properly dealt with by Thorn Australia Pty Ltd, we will investigate it further and respond to you within 14 days.
2. if the due date for the direct debit falls on a non-business day Thorn Australia Pty Ltd will debit your account on the next business day. If for any reason the direct debit is delayed after the due date another attempt to direct debit your Bank / Financial Institution account will be made the next business day.
3. the information provided by you in the Schedule will not be provided to any other person other than your Bank/Financial Institution without your consent (unless we are required to do so by law).
4. Thorn Australia Pty Ltd will notify you at least 14 days prior to any change to this arrangement.



The Direct Debit Request form is to establish a direct debit from the Bank or Financial Institution account described in the Schedule on the Direct Debit Request Form to pay your Thorn Australia Pty Ltd account.

If you have any enquiries about your Direct Debit payments please contact Customer Service on 1 800 623 611 or fax us on 02 9101 5177.

Please note that direct debiting may not be available from all Bank or Financial Institution accounts. Please check with your Bank/ Financial Institution whether the account you want direct debited can be used in this way.

OPERATING RENTAL AGREEMENT TERMS AND CONDITIONS

This Agreement comprises the Goods Schedule and these Terms and Conditions made on the date in the Goods Schedule between TEF, you and any Guarantor named in the Goods Schedule. By signing the Goods Schedule you agree to the terms and conditions of this Agreement.

1. Offer and Acceptance

- 1.1 By completing and signing this Agreement you make an irrevocable offer to rent the Goods from TEF upon the terms of this Agreement
- 1.2 TEF is under no obligation to accept your offer. TEF may accept your offer by signing the Goods Schedule in the space provided. The Operating Rental Agreement does not commence until and unless TEF accepts the Goods Schedule.
- 1.3 TEF may on or before acceptance of a Goods Schedule notify you that pre-settlement conditions or conditions precedent apply in which case no agreement will be constituted by TEF's acceptance of the Goods Schedule until all such conditions have been complied with to TEF's reasonable satisfaction or waived by TEF expressly in writing.
- 1.4 Where there is more than one Renter named in the Goods Schedule, each Renter is jointly and severally liable to pay the Rental Instalments and fulfil all other obligations to TEF under this Agreement.

2. Term

- 2.1 The Term commences on the Commencement Date and, subject to clauses 13, 17 and 22, continues for the number of months specified in the Goods Schedule.

3. Rental Instalments

- 3.1 Throughout the Term you will pay to TEF the Rental Instalments in the manner specified in the Goods Schedule.
- 3.2 If the Commencement Date occurs after the date of delivery of the Goods (the **Delivery Date**), you also agree to rent the Goods from TEF during the period from the Delivery Date to the Commencement Date (the **Interim Period**) and pay to TEF on demand an additional amount equal to the Rental Instalment for the first instalment period, multiplied by the number of days in the Interim Period and divided by the number of days in that instalment period (**Interim Amount**). Payment of the Interim Amount does not affect your obligation to pay the Rental Instalments during the Term.
- 3.3 The Rental Instalments must be paid by direct debit or in such manner as TEF may from time to time direct you in writing by noon on the Payment Date in funds that are immediately available. If the date is not a Business Day then you must pay the Rental Instalment on the preceding Business Day.
- 3.4 Your obligation to pay the Rental Instalments and other moneys under these terms and conditions is absolute and unconditional. Without limitation your payment obligations will continue notwithstanding any defect in, breakdown, accident, loss, theft or damage to the Goods. Your payment obligations are absolute and are not subject to set-off or reduction for any reason.

3.5 If:

- (a) a Tax Event occurs reducing TEF's effective rate of return under this Agreement; and
- (b) TEF has not been indemnified in respect of that Tax Event,

TEF may at its absolute discretion vary one or more of the Rental Instalments or the Payment Dates so as to take account of the Tax Event. TEF will notify you in writing of any variation.

4. Your Warranties

- 4.1 You warrant to TEF that:
 - (a) all the information given to TEF by you in connection with this Agreement is correct and is not by content or omission misleading;
 - (b) the Goods will be used exclusively for business purposes; and
 - (c) in entering into this Agreement you have not relied upon any representation or statement made by TEF or on its behalf.

5. Acquisition of Goods

- 5.1 You will obtain delivery of the Goods at your expense and, if required, arrange for its installation at your expense.
- 5.2 If the Goods are delivered before this Agreement is accepted by TEF the delivery is provisional. If provisional

delivery occurs your obligations as to insurance, care, maintenance and use of the Goods under this Agreement (except as to payment of the Rental Instalments) exist as soon as you execute this Agreement.

5.3 You acknowledge that:

- (a) you have examined the Goods before accepting them and satisfied yourself as to their condition and suitability for your purposes and their compliance with any prescribed safety standards;
- (b) TEF has given no representation or warranty regarding the quality, fitness, safety or suitability of the Goods (except as may be implied by law), and no person is authorised by TEF to do so;
- (c) you do not have any title to the Goods;
- (d) no agreement or representation has been made which will entitle you to acquire the Goods at a later date;
- (e) you will look to the supplier, and not TEF, for any warranty claim you may have in relation to the Goods;
- (f) TEF is not responsible for the maintenance, service or warranty of the Goods; and
- (g) TEF may assign to a third party its rights to certain amounts payable by you under this Agreement and in such event TEF will undertake to the third party not to amend this Agreement or do anything which may reduce your obligations under this Agreement without the consent of the third party at its discretion.

6. Use and Location of Goods

6.1 You will:

- (a) keep the Goods in good order and repair and properly operated and serviced in accordance with the manufacturer's instructions;
- (b) not attempt to sell, dispose of or encumber the Goods in any way;
- (c) not alter any identifying markings on the Goods;
- (d) allow TEF to inspect the Goods at any reasonable time upon TEF giving you reasonable notice; and
- (e) not remove the Goods from their Usual Location without TEF's prior written consent.

7. Insurance

7.1 You must:

- (a) insure and keep the Goods insured against public risk, loss, fire, accident, theft and damage or as otherwise reasonably requested by TEF for an amount equal to the full replacement value of the Goods and to insure and keep insured against all liability howsoever arising in respect of any such occurrence with a reputable insurer in TEF's name as owner and your name as Renter;
- (b) hand to TEF all policies of insurance and pay promptly all premiums and stamp duty in respect of such policies and appoint TEF as your agent to make, enforce or settle any insurance claim in respect of the Goods and permit TEF to receive all insurance moneys and execution of this Agreement shall be proof of TEF's authority to receive such moneys; and
- (c) not do or permit or suffer to be done anything which may prejudice any such insurance.

8. Loss or Damage

8.1 You must tell TEF if any of the Goods are:

- (a) stolen; or
- (b) lost; or
- (c) destroyed; or
- (d) damaged or impaired to such an extent that you or the insurer decides that repair is impractical or uneconomic.

(collectively called the "Affected Goods")

8.2 If any of these events happen, and TEF and you agree to the Affected Goods being replaced, the replacement goods will then be the subject of this Agreement.

8.3 TEF is entitled to receive all amounts which are payable to you by any insurer or other person because any of the things in clause 8.1 happens.

8.4 If within 30 days after the event in clause 8.1 happens, TEF and you have not agreed to a replacement, then on the next Payment Date after the 30 day period, you must pay TEF in

addition to any Rental Instalment and other amounts due on that date:

- (a) the sum of the amounts calculated in accordance with clauses 11.2(b), (c), (d) and (e) in so far as those relate to the Affected Goods plus any applicable GST; and
- (b) the Early Termination Value for the Affected Goods; less
- (c) any money TEF has received from an insurer or other person because the event in clause 8.1 happened.

Without limiting any other clause of this Agreement you must also pay on its due date any Rental Instalment or other amount that falls due during the 30 day period. If, before the next Payment Date after the event in clause 8.1 happens, TEF and you have agreed not to replace the Affected Goods, then on that Payment Date, you must pay in addition to any Rental Instalment or other amount due on that date, the amount referred to in (a) less the amount referred to in (b).

- 8.5 This Agreement is terminated in relation to the Affected Goods when you make payment under clause 8.4. This Agreement will continue in respect of the unaffected Goods and TEF will notify you in writing of the revised Rental Instalments which are payable in respect of those Goods.
- 8.6 If TEF receives money from the insurer or any other person after you have paid TEF the amount due under clause 8.4, TEF will refund to you, up to the amount you paid to TEF, the amount TEF received less all money then payable by you under this Agreement.

9. Essential Terms

9.1 The following terms are fundamental and essential terms:

- (a) that you pay all Rental Instalments on time (clause 3);
- (b) that you insure the Goods (clause 7);
- (c) that you do not cease or threaten to cease carrying on business;
- (d) that you or a Guarantor do not become Insolvent;
- (e) that you do not attempt to sell, dispose of or encumber the Goods in any way (clause 6.1(b));
- (f) each of your warranties contained in clause 4 are and remain correct;
- (g) that any Guarantor executes this Agreement effectively and is not discharged (clause 31);
- (h) you or a Guarantor are not in default of a Related Agreement; and
- (i) where you are a corporation (but not a Listed Corporation) no change in your control takes place without the prior written consent of TEF.

9.2 You will be taken to have repudiated this Agreement if you breach any of the essential terms referred to in clause 9.1.

10. Default

10.1 An event of default occurs if you do not perform on time any of your obligations under these terms and conditions, other than any of the essential terms referred to in clause 9.1, and fail to rectify such failure to perform within seven (7) Business Days of written notice from TEF requesting its remedy.

11. Termination by TEF

11.1 TEF may give you notice terminating this Agreement if:

- (a) there is a breach of any essential term specified in clause 9.1; or
- (b) you commit an event of default in accordance with clause 10.1.

11.2 If TEF terminates this Agreement under clause 11.1(a) or (b), you must immediately:

- (a) return the Goods to TEF in good working order and condition at a place specified by TEF failing which you will pay to TEF the Early Termination Value;
- (b) pay to TEF all other moneys then payable under this Agreement;
- (c) pay to TEF on demand the amount of any loss reasonably incurred by TEF in terminating this Agreement;
- (d) pay to TEF as liquidated damages the present value of future Rental Instalments payable for the balance of the Term calculated by applying the Discount Rate to each such instalment plus any applicable GST (to the extent not already included); and
- (e) pay to TEF the Early Termination Fee and any early break costs incurred by TEF to a third party in pre-paying any funding arrangements in connection with

TEF purchasing the Goods and renting the Goods to you and early termination of this Agreement.

- 11.3 TEF will apply any moneys received by us under this clause in payment of the moneys owing to TEF by you in the order and manner TEF thinks fit in our absolute discretion.
- 11.4 If you do not return the Goods as you are required to, TEF may enter any premises where TEF believes the Goods may be located and retake possession of the Goods. In such event you release TEF from and indemnify TEF against any liability or damage however arising or incurred in retaking or attempting to retake possession of the Goods.
- 11.5 Provided you have paid to TEF the Early Termination Value and all other moneys payable under clause 11.2, and TEF subsequently obtains possession of the Goods, TEF will take all reasonable steps to re-sell or re-rent the Goods. TEF will pay you the net proceeds, if any, on re-selling or re-renting the Goods (after deducting all costs and expenses incurred). If the Goods are not returned or cannot be sold the sale price will be taken to be nil.
- 11.6 Any termination of this Agreement or any payment by you does not affect any other rights TEF has under these terms and conditions or at law or in equity.

12. Exclusion of Warranties

- 12.1 This Agreement does not exclude or restrict any liability that cannot lawfully be excluded or restricted.
- 12.2 This Agreement excludes all terms, conditions or warranties implied by law which may be lawfully excluded.
- 12.3 TEF is not liable for any damage, injury or loss to any person or property arising from the possession, operation or use of the Goods.
- 12.4 The liability of TEF in relation to the Goods and their use, including damage or economic loss, is limited to the maximum extent permitted by law, and to the extent permitted by law the liability of TEF is limited at its option to:
 - (a) the replacement or cost of replacement of the relevant Goods with the same or equivalent Goods; or
 - (b) the repair or cost of repair of the relevant Goods.

13. Expiry of Term and Return of Goods

- 13.1 If the Term is not extended under clause 17.1 or varied under clause 22 then at the end of the Term you must:
 - (a) return the Goods to TEF in good working order and condition at a place specified by TEF failing which you will pay to TEF the Early Termination Value; and
 - (b) pay to TEF all other moneys then payable under this Agreement.
- 13.2 If you do not return the Goods as you are required to, the provisions of clause 11.4 and 11.5 shall apply.

14. Costs, Duties, Charges and Commissions

- 14.1 You must pay or reimburse TEF for:
 - (a) all current and future levies and taxes (other than income tax), stamp duties and other government duties payable in connection with this Agreement or any payment, receipt or other transaction arising under or contemplated by this Agreement;
 - (b) any expenses which TEF may reasonably incur in retaking or attempting to retake possession of the Goods;
 - (c) any moneys which TEF may reasonably think fit to pay to make good any failure by you to comply with any of your obligations; and
 - (d) any costs or expenses (including legal costs) reasonably incurred by TEF in connection with the protection of the Goods or the enforcement of TEF's rights under this Agreement.
 - 14.2 Without limiting clause 14.1, where TEF is obliged to pay GST on any supply under this Agreement, the Rental Instalments or other payments due relating to that supply will be increased to cover the amount of that GST (but only to the extent to which GST has not already been included in those instalments or payments). TEF will notify you of the amount of any such increase and provide you with a tax invoice to enable you to claim an input tax credit, if you are so entitled.
 - 14.3 You agree to TEF paying commission, fees or other remuneration to any broker, agent, dealer or other person who introduces you to TEF or TEF to you.
- ## 15. Maintenance Charges
- 15.1 If any maintenance charges for the Goods have been included in the Rental Instalments, you acknowledge that:

- (a) you have given TEF a direction to pay the maintenance provider and to include such charges in the Rental Instalments;
 - (b) TEF is not responsible for the maintenance, service or warranty of the Goods;
 - (c) any failure or breach on the part of the maintenance provider will not in any way release you from the requirement for you to pay the Rental Instalments and observe your other obligations under this Agreement.
- 16. Indemnities**
- 16.1 You indemnify TEF against:
- (a) any loss of or damage to the Goods however arising;
 - (b) liability for any death, injury or damage to any person or property arising directly or indirectly from the Goods or its use;
 - (c) any claim for breach of intellectual property rights arising in connection with the Goods or its use;
 - (d) any loss arising from any part of this Agreement being void, voidable or unenforceable for any reason;
 - (e) any loss or liability incurred by TEF resulting from possession, use or operation of the Goods by you;
 - (f) any liability which TEF may incur under any legislation by reason of the use of the Goods for any purpose other than as stated by you to TEF; provided that such loss, damage, claim or liability is not due to TEF's negligence;
 - (g) anything done by TEF in exercise or purported exercise of TEF's rights under this Agreement;
 - (h) any claim affecting TEF's interest in or title to the Goods and any action taken by TEF to protect such interest and title; and
 - (i) any breach by you of your obligations under this Agreement, the occurrence of a breach of an essential term or an event of default in accordance with clauses 9 and/or 10 of this Agreement, or the repossession of the Goods or its storage.
- 16.2 Each Indemnity in clause 16.1 is a separate and independent obligation and continues after termination of this Agreement.
- 17. Extension of Term and Holding Over**
- 17.1 The Term of this Agreement (and your obligations under this Agreement) shall be automatically extended for a further period of three (3) months at a monthly rental equal to the Rental Instalments previously payable unless:
- (a) you deliver to TEF written notice at least ninety (90) days prior to the expiration of the Term of this Agreement of your intention return the Goods; and
 - (b) you deliver the Goods in good working order and condition to TEF at a place specified by TEF on or before the expiration of the Term.
- 17.2 Upon expiration of such extended term, this Agreement will continue on the basis of a rental from month-to-month at a monthly rental equal to the Rental Instalments previously payable until such time as:
- (a) TEF terminates this Agreement by notice in writing to you; or
 - (b) you terminate this Agreement by first giving TEF at least thirty (30) days written notice.
- 17.3 If this Agreement is terminated under clause 17.2(a) or (b), you must:
- (a) return the Goods to TEF in good working order and condition at a place specified by TEF failing which you will pay to TEF the Early Termination Value; and
 - (b) pay to TEF all other moneys then payable under this Agreement.
- 17.4 If you do not return the Goods as you are required to, the provisions of clauses 11.4 and 11.5 shall apply.
- 18. Overdue Payments**
- 18.1 You must pay interest calculated on daily balances on any amount which you do not pay on time for the period it is unpaid.
- 18.2 The rate of interest applying to each daily balance is the Default Rate.
- 18.3 Each month (or at any other time TEF chooses) TEF may add to the amount you owe TEF any interest payable under clause 18.1 which is overdue (this is known as "capitalising" or "compounding" the interest). You will then be liable for interest under clause 18.1 on the total amount.
- 18.4 You must pay all interest payable under clauses 18.1 or 18.3 when TEF specifies.
- 18.5 Your obligation to pay an amount on the date it becomes due is not affected by clauses 18.1 to 18.4.
- 18.6 If any amount you must pay under this Agreement becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest is payable from the date TEF first asks you for the amount until that amount is paid. This obligation is not affected by the court order. The rate is the rate in clause 18.2 or the rate in the court order, whichever is the higher.
- 18.7 Clauses 18.1 to 18.6 apply equally to the Guarantor. In relation to any amount owed to TEF by the Guarantor, each reference to "you" in these clauses is taken to be a reference to the Guarantor.
- 19. Compliance with Statutes**
- 19.1 You must at your own cost comply and cause TEF to comply with all statutes, regulations, ordinances, and bylaws and the conditions of any licence or approval relating to the Goods or their use, installation, removal, replacement, maintenance or repair.
- 20. Trusts**
- 20.1 This clause applies if you enter into this Operating Rental Agreement as the trustee of a trust (the **Trust**). In this clause "you" also refers to any Guarantor
- 20.2 Your liability is not limited or otherwise affected by having entered into this Agreement as trustee of the Trust.
- 20.3 You represent to TEF and agree that:
- (a) the Trust is validly formed;
 - (b) you are the only trustee of the Trust;
 - (c) you have the authority to enter into this Agreement as trustee of the Trust and to do all things necessary to comply with your obligations under this Agreement in accordance with the trust deed of the Trust;
 - (d) your liability under this Agreement is properly incurred by you in the exercise of your duties as trustee of the Trust;
 - (e) you have a right of indemnity against the trust assets in priority to all the beneficiaries and will exercise that right to enable payment of money due under this Agreement; and
 - (f) your entry into this Agreement is for the benefit of the beneficiaries of the Trust.
- 20.4 You must not do any of the following without our prior written consent:
- (a) distribute any capital of the Trust;
 - (b) retire as trustee or be replaced as trustee;
 - (c) re-settle the Trust;
 - (d) amend the trust deed of the Trust or otherwise vary the terms of the Trust;
 - (e) grant a security interest over any of the assets of the Trust; or
 - (f) breach any terms of the Trust.
- 20.5 You must tell us immediately if any of the events in clause 20.4 occur.
- 20.6 As a separate and independent right, you authorise TEF to have recourse to and satisfy any of your liability under this Agreement directly out of the trust assets.
- 21. TEF as your Attorney**
- 21.1 For valuable consideration you and the Guarantor each irrevocably appoint TEF and each person employed by TEF whose title includes the word "manager" or "executive" severally your attorneys with power (before or after acceptance):
- (a) to do anything the attorney (acting reasonably) considers desirable to give effect to this Agreement;
 - (b) to complete or correct any details of this Agreement (including goods schedules);
 - (c) to do anything you should have done under this Agreement; and
 - (d) after the occurrence of any breach of an essential term or event of default in accordance with clauses 9 and 10 of this Agreement, to do anything the attorney considers desirable to facilitate the exercise of TEF's rights under this Agreement.
- 21.2 Both you and each Guarantor must ratify all acts of its attorneys under clause 21.1. You indemnify TEF and each attorney appointed by clause 21.1 against any loss, damage, cost or claim suffered or incurred as a direct or indirect consequence of the exercise of any of TEF's powers.

22. Variation

22.1 Other than as provided in clauses 3.4 and 8.5, no variation of this Agreement will be effective unless it is in writing and signed by both parties.

23. Severance

23.1 If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable, such provision shall be severed and the remaining provisions shall continue unaffected.

24. Governing Law

24.1 This Agreement is governed by the Laws of the state of New South Wales. You agree to submit to the non-exclusive jurisdiction of the courts of that state.

25. Waiver

25.1 No waiver by TEF of any default, breach or repudiation by you will affect TEF's rights in respect of any further or continuing default, breach or repudiation.

26. Assignment and Agency

26.1 TEF may sell or assign, either absolutely or by way of security, its rights under this Agreement or to the Goods.

26.2 You are not permitted to assign any rights or obligations you may have under this Agreement.

26.3 You acknowledge that TEF may have entered into this Agreement as the agent for some other person and that the other person has or may acquire property in the Goods.

27. Business Day

27.1 If the day on which anything to be done is not a Business Day, then:

- (a) if it involves a payment other than a payment which is due on demand, it shall be done on the preceding Business Day; and
- (b) in all other cases, it shall be done no later than the next Business Day.

28. Notices

28.1 Any notice to be given must be addressed to the relevant party at the address set out in the Goods Schedule to this Agreement or at the address last notified by each party to the other in writing.

28.2 Notices may be hand delivered, sent by pre-paid mail, facsimile or email.

28.3 Notices sent:

- (a) by pre-paid mail will be taken to be received on the third Business Day after posting; and
- (b) by facsimile or email will be taken to be received on production of a transmission report from the transmitting machine indicating a successful transmission of the facsimile or email.

29. Blanks and Corrections

29.1 You authorise TEF to complete any blank spaces in the Goods Schedule relating to the Commencement Date and the serial numbers and other identification of the Goods. You also authorise TEF to rectify any details in the Goods Schedule to correct any manifest errors or omissions.

30. Certificates

30.1 The certificate of an officer of TEF will (in the absence of manifest error) be prima facie evidence of the matters stated in that certificate.

31. Guarantee and Indemnity

31.1 The Guarantor acknowledges that TEF enters into this Agreement at the Guarantor's request and upon the basis of this guarantee and indemnity having been given.

31.2 The Guarantor unconditionally and irrevocably guarantees the punctual performance of all of the Renter's obligations under this Agreement. The Guarantor must immediately upon demand pay TEF any amount not paid when due by the Renter under this Agreement.

31.3 The Guarantor unconditionally and irrevocably indemnifies TEF against all losses, damages, costs, charges, liabilities and expenses which TEF may at any time suffer or incur because:

- (a) any of the Renter's obligations expressed in this Agreement is void, voidable or wholly or partially unenforceable;
- (b) TEF has to disgorge any money paid to TEF on the Renter's account under this Agreement; or
- (c) the Renter fails to perform any obligation under this Agreement.

31.4 The indemnity in clause 31.3 is a continuing obligation, separate and independent from the Guarantor's other obligations under any other agreement. It continues after those other obligations end.

31.5 The Guarantor must pay moneys owing under this Agreement in immediately available funds without any deduction and waives any right of set-off and any right to rely on any defence available to the Renter.

31.6 The obligations and liabilities of the Guarantor and TEF's rights under this Agreement continue and are not affected by:

- (a) TEF granting of any time or indulgence to the Renter or another person;
- (b) TEF compounding or compromising with or wholly or partially releasing the Renter or another person;
- (c) laches, acquiescence, delay, acts, omissions or mistakes by TEF;
- (d) TEF taking, varying, wholly or partially discharging or otherwise dealing with or losing or impairing any security for the Renter's obligations under any this Agreement or any such security being or becoming void, voidable or unenforceable;
- (e) any person who is intended to assume liability as a Guarantor under this Agreement not doing so effectively, failing to execute this Agreement or being discharged;
- (f) any novation, assignment, termination or variation of this Agreement;
- (g) the Renter's death, mental illness or bankruptcy or the death, mental illness or bankruptcy of any individual Guarantor;
- (h) if the Renter or the Guarantor are a corporation and are Insolvent or deregistered;
- (i) an agreement being constituted without reference to or consent by the Guarantor; or
- (j) anything else which might otherwise have such effect at law or in equity.

31.7 The Guarantor's liability is not limited or otherwise affected by having entered into this Agreement as trustee of the trust named in the Schedule.

31.8 If the Guarantor has entered into this Agreement as trustee of the trust, the Guarantor must exercise its right of indemnity against trust assets to enable payment of money due under this Agreement and as a separate and independent right, the Guarantor authorises TEF to have recourse to and satisfy any liability of the Guarantor under this Agreement directly out of the trust assets.

31.9 The Guarantor acknowledges TEF may claim against the Guarantor under this Agreement before TEF enforces any of its rights:

- (a) against the Renter or any other person; or
- (b) under another document such as a guarantee and indemnity, mortgage, charge or other security.

31.10 This guarantee and indemnity does not merge with or adversely affect:

- (a) any other guarantee and indemnity, or mortgage, charge or other security, or right or remedy to which TEF is entitled at any time; or
- (b) a judgment or order which TEF obtains against the Guarantor in respect of an amount payable under this guarantee and indemnity.

TEF may still exercise its rights under the guarantee and indemnity well as under the judgment, order, other guarantee or security.

31.11 So long as an amount payable under this Agreement remains unpaid, the Guarantor may not, without TEF's consent:

- (a) exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable under this Agreement;
- (b) claim an amount from the Renter or another Guarantor under a right of indemnity; or
- (c) claim an amount in the Renter's or another Guarantor's insolvency.

32. Software

32.1 If the Goods have software installed on them:

- (a) if we have been given a licence to use the software, you may use it subject to the terms of our licence, and you must comply with those terms; and
- (b) if you have been given a licence to use the software, you must comply with those terms, and when this Agreement ends you must do what we reasonably require to ensure that we get the benefit of the licence or the grant of an equivalent licence;
- (c) we have no obligation to maintain the software;

- (d) we make no representations or warranties about the software; and
- (e) you must return any copies of the software when you return the Goods to us, after removing any personal information.

33. Gaming machines (NSW)

33.1 This clause 33 applies despite any other term of the Agreement.

33.2 This clause applies if the Goods are gaming machines subject to the Gaming Machines Act 2001 (NSW).

33.3 The Term will not be:

- (a) less than 1 year;
- (b) more than 5 years, where the Goods are Multi-Terminal Gaming Machines; and
- (c) otherwise more than 3 years.

33.4 The Term may not be extended.

34. PPS Act

34.1 You acknowledge that under the PPS Act, TEF has a security interest in the Goods and that TEF may register its interest on the Personal Property Securities Register.

34.2 Any provision of the PPS Act that may be lawfully excluded by agreement of the parties and which requires the giving of notices to a grantor, or prescribes the form of such notices, or confers rights on the grantor, or limits the rights of the secured party, does not apply in relation to the security interest of TEF in the Goods.

35. Definitions and Interpretation

35.1 In this terms and conditions:

Agreement means this Operating Rental Agreement between TEF, you and any Guarantor comprised of the Goods Schedule and these Terms and Conditions.

Business Day means a day in which banks are open for general banking business in Sydney.

Commencement Date means the date the Renter's offer is accepted by TEF and as specified in the Goods Schedule.

Default Rate means the interest rate which is two percent (2%) greater than the rate implicit in this Agreement as reasonably determined by us.

Discount Rate means the interest rate which is two percent (2%) less than the rate implicit in this Agreement, as reasonably determined by us.

Early Termination Fee means TEF's reasonable administrative costs associated with an early termination of this Agreement.

Early Termination Value means the estimate of the market value of the Goods at the date of termination of this Agreement as reasonably determined by TEF.

Goods means the equipment described in the Goods Schedule, and includes any part of that equipment, any substituted equipment and any accessories, manuals, certificates of registration, licences or other items relating thereto (together the "accessories") regardless of whether such accessories were provided at the time of supply of the Goods or acquired subsequently by the Renter, and any proceeds of such equipment and accessories.

Goods Schedule means the schedule entitled Goods Schedule - Tax Invoice which forms part of this Agreement.

Guarantor means any guarantor named as such in the Goods Schedule.

GST has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999.

Insolvent means unable to pay debts when they fall due, in bankruptcy, in receivership administration, wound up, subject to any arrangements, assignment or composition with creditors or protected from any creditors under any legislation.

Listed Corporation has the same meaning given to that term in the Corporations Act 2001 (Cth).

Payment Date means each date calculated in accordance with the Rental Instalments section of the Goods Schedule.

PPS Act means the Personal Property Securities Act 2009 (Cth), as amended.

Related Agreement means any agreement between you and TEF or any agreement between TEF and a Guarantor.

Rental Instalment means the Rental Instalments as set out in the Goods Schedule and includes GST, stamp duty and any other costs and duties payable in accordance with this Agreement.

Renter, you or your means the person named as Renter in the Goods Schedule.

Tax Event means any one or more of the following events:

- (a) an imposition of, or any change in the basis of, or the interpretation, application or administration of any law or regulation imposing any taxes, (including the imposition of a GST), levies, imposts, deductions, charges, withholdings and duties (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them;
- (b) without limiting the generality of (a) above, a change in the tax rate applicable to TEF;
- (c) without limiting the generality of (a) above, the rate or deductibility of the depreciation available to TEF in respect of the Goods, or the timing of the availability of that depreciation changes, or differs from the assumptions made by TEF in calculating the Rental Instalments under this Agreement;
- (d) without limiting the generality of (a) above, a change in the dates or frequency upon which tax is payable by TEF; or
- (e) sections 82KJ, 82 KK, 82 KL, 51AD, Division 16D or 16E of Part III or Part IVA of the Income Assessment Tax Act, 1936 or similar provisions of the Income Tax Assessment Act 1997 or replacement Act are applied to the Operating Rental transaction documented in this Agreement.

Term means the rental term referred to in clause 2.1.

Usual Location of Goods means the address specified as such in the Goods Schedule.

In these terms and conditions:

- (a) the singular includes the plural and vice versa;
- (b) "persons" includes a firm, body corporate, unincorporated association or any other body or entity;
- (c) a reference to either party includes that party's successors, legal personal representatives and permitted assigns;
- (d) any appointment, agreement, warranty, representation or obligations which binds or benefits two or more persons under this Agreement binds or benefits those persons jointly and severally;
- (e) a reference to a clause is a reference to a clause of these terms and conditions;
- (f) words or definitions used in the Goods Schedule are to be read and interpreted in accordance with that definition in these terms and conditions unless a contrary intention applies;
- (g) headings are inserted for convenience only and do not affect interpretation;
- (h) \$ or dollar refer to Australian currency.