

# Rental Contract Standard Terms and Conditions

## 1. INTERPRETATION

In construction of the terms and conditions of this Contract (unless the context otherwise requires):

- (a) **“Agreed Price”** means the amount (including GST) payable to SilverChef by the Hirer to purchase the Equipment from SilverChef. This amount is specified in **Item 10** of the Schedule with reference to specific timing. For timings not specified in **Item 10** of the Schedule, the amount is as agreed between SilverChef and the Hirer. If the Agreed Price is not outlined in the Schedule, please contact our Customer Service team to discuss your end of term options including the Agreed Price;
- (b) **“Authorised Signatory”** means each and any person named in **Item 3** of the Schedule as an ‘Authorised Signatory’ of the Hirer;
- (c) **“Business Day”** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where the event is to occur;
- (d) **“Common Payment Day”** means the day of the week that the Rental Commencement Date fell on or as otherwise specified by SilverChef from time to time;
- (e) **“this Contract”** means the rental contract between SilverChef and the Hirer (and the Guarantor (if any)) in relation to the Rental Facility and the Rental;
- (f) **“Date of Contract”** means the date set out in **Item 1** of the Schedule;
- (g) **“Delivery Confirmation”** means notice to SilverChef:
  - (i) that the Equipment has been delivered; and
  - (ii) of the date of such delivery;
- (h) **“Deposit”** means a deposit in the amount of the Weekly Rent;
- (i) **“Electronic Communication”** means:
  - (i) a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy; or
  - (ii) a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.
- (j) **“End of Renting”** has the meaning set out in **clause 29**;
- (k) **“Equipment”** means the equipment described in **Item 4** of the Schedule (including by model number and serial number);
- (l) **“Event of Default”** has the meaning set out in **sub-clause 26(e)**;
- (m) **“GST”** means the tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (as amended from time to time) or any replacement or other relevant legislation and regulations enacted to validate, recapture or recoup tax collected as GST;
- (n) **“GST rate”** means the percentage figure set out in section 9-70 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* or any replacement figure from time to time;
- (o) **“Guarantor”** means each and any person specified in **Item 3** of the Schedule as a ‘Guarantor’;
- (p) **“Hirer”** means the party specified in **Item 2** of the Schedule, and its executors, administrators, successors and permitted assigns, and where the context permits, it includes its agents, servants and employees;
- (q) **“Installation Site”** means the premises in which the Equipment is to be installed as described in **Item 9** of the Schedule or such other premises as approved by SilverChef in writing from time to time pursuant to **clause 8**;

- (r) **“Interest Rate”** means the rate published by the Australian Taxation Office as the general interest charge (**“GIC”**) from time to time PROVIDED THAT the Interest Rate applicable:
- (i) from the date of termination of the Rental (or any Month to Month Rental or holding over) pursuant to **sub-clause 26(f)** until the earlier of the date the Hirer pays to SilverChef all unpaid amounts due and owing pursuant to this Contract or the date of any claim and statement of claim being filed in a court of law in respect of amounts due and owing by the Hirer to SilverChef pursuant to this Contract, will be the GIC as at the date of termination; and
  - (ii) from the date of any claim and statement of claim being filed in a court of law in respect of amounts due and owing by the Hirer to SilverChef pursuant to this Contract until judgment is given by the court or the claim and statement of claim is discontinued, will be the GIC as at the date the claim and statement of claim is filed in the court;
- (s) **“Master Agreement”** has the same meaning as the ‘Rental Facility’;
- (t) **“Master Agreement Limit”** has the same meaning as the ‘Rental Facility Limit’;
- (u) **“Master Agreement Number”** has the same meaning as the ‘Rental Facility Number’;
- (v) **“Month to Month Rental”** has the meaning set out in **sub-clause 27(a)**;
- (w) **“Original Rental”** has the meaning set out in **sub-clause 1(jj)**;
- (x) **“PPS Act”** means *Personal Property Securities Act 2009*;
- (y) **“PPSR”** means *Personal Property Securities Register*;
- (z) **“Recovery Value”** means the amount (including GST) payable to SilverChef by the Hirer to reimburse SilverChef for its loss of the Equipment, which will be the Written Down Value of the Equipment at the material time, as evidenced from a statement in writing issued by SilverChef and signed by an authorised officer of SilverChef, and such a statement will be evidence of the Written Down Value at the material time and of all matters set out in the statement;
- (aa) **“Related Contract”** means any agreement or deed between the Hirer and/or a Guarantor (if any), and SilverChef under which financial accommodation is provided to, or secured by, the Hirer and/or a Guarantor (if any);
- (bb) **“Rent”** means the amount of rent payable by the Hirer pursuant to **clause 13**;
- (cc) **“Rental”** means the rental of the Equipment by the Hirer from SilverChef under and subject to this Contract;
- (dd) **“Rental Contract & Tax Invoice”** means the document titled ‘Rental Contract & Tax Invoice’ which is (or is to be) executed by both parties to this Contract and which refers to these Standard Terms and Conditions;
- (ee) **“Rental Commencement Date”** means the date of delivery of the Equipment as specified in the Delivery Confirmation;
- (ff) **“Rental Expiration Date”** means the date when the time set out in **Item 5** of the Schedule as the minimum term expires starting from the Rental Commencement Date;
- (gg) **“Rental Facility”** means the facility identified by the ‘Rental Facility Number’ or ‘Master Agreement Number’ set out in the Schedule, which has been established in order for SilverChef to:
- (i) purchase and immediately hire out equipment to the Hirer for its business purposes; and/or
  - (ii) hire out Transferred Equipment to the Hirer for its business purposes;
- (hh) **“Rental Facility Limit”** or “Master Agreement Limit” means the amount set out in the Schedule as the ‘Rental Facility Limit’ or such other amount as varied by SilverChef from time to time pursuant to **clause 3**;
- (ii) **“Schedule”** means the schedule of items contained in the Rental Contract & Tax Invoice;
- (jj) **“Security Bond”** means the amount specified in **Item 7** of the Schedule or such other amount as varied by SilverChef from time to time pursuant to **clause 3**;
- (kk) **“Security Interest”** has the same meaning as per Section 12 of the *PPS Act*;
- (ll) **“SilverChef”** means Silver Chef Rentals Pty Ltd ABN 33 112 241 522, a company incorporated in the State of Queensland, having its registered office at 20 Pidgeon Close,

- West End, Brisbane, Queensland, and its successors and assigns, and where the context permits, it includes its agents, servants and employees;
- (mm) “**Special Conditions**” has the meaning set out in **sub-clause 35(a)**;
- (nn) “**Standard Terms and Conditions**” means this document titled ‘Rental Contract Standard Terms and Conditions’;
- (oo) “**Term**” means the period from the Rental Commencement Date until the Rental Expiration Date (the Term is set out in **Item 5** of the Schedule as the minimum term);
- (pp) “**Termination Amount**” means an amount calculated by SilverChef including any fees and charges SilverChef incurs such as return costs, repatriation costs, holding costs etc. in relation to the termination of the contract.
- (qq) “**Transferred Equipment**” means equipment that is subject to a Transferred Rental;
- (rr) “**Transferred Rental**” means a rental by SilverChef initially to another hirer (“**Original Rental**”) but which is being or has been transferred to the Hirer;
- (ss) “**Weekly Rent**” means the amount of the total weekly rent specified in **Item 4** of the Schedule;
- (tt) “**Written Down Value**” means the amount representing the purchase price (excluding GST) paid by SilverChef for the Equipment less depreciation calculated in accordance with the company’s accounting policies disclosed in the company’s published Annual Reports;
- (uu) words importing the singular number include the plural number and vice versa;
- (vv) words importing the masculine gender include the feminine and neuter genders and vice versa;
- (ww) words importing natural persons include corporations and vice versa;
- (xx) where the Hirer is more than one person, the terms and conditions of this Contract are binding upon such persons jointly and severally;
- (yy) where there is more than one person specified as Guarantor in the Schedule, the terms and conditions of this Contract on the part of the Guarantor are binding upon such persons jointly and severally;
- (zz) “**includes**” in any form is not a word of limitation;
- (aaa) “**parties**” (in reference to the parties of or to this Contract) means SilverChef and the Hirer but, except where there is an express indication to the contrary, excludes any Guarantor;
- (bbb) a reference to a document (including this Contract) includes any variation, novation, ratification or replacement of that document from time to time;
- (ccc) a reference to winding up or bankruptcy includes bankruptcy, winding up, liquidation, dissolution and becoming an ‘insolvent under administration’ (as defined in section 9 of the *Corporations Act 2001*) and to the circumstances and events giving rise to or constituting such condition or matters;
- (ddd) references to any statutes, regulations, ordinances or by-laws include all amendments, consolidations or replacements of those statutes, regulations, ordinances or by-laws;
- (eee) references to clauses and sub-clauses are references to clauses and sub-clauses of this Contract;
- (fff) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- (ggg) headings of clauses and sub-clauses have been inserted for guidance only and are not taken to form part of this Contract.

## 2. CONTRACT IN PARTS

- (a) This Contract consists of the following parts:
- (i) these Standard Terms and Conditions; and
  - (ii) the Rental Contract & Tax Invoice.
- (b) Where there is any discrepancy or inconsistency between a part of this Contract and another part:

- (i), the Rental Contract & Tax Invoice (including any Special Conditions but not including the information set out as 'Important Information' in it) prevails over these Standard Terms and Conditions; and
- (ii) these Standard Terms and Conditions prevail over the information set out as 'Important Information' in the Rental Contract & Tax Invoice.
- (c) Words and expressions defined in these Standard Terms and Conditions shall have the same meaning when used in other parts of this Contract, unless the context otherwise requires.

### 3. RENTAL FACILITY

- (a) The Hirer acknowledges and agrees that:
  - (i) SilverChef has agreed to make available to the Hirer the Rental Facility up to the maximum amount of the Rental Facility Limit subject to the terms and conditions of this Contract and any other rental contract entered into by the parties in connection with the Rental Facility; and
  - (ii) Under the Rental Facility:
    - (1) the Hirer may select equipment to be used by the Hirer for its business purposes (as approved by SilverChef); and
    - (2) SilverChef will purchase the selected and approved equipment; and
    - (3) the Hirer will hire the selected and approved equipment from SilverChef; and/or
    - (4) the Hirer may have selected Transferred Equipment to be used by the Hirer for its business purposes (as approved by SilverChef); and
    - (5) the Hirer will hire the selected and approved Transferred Equipment from SilverChef,

PROVIDED THAT the total of all purchase prices (including GST) paid by SilverChef for all such equipment (including any Transferred Equipment) hired by the Hirer under this Contract and any other rental contract entered into by the parties in connection with the Rental Facility, whenever hired, must not exceed the Rental Facility Limit except as provided for in this **clause 3**.
- (b) If the Hirer hires any equipment (including any Transferred Equipment) in connection with the Rental Facility and:
  - (i) duly returns or purchases such equipment; and
  - (ii) pays all the rent and other amounts owing in respect of the rental of such equipment, within the first twelve (12) months of that rental, the purchase price (including GST) paid by SilverChef for such equipment may then be excluded when determining the total of all purchase prices (including GST) paid by SilverChef for equipment hired by the Hirer in connection with the Rental Facility (when relating the total to the Rental Facility Limit).
- (c) Upon application in writing by the Hirer to SilverChef in a manner specified by SilverChef from time to time, SilverChef may in its sole and absolute discretion:
  - (i) consent to the Hirer hiring equipment from SilverChef which exceeds the Rental Facility Limit; or
  - (ii) approve the selection, purchase and rental (and/or, as the case may be, the selection and rental) of a particular item of equipment which causes the Rental Facility Limit to be exceeded.
- (d) SilverChef may in its sole and absolute discretion:
  - (i) review, vary or increase the Rental Facility Limit upon application in writing by the Hirer to SilverChef in a manner specified by SilverChef from time to time; and
  - (ii) require the Hirer to provide information pertaining to its financial position and/or require additional security from the Hirer before SilverChef considers any variation or increase of the Rental Facility Limit upon the Hirer's application in writing; or
  - (iii) decrease the unused portion of the Rental Facility Limit at any time without prior notice to the Hirer. To remove doubt, it does not mean that SilverChef has increased the Rental Facility Limit merely because the amount owing to SilverChef by the Hirer in connection with the Rental Facility exceeds the Rental Facility Limit.

- (e) If this Contract is the first rental contract entered into by the parties in connection with the Rental Facility, then the Rental Facility commences upon the execution of this Contract by both parties (which will be on the Date of Contract). From the Date of Contract, the terms and conditions of this Contract relating to the Rental Facility are binding regardless of whether any payment for rent or otherwise has been made or any equipment has been selected by the Hirer or approved or purchased by SilverChef prior to the execution of this Contract.
- (f) If this Contract is not the first rental contract entered into by the parties in connection with the Rental Facility, then the Rental Facility will have commenced earlier pursuant to the rental contract first entered into by the parties in connection with the Rental Facility.
- (g) In the event of any discrepancy or inconsistency between a provision about the Rental Facility in:
  - (i) an earlier rental contract entered into by the parties in connection with the Rental Facility; and
  - (ii) a later rental contract entered into by the parties in connection with the Rental Facility, the provision in the later rental contract prevails to the extent of the discrepancy or inconsistency.
- (h) The Hirer undertakes that it shall at all times duly and punctually comply in all respects with all its obligations under this Contract and every other rental contract entered into by the parties in connection with the Rental Facility.
- (i) The Rental Facility may only be terminated in accordance with **clauses 26 and 30** or pursuant to any other rental contract entered into by the parties in connection with the Rental Facility.

#### 4. RENTAL OF EQUIPMENT

- (a) In connection with the Rental Facility, SilverChef has agreed to hire out the Equipment to the Hirer for the Term, at the Rent and subject to the terms and conditions of this Contract.
- (b) The Rental commences on the Rental Commencement Date subject to **clause 12**.
- (c) The Rental may only be terminated in accordance with **clauses 26, 27, 28 and 31**.
- (d) The option to upgrade any piece of Equipment is at the absolute discretion of SilverChef. Any request to upgrade the Equipment must be made in writing to SilverChef by the Hirer.
- (e) Equipment such as furniture, small wares, custom built and fixed to the premises (not an exhaustive list) cannot be upgraded.
- (f) Equipment warranty cover for Certified Used Equipment is outlined on SilverChef's website. To view full warranty cover inclusion and exclusion, please visit [www.silverchef.com.au](http://www.silverchef.com.au)

#### 5. AMOUNTS PAYABLE

The Hirer acknowledges and agrees that:

- (a) all payments payable by the Hirer under this Contract must be made in the manner specified in **Item 6** of the Schedule) or in such other manner as SilverChef may from time to time reasonably direct in writing;
- (b) it is not entitled to withhold any payments or make any deductions from any payments where the Hirer claims to have a right of set-off or counter-claim; and
- (c) if there is a documentation fee set out in **Item 8** of the Schedule, the Hirer will pay the fee as directed by SilverChef and it will be non-refundable.

#### 6. DEPOSIT FOR RENT

The Hirer must pay to SilverChef on or before the date it executes this Contract (which must be prior to the delivery and installation of the Equipment), the Deposit to be held and applied by SilverChef towards the first weekly payment of Rent payable in accordance with **clause 13**.

## 7. SECURITY BOND

- (a) The Hirer must pay to SilverChef on or before the date it executes this Contract (which must be prior to the delivery and installation of the Equipment), the Security Bond as security for the performance of the Hirer's obligations under this Contract.
- (b) In the event of any default by the Hirer in the payment of the Rent or (without limitation) the payment of any money or the observance or performance of any other obligation on the part of the Hirer contained or implied in this Contract, SilverChef will be entitled to claim from and apply the whole or a proportionate part of the Security Bond held by it to compensate SilverChef for the loss suffered directly or indirectly by SilverChef as a result of the default by the Hirer and such claim will not constitute a waiver of any such default by the Hirer.
- (c) A claim under **sub-clause 7(b)** may include (without limitation):
  - (i) the cost of repair of damage to the Equipment;
  - (ii) the cost of any necessary replacement of parts of the Equipment;
  - (iii) the cost of insurance claim policy excesses;
  - (iv) the cost of cleaning the Equipment;
  - (v) the amount of the loss of Rent;
  - (vi) the costs for transport and storage;
  - (vii) the costs for arranging the return of the Equipment to SilverChef; and
  - (viii) the amount of any other money payable under this Contract.
- (d) SilverChef is entitled to require the Hirer to pay an additional amount to SilverChef as security for the performance of the Hirer's obligations under this Contract in order to cover any amount claimed and applied from the Security Bond held by SilverChef under **sub-clause 7(b)** and to cover any increase in the required amount of the Security Bond pursuant to **clause 3**. The Hirer must pay the additional amount so required within fourteen (14) days of any request as an essential term of this Contract.
- (e) If after the End of Renting (and any holding over period) all obligations of the Hirer under this Contract in respect of the Rental of the Equipment are discharged and satisfied, SilverChef must, upon the written request of the Hirer, return the Security Bond held by SilverChef to the Hirer or at the Hirer's direction (to the extent not resorted to).
- (f) If the Hirer assigns all or part of the Rental in accordance with **clause 24**, the Security Bond held by SilverChef may be dealt with in accordance with **sub-clauses 24(f)** and **(g)**.

## 8. DELIVERY AND INSTALLATION OF EQUIPMENT

- (a) Following execution of this Contract by the parties and SilverChef's acquisition of the Equipment, the Hirer must, at its own cost:
  - (i) arrange for the timely delivery of the Equipment to the Installation Site; and
  - (ii) arrange for the installation of the Equipment at the Installation Site.
- (b) The Hirer must notify SilverChef of the arranged date of delivery of the Equipment and any changes to that date. The Hirer must notify SilverChef that the Equipment has been delivered pursuant to **clause 11**.
- (c) The Hirer must ensure that:
  - (i) appropriate energy outlets are available for the Equipment to be connected to at the Installation Site; and
  - (ii) the Installation Site is prepared for the delivery and installation of the Equipment to any standard specified by SilverChef or the manufacturer of the Equipment.
- (d) SilverChef is not responsible for the delivery or installation of the Equipment or for any delay in the delivery or installation.
- (e) The Rental is in no way affected by any delay in the installation of the Equipment.
- (f) The Hirer must not relocate the Equipment without first obtaining the written consent of SilverChef to the change of the Installation Site and the relocation. The Hirer must arrange for the relocation and re-installation of the Equipment at its own cost and take all steps to ensure the Equipment is not damaged as a result of the relocation and re-installation.

The Rental is in no way affected by the relocation of the Equipment pursuant to this clause.

#### 9. ACKNOWLEDGEMENT BY THIRD PARTIES

If requested by SilverChef, prior to delivery of the Equipment and prior to any change of the Installation Site, the Hirer must arrange for all persons who have an interest in the Installation Site (or the building containing the Installation Site) to deliver to SilverChef an acknowledgement in writing (in a form acceptable to SilverChef) that SilverChef:

- (a) has the absolute, unencumbered title to the Equipment (as between SilverChef and that person); and
- (b) has the right, and any representative of SilverChef has the right, to enter upon the Installation Site (and if necessary, the building containing the Installation Site) to inspect and/or remove the Equipment at any time without the consent of, or any payment to, any person.

#### 10. EQUIPMENT AS A FIXTURE TO LAND

(a) The Hirer must not at any time attach, affix or secure the Equipment upon or to any land except as provided for in this clause.

(b) The Hirer must not at any time attach, affix or secure the Equipment upon or to the Installation Site unless its use so requires and the prior written consent of SilverChef has been obtained. Without limiting the generality of this sub-clause, it is agreed as follows:

- (i) if the Installation Site is owned by the Hirer, the Equipment is deemed not to be a fixture and in those circumstances:
  - (1) the Equipment may be removed by SilverChef at any time in accordance with this Contract;
  - (2) SilverChef or a representative of SilverChef will be entitled, upon giving reasonable notice to the Hirer, to enter upon the Installation Site for the purpose of inspecting and/or removing the Equipment and will not be liable in respect of any reasonable loss or damage arising from such entry or from the removal of the Equipment; and
  - (3) if the Installation Site is to become the subject of a mortgage or charge then, before the Hirer gives the mortgage or charge, the Hirer must, without any request from SilverChef, obtain the written acknowledgement of the proposed mortgagee or chargee (as the case may be) that:
    - (a) the Equipment is not a fixture for the purposes of the proposed mortgage or charge;
    - (b) the mortgagee or chargee will not make any claim in relation to the Equipment; and
    - (c) the mortgagee or chargee will permit SilverChef (whether or not there has been any default under the proposed mortgage or charge) to enter upon the Installation Site and to inspect and/or remove the Equipment; and
- (ii) if the Installation Site is not owned by the Hirer, prior to the Equipment becoming attached, affixed or secured to the Installation Site, the Hirer, if requested by SilverChef, must obtain the written acknowledgment of the owner of the Installation Site (and any other persons having an interest in the Installation Site or the building containing the Installation Site) that the Equipment is deemed not to be a fixture and that SilverChef or its representative has the same rights as set out in **clause 9** to the entry upon the Installation Site (and if necessary, the building containing the Installation Site) and the inspection and/or removal of the Equipment at any time. As between SilverChef and the Hirer, SilverChef will have the same rights of entry and inspection and/or removal as set out in **clause 10(b)(i)(2)**.

#### 11. DELIVERY CONFIRMATION

(a) Immediately upon the delivery of the Equipment at the Installation Site, the Hirer must give the Delivery Confirmation by either:-

- (i) verbal notice by telephone to SilverChef; or
- (ii) written notice to SilverChef (in the form specified by SilverChef from time to time).

It is at the sole discretion of SilverChef whether it will accept either Verbal or Written confirmation of receipt of equipment.

- (b) If the Hirer fails to comply with **sub-clause 11(a)**, the Delivery Confirmation may be given by the supplier of the Equipment or the dealer who was involved with the supply of the Equipment, in which case, the date of delivery specified in such Delivery Confirmation will be conclusive evidence of that date and will be final and binding on the parties to this Contract (except in the case of manifest error). SilverChef will notify the Hirer of the date of delivery of the Equipment specified in such Delivery Confirmation.
- (c) Unless notified to the contrary within 7 days by the Hirer, SilverChef's receipt of the Delivery Confirmation will, without any further act, 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.

## 12. CONDITIONS PRECEDENT TO SILVERCHEF'S OBLIGATION TO HIRE OUT EQUIPMENT

- (a) SilverChef's obligation to hire out the Equipment to the Hirer is subject to and conditional upon:
  - (i) the Hirer's execution of this Contract; and
  - (ii) the Hirer having paid to SilverChef the Security Bond in accordance with **clause 7**.
- (b) Notwithstanding any other term or condition of this Contract, if the conditions precedent in **clause 12(a)** have not been fulfilled and fully satisfied or waived, SilverChef will be relieved of any obligation to hire out the Equipment to the Hirer under this Contract.

## 13. RENT

The Hirer acknowledges and agrees that:

It must pay Rent to SilverChef during the Term in advance by weekly payments of the Weekly Rent and, except where otherwise agreed between the parties, the Hirer agrees to pay the Rent in the following manner:

- (i) the first weekly payment of the Weekly Rent is to be made on the Rental Commencement Date (and SilverChef is expressly authorised to apply the Deposit paid by the Hirer pursuant to **clause 6** towards this payment);
- (ii) the second weekly payment of the Weekly Rent is to be made on the date that is seven (7) days after the Rental Commencement Date; and
- (iii) all remaining weekly payments of the Weekly Rent are to be made on the Common Payment Day of each week in the remainder of the Term.

## 14. TRANSFERRED RENTAL

In the event the Rental is a Transferred Rental, the terms and conditions of this Contract in relation to the Rental must be amended as appropriate to apply to a Transferred Rental, including (but without limiting the generality of this clause) that the parties acknowledge and agree:

- (a) the Rental Commencement Date will be the date the Original Rental commenced;
- (b) the Term (which is specified in the Schedule) is the same as the minimum term of the Original Rental;
- (c) the Original Rental with respect to the Equipment is being or has been transferred to the Hirer for the remaining period of the Original Rental effective from when the Rental is binding on the Hirer;
- (d) Rent is payable by the Hirer in advance by weekly payments of the Weekly Rent in line with the Original Rental (as SilverChef directs) as soon as the Rental is binding on the Hirer;



- (e) **clause 6** is not applicable, but SilverChef may require the Hirer to pay an amount for Rent on or before the Hirer's execution of this Contract in order to ensure that Rent is paid up to date and in advance as soon as the Rental is binding on the Hirer;
- (f) the Hirer must pay to SilverChef on or before the date it executes this Contract the Security Bond as security for the performance of the Hirer's obligations under this Contract;
- (g) if the Hirer is taking or has taken over occupation of the Installation Site, there will be no need for the Hirer to arrange for delivery and installation of the Equipment and accordingly, no need for the Hirer to give the Delivery Confirmation, however, the Hirer must promptly give SilverChef confirmation of the date when it effectively will take over or took over occupation of the Installation Site (and all other information about the change of occupation that may be requested by SilverChef);
- (h) if, with SilverChef's prior written consent, the Installation Site is or is to be changed and the Equipment relocated, the Hirer must arrange for the relocation and re-installation of the Equipment at its own cost and take all steps to ensure the Equipment is not damaged as a result of the relocation and re-installation, and the Hirer must give the Delivery Confirmation in accordance with **clause 11**; and
- (i) the Rental will be binding on the Hirer upon execution of this Contract and the date when the Hirer effectively took over occupation of the Installation Site in the case of **sub-clause 14(g)** applying or the date of delivery of the Equipment specified in the Delivery Confirmation in the case of **sub-clause 14(h)** applying.

## 15. CUSTODY AND USE OF THE EQUIPMENT

- (a) The Hirer acknowledges and agrees that it does not have any title, right, property or interest in the Equipment other than as a bailee, except as provided in this Contract.
- (b) The Hirer agrees:
  - (i) to keep the Equipment under its personal control during the Term (and any Month to Month Rental or holding over);
  - (ii) not to (or attempt to):
    - (1) sell;
    - (2) dispose of;
    - (3) encumber;
    - (4) lend;
    - (5) let or sub-let;
    - (6) assign;
    - (7) pledge;
    - (8) mortgage;
    - (9) on-hire;
    - (10) conceal; or
    - (11) part with possession or control of, the Equipment or otherwise deal with the Equipment in any way that would adversely affect SilverChef's ownership of the Equipment or SilverChef's interests in this Contract, without SilverChef's prior written consent given pursuant to this Contract;
  - (iii) not to remove the Equipment from the Installation Site without the prior written consent of SilverChef;
  - (iv) not to alter the Equipment or alter or deface any identifying number, name or mark on the Equipment;
  - (v) to comply with all statutory, governmental and other legal requirements (including workplace health and safety and environmental legislation) in relation to the operation of the Equipment, including relating to (without limitation):
    - (1) the Equipment itself;
    - (2) the possession and use of the Equipment;
    - (3) the Installation Site; and

- (4) the occupation and use of the Installation Site, particularly in relation to the use of the Equipment at the Installation Site; and
- (vi) to protect the Equipment from any distress, execution or seizure and shall indemnify SilverChef against all losses, costs, charges, damages and expenses incurred by SilverChef as a result of the Hirer's failure to do so.
- (c) The Hirer undertakes:
  - (i) to maintain the Equipment in accordance with **clause 16**;
  - (ii) to use and operate the Equipment in a proper and prudent manner and ensure that only duly qualified competent agents, servants and employees are allowed to use and operate the Equipment;
  - (iii) not to use or operate the Equipment, or permit the Equipment to be used or operated, for a purpose that is unlawful;
  - (iv) to notify SilverChef immediately if any person attempts to seize the Equipment;
  - (v) to make the Equipment available for inspections, examination and testing by SilverChef upon reasonable prior written notice by SilverChef;
  - (vi) to ensure that the Equipment is at all times stored safely and protected from theft, loss or damage (as far as it is practicable);
  - (vii) not to cause or do or permit anything which is likely to endanger the safety or condition of the Equipment or which would adversely affect SilverChef's interests in the Equipment; and
  - (viii) to use its best endeavours to do everything necessary to protect the rights of SilverChef in the Equipment.
- (d) The Hirer must notify all agents, servants and employees of the Hirer's obligations and undertakings in **sub-clauses 15(b) and (c)**.
- (e) The Hirer will notify any person attempting to seize the Equipment or any part of it of:
  - (i) SilverChef's ownership of the Equipment and SilverChef's interest in this Contract;
  - (ii) the extent of the Hirer's interest in the Equipment; and
  - (iii) that the Hirer is obliged to keep the Equipment under its personal control during the Term and that the Hirer is subject to the restrictions in **sub-clause 15(b)(ii)**.
- (f) The Hirer will, if requested by SilverChef, place and keep displayed on the Equipment a notice in plain and legible print that SilverChef is the owner of the Equipment and a statement of the restrictions upon the Hirer contained in **sub-clause 15(b)(ii)**.

## 16. MAINTENANCE & REPAIR OF EQUIPMENT

- (a) Except as otherwise agreed in writing by the Hirer and SilverChef, the Hirer will, at its own cost, maintain the Equipment in a clean state and in good working order and repair, and in particular:
  - (i) the Hirer must maintain the Equipment in the same operational condition and functionality as at the Rental Commencement Date;
  - (ii) the Hirer must only use and operate the Equipment in accordance with:
    - (1) the operating manual for the Equipment (which the Hirer must ensure is delivered with the Equipment); and
    - (2) any other instructions issued by SilverChef from time to time;
  - (iii) the Hirer must not use or operate the Equipment, or permit the Equipment to be used or operated, in a manner or for a purpose for which the Equipment was not designed or manufactured;
  - (iv) the Hirer must ensure the Equipment is maintained in accordance with the maintenance instructions provided in any manufacturer's express warranty documentation or otherwise in a manner which does not void any manufacturer's express warranty;
  - (v) the Hirer must ensure that no components of the Equipment are removed or exchanged except where defective and in the course of usual and proper service or replacement;
  - (vi) the Hirer must only use genuine parts to maintain the Equipment;

- (vii) the Hirer must not use or operate the Equipment, or permit the Equipment to be used or operated, when such Equipment is out of proper repair;
  - (viii) the Hirer must not overload, use or operate the Equipment, or permit the Equipment to be overloaded, used or operated, in a manner which, in the opinion of SilverChef, would be likely to endanger the safety or condition of the Equipment or any part of it or the safety of any person or property;
  - (ix) the Hirer must keep the Equipment in a clean state so as not to cause damage or disruption to the normal functioning of the Equipment;
  - (x) the Hirer must maintain the good overall appearance of the Equipment; and
  - (xi) the Hirer must ensure that all systems and controls of the Equipment are fully operational;
  - (xii) the Hirer must replace all broken or defaced gauges or glass components of the Equipment; and
  - (xiii) the Hirer must not fit any attachments to the Equipment which are not approved by SilverChef.
- (b) The Hirer will immediately notify SilverChef in writing of any fault, defect, damage or loss suffered by the Equipment as soon as it is detected.
  - (c) The Hirer acknowledges that it does not have any authority to pledge SilverChef's credit or create any lien over the Equipment in respect of any repair or service costs for any reason and the Hirer agrees to advise any potential repairer of this prohibition.
  - (d) The Hirer acknowledges and agrees that the Equipment may be covered by a manufacturer's express warranty and repairs to the Equipment may be effected under such warranty. In all other cases, repairs to the Equipment will be at the Hirer's cost.
  - (e) If the Hirer fails to strictly comply with **sub-clause 16(a)** then SilverChef may (without any obligation to do so) effect repairs made necessary as a result of such failure by the Hirer and the cost of such repairs (which may include travel costs incurred in order for SilverChef to carry out the repairs to the Equipment) shall be borne by the Hirer and be payable to SilverChef upon demand.

## 17. RESERVATION OF SILVERCHEF'S RIGHTS

- (a) The Hirer acknowledges and agrees that by executing this Contract it grants to SilverChef or its representative (as far as it is able) an irrevocable licence to enter the Installation Site at any time upon reasonable prior written notice by SilverChef to the Hirer (which in the case of an emergency, may be little or no notice) in order to gain access to the Equipment for the purposes of, amongst other things:
  - (i) locating the Equipment;
  - (ii) affixing to the Equipment identifying plates or marks;
  - (iii) examining and testing the Equipment;
  - (iv) inspecting the state of repair and operating condition of the Equipment;
  - (v) repairing and maintaining the Equipment;
  - (vi) removing or recovering possession of the Equipment; and
  - (vii) otherwise exercising SilverChef's rights, powers, privileges and interests or complying with its obligations under this Contract,and SilverChef shall not be held responsible for any reasonable loss or damage occasioned to the Installation Site (or the building containing the Installation Site), the Equipment, or otherwise sustained by the Hirer by virtue of SilverChef exercising its rights pursuant to this Contract.
- (b) The Hirer acknowledges and agrees that in the event of default and SilverChef taking action to recover possession of the Equipment pursuant to this Contract, SilverChef may, without notice, liability or legal process, enter upon or into the Installation Site (and the building containing the Installation Site) and for that purpose may break open any gate, door or fastening in order to gain entry with the intent of recovering possession of the Equipment.

## 18. COMPETITION AND CONSUMER ACT

- (a) The Hirer is aware that certain legislation, including the *Competition and Consumer Act 2010 (Cth)* (“**the CAC Act**”), has the effect of granting certain rights which cannot be excluded, restricted or modified, or if they can be restricted or modified such restrictions and modifications may be of a limited nature only.
- (b) Subject to the qualifications contained in section 64A of Schedule 2 of the CAC Act, should SilverChef be liable for any failure to comply with a guarantee implied by Division 1 of Part 3-2 of Schedule 2 of the CAC Act (other than a guarantee under sections 51, 52 or 53 of Schedule 2 of the CAC Act, where applicable) SilverChef’s liability for such failure is limited to:
  - (i) in the case of the Equipment, any one of the following at the option of SilverChef:
    - (1) the replacement of the Equipment (1) the supply of equivalent equipment;
    - (2) the repair of the Equipment;
    - (3) the payment of the cost of replacing the Equipment or acquiring equivalent equipment; or
    - (4) the payment of the cost of having the Equipment repaired; or
  - (ii) in the case of any services supplied by SilverChef, any one of the following at the option of SilverChef:
    - (1) the supplying of the services again; or
    - (2) the payment of the cost of having the services supplied again.
- (c) The Hirer warrants that the Equipment is not a good of a kind ordinarily acquired for personal, domestic or household use or consumption.

## 19. RELIANCE & WARRANTIES

- (a) The Hirer acknowledges that in deciding to enter into this Contract:
  - (i) it has not relied in any way on SilverChef’s skill or judgment (and it agrees that it would be unreasonable for it to rely on the skill or judgment of SilverChef to determine whether the Equipment would be reasonably fit for the Hirer’s purposes);
  - (ii) it has satisfied itself as to the condition and suitability of the Equipment and its fitness for the Hirer’s purposes; and
  - (iii) it has previously examined the Equipment and such examination ought reasonably to have revealed that the Equipment was not of acceptably quality and it has satisfied itself as to the Equipment’s compliance with the specifications required by the Hirer as well as its condition, quality, fitness for its intended purpose and the validity of the express warranties of the manufacturer and/or supplier.
- (b) Any and all guarantees, warranties and conditions expressed by SilverChef or any representative of SilverChef as to the condition, suitability, quality, fitness for any purpose, safety or title of the Equipment are hereby negated and excluded to the full extent permitted by law and SilverChef gives no such guarantee, warranty or condition and the Hirer acknowledges that SilverChef has not given any such guarantee, warranty or condition.
- (c) The Hirer warrants and declares that the Equipment to be hired by the Hirer from SilverChef is to be hired wholly (or predominantly) for the purpose of a business carried on by the Hirer, and the amounts payable under this Contract are to be claimed by the Hirer as losses or outgoings necessarily incurred in the carrying on of that business

## 20. RISK AND INSURANCE

- (a) The Hirer assumes and bears the risk of loss or damage to the Equipment immediately upon its execution of this Contract. If the Equipment is damaged, lost, stolen or not returned to SilverChef when required by this Contract, the Hirer agrees:
  - (i) if the Equipment is capable of repair, to repair the Equipment at the Hirer’s own cost; or
  - (ii) if the Equipment is not capable of repair to pay SilverChef the amount described in **sub-clauses 29(d) to 29(h)** (as the case may be).
- (b) The Hirer agrees and undertakes:

- (i) to arrange and maintain in force throughout the Term (and during any Month to Month Rental or holding over period) an insurance policy or policies covering the Equipment against loss and all other risks against which a prudent owner would insure, for the full replacement value of the Equipment, and noting SilverChef as an interested party (“**Hirer’s Insurance Policy**”). Such insurance is to include insurance of the Equipment against:
    - (1) damage or destruction caused by accident;
    - (2) any insurable risk commonly insured against in regard to equipment of a similar nature; and
    - (3) such other insurable risks as SilverChef may reasonably stipulate;
  - (ii) at SilverChef’s request from time to time, to provide SilverChef with evidence of the currency of the Hirer’s Insurance Policy;
  - (iii) not to do any act or fail to do any act which would allow the insurer to refuse, settle or compromise any claim on the Hirer’s Insurance Policy in relation to the Equipment without the prior written consent of SilverChef; and
  - (iv) not to do any act or fail to do any act which may have the effect of voiding the Hirer’s Insurance Policy.
- (c) The Hirer’s Insurance Policy must contain an agreement by the insurer to give SilverChef written notice of its intention to cancel the policy. The Hirer’s Insurance Policy must also contain a clause providing that notwithstanding:
- (i) the lapse of the Hirer’s Insurance Policy (except by reason of expiration in accordance with its terms);
  - (ii) any right of cancellation by the insurer; or
  - (iii) any cancellation by the Hirer (whether voluntary or involuntary),
- the Hirer’s Insurance Policy will continue in force for the benefit of SilverChef for at least thirty (30) days after written notice of cancellation has been given to SilverChef.
- (d) The Hirer must not, without the prior written consent of SilverChef (such consent not to be reasonably withheld), permit any reduction in limits or coverage in the Hirer’s Insurance Policy affecting or relating to the Equipment or this Contract.

## 21. INDEMNITIES

- (a) The Hirer agrees to use, operate and possess the Equipment at the Hirer’s risk. Subject to paragraph (e) of this clause, the Hirer agrees that SilverChef will have no responsibility or liability for any loss or damage to any property of the Hirer. To the full extent permitted by law the Hirer releases and discharges SilverChef and its agents, servants and employees from:
- (i) all claims and demands on SilverChef; and
  - (ii) any loss or damage whatsoever and whenever caused to the Hirer or its agents, servants or employees whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in, the Equipment or any accident to or involving the Equipment or its use, operation, repair, maintenance or storage (whether occasioned by the negligence of SilverChef or otherwise) or which may otherwise be suffered or sustained in, upon or near the Equipment.
- (b) Subject to paragraph (e) of this clause, the Hirer assumes liability for, and indemnifies and will keep indemnified, protected, saved and harmless SilverChef and its agents, servants and employees from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses, legal or otherwise (including court costs and legal fees incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort);
- (i) arising out of or alleged to arise out of the selection, purchase, delivery, acceptance or rejection, ownership, possession, use (including by reason of the use or incorporation of any invention resulting in infringements of patents), operation, repair,

- maintenance or storage of the Equipment, and by whomsoever used or operated (except where used by SilverChef or any person on behalf of SilverChef); or
- (ii) incurred by SilverChef in respect of any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment; or
  - (iii) arising out of any claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against SilverChef in connection with the Equipment or its use and operation.
- (c) The Hirer indemnifies and will keep indemnified, protected, saved and harmless SilverChef against any liability or additional liability SilverChef may incur under the *Income Tax Assessment Act 1936 (Cth)*/*Income Tax Assessment Act 1997 (Cth)* by reason of the use of the Equipment by the Hirer for any purpose. If SilverChef's liability for income tax arises, is increased or is payable earlier because:
- (i) deductions at the depreciation rates which the Hirer may have represented to SilverChef as applicable to the Equipment or its use or upon which SilverChef may have relied for calculation of the Rent are not for any reason allowed in full at the times they would normally have been allowed; or
  - (ii) the residual value is not approved by the Commissioner of Taxation,
- then the Hirer shall pay to SilverChef on demand by SilverChef such amount as will result in the after-tax yield to SilverChef being the same as it would have been but for such increase or acceleration in liability.
- (d) The indemnities and assumptions of liability contained in **sub-clauses 21(a), 21(b) and 21(c)** will continue in full force and effect notwithstanding the termination of this Contract (or termination of the Rental, any Month to Month Rental or holding over, or termination of the Rental Facility) whether by expiration of time or otherwise, as to any act or omission relating to the Equipment occurring during the continuance of this Contract which at any time is claimed to have created a cause of action against SilverChef or assumption of liability by the Hirer. The indemnities and assumption of liability against any claims for patent infringements will continue in full force and effect throughout the life of the Equipment, except as to any alterations or modifications to the Equipment occurring after the termination of the Rental, any Month to Month Rental or holding over.
- (e) Nothing in this clause limits the liability of SilverChef or its agents, servants or employees to the extent that such liability arises from any willful or negligent act of SilverChef or its agents, employees or servants.

## 22. COSTS, TAXES AND STAMP DUTIES

- (a) SilverChef will stamp and register this Contract (or any interest granted to SilverChef under this Contract) in any State or Territory of Australia as is required or permitted by law.
- (b) The Hirer will pay to SilverChef upon demand all charges and expenses reasonably incurred by SilverChef in connection with stamping and registration of this Contract (or any interest granted to SilverChef under this Contract) and any incidental documentation and the amount of all stamp duty and other imposts which are imposed, charged or payable in respect of this Contract and any transaction contemplated by it.
- (c) To the extent that Rent includes amounts calculated in respect of stamp duty, those amounts constitute payments on account of stamp duty. If the rates of stamp duty applicable to this Contract are varied, the Hirer will pay such further weekly amounts on account of stamp duty as SilverChef specifies in writing.
- (d) The Hirer undertakes to pay SilverChef upon demand, the amount of any liability which SilverChef may incur under the *Income Tax Assessment Act* by reason of the use of the Equipment by the Hirer for any purpose other than that stated by the Hirer to SilverChef.
- (e) Each party must bear its own legal costs (if any) in the preparation and execution of this Contract.
- (f) The Hirer will pay to SilverChef upon demand all fees, charges, costs and expenses incurred by SilverChef in obtaining or attempting to obtain payment of money from the

Hirer pursuant to this Contract or in otherwise enforcing the terms of this Contract. SilverChef's standard fees, charges, costs and expenses may be published by SilverChef on its website from time to time.

### 23. AUTHORISED SIGNATORY

- (a) At the Date of Contract, the Hirer warrants that it has authorised each Authorised Signatory:
  - (i) to contact, correspond and deal with SilverChef and to sign and acknowledge any document in relation to this Contract (including the Rental Facility) on behalf of the Hirer; and
  - (ii) to bind the Hirer to the fullest extent as if the Hirer was acting itself or had properly executed and acknowledged such document itself, and SilverChef consents to such authorisation.
- (b) The Hirer may by notice in writing to SilverChef substitute or revoke the authorisation of any Authorised Signatory or nominate any replacement or new authorised signatory. Such substitution, revocation, replacement or new appointment (as the case may be) of an Authorised Signatory may only be effective after SilverChef consents in writing to the substitution, revocation, replacement or new appointment (as the case may be).

### 24. ASSIGNMENT BY THE HIRER

- (a) In this clause, the following words and expressions have the following meanings unless the context otherwise requires:
  - (i) **"Assigned Equipment"** has the meaning given by **sub-clause 24(c)**;
  - (ii) **"Assigned Portion Rent"** means the amount calculated by multiplying the Assignment Factor by the Rent;
  - (iii) **"Assigned Portion Security Bond"** means the amount calculated by multiplying the Assignment Factor by the Security Bond;
  - (iv) **"Assigned Rental"** has the meaning given by **sub-clause 24(e)**;
  - (v) **"Assignment Factor"** means the amount calculated by dividing the purchase price (including GST) of the Assigned Equipment paid by SilverChef by the purchase price (including GST) of all of the Equipment paid by SilverChef;
  - (vi) **"Operative Date of the Assigned Rental"** means the date when the Assigned Rental is binding on the Assignee;
  - (vii) **"Remaining Equipment"** means that part of the Equipment that is not the Assigned Equipment (if any);
  - (viii) **"Remaining Portion Rent"** means the amount calculated by deducting the Assigned Portion Rent from the Rent; and
  - (ix) **"Remaining Portion Security Bond"** means the amount calculated by deducting the Assigned Portion Security Bond from the Security Bond.
- (b) The Hirer agrees that it will not assign the Rental or any part of it to another person unless the Hirer complies with this clause.
- (c) At any time during the Term, the Hirer may give SilverChef a written request for consent to assign all or any part of the Rental specifying:
  - (i) details of the proposed assignee (the **"Assignee"**), including its name and contact details;
  - (ii) the part of the Rental the Hirer wishes to assign to the Assignee (by identifying the particular items of the Equipment) (**"Assigned Equipment"**); and
  - (iii) the date (at least thirty (30) days after SilverChef receives the request) on which the assignment will take effect.
- (d) SilverChef may, in its absolute discretion, consent to the assignment of the relevant part of the Rental to the Assignee. In exercising its discretion, SilverChef may (but is not bound to) take into account the following matters:
  - (i) whether the Hirer is in breach of this Contract, including whether there are any outstanding amounts payable by the Hirer to SilverChef under this Contract;

- (ii) whether documentation has been provided by the Assignee at the request of SilverChef, including written confirmation that the Assigned Equipment has been sighted by the Assignee and is in clean and good working condition and is situated at the Installation Site;
- (iii) whether financial documentation has been provided by the Assignee at the request of SilverChef in order to satisfy SilverChef that the Assignee is a respectable and financially responsible person;
- (iv) if the Hirer only wishes to assign part of the Rental, that the Hirer has agreed in writing to amend this Contract with effect from the Operative Date of the Assigned Rental as follows:
  - (1) the Rent payable under **clause 13** to become the Remaining Portion Rent; and
  - (2) the Security Bond payable under **clause 7** to become the Remaining Portion Security Bond.
- (e) Any assignment under this **clause 24** shall be subject to the Assignee entering into a rental contract with SilverChef for the hire of the Assigned Equipment ("**Assigned Rental**") on terms satisfactory to SilverChef, which may include:
  - (i) the provision of guarantees on behalf of the Assignee;
  - (ii) the provision of a security bond equal to the Assigned Portion Security Bond by or on behalf of the Assignee (which may include the transfer of the Security Bond in accordance with **sub-clause 24(g)**); and
  - (iii) the payment of rent equal to the Assigned Portion Rent by the Assignee.
- (f) In the event that SilverChef consents to the assignment of the Rental in respect of the Assigned Equipment:
  - (i) the Hirer will cease to be liable to SilverChef under this Contract in relation to the Assigned Equipment from the Operative Date of the Assigned Rental;
  - (ii) the Hirer will continue to be liable to SilverChef under this Contract in relation to the Assigned Equipment prior to the Operative Date of the Assigned Rental;
  - (iii) if the Hirer only assigns part of the Rental to the Assignee, nothing in this clause shall affect the liabilities of the Hirer under this Contract in relation to the Remaining Equipment; and
  - (iv) subject to any transfer of the Security Bond held by SilverChef under **sub-clause 24(g)** and any claims on the Security Bond held by SilverChef that it may make under **clause 7**, after the Operative Date of the Assigned Rental, SilverChef will refund to the Hirer:
    - (1) if the Hirer assigned all of the Rental, the Security Bond held by SilverChef; or
    - (2) if the Hirer assigned part of the Rental, the amount of the Security Bond held by SilverChef in excess of the Remaining Portion Security Bond.
- (g) If SilverChef consents to the assignment of all or part of the Rental to the Assignee, the Hirer may agree to transfer to the Assignee all or part of the Security Bond held by SilverChef under this Contract and that may be refunded to the Hirer upon the assignment pursuant to **sub-clause 24(f)(iv)**, for use under the Assigned Rental PROVIDED THAT:
  - (i) the Hirer gives SilverChef a written request ("**Transfer Request**") to transfer all or part of the Security Bond held by SilverChef under this Contract specifying:
    - (1) details of the Assignee, including its name and contact details;
    - (2) a date (at least seven (7) days after SilverChef receives the request) on which the transfer of the Security Bond held by SilverChef is to take effect; and
    - (3) the amount or portion of the Security Bond held by SilverChef that it wishes to transfer to the Assignee;
  - (ii) the Hirer gives the Assignee a copy of the Transfer Request within seven (7) days; and
  - (iii) SilverChef (in its sole discretion) agrees to the transfer of that amount or portion of the Security Bond held by SilverChef and provides written notice of its agreement to the Hirer and the Assignee. In exercising its discretion, SilverChef may (but is not bound to) take into account the following matters:



- (1) whether the Hirer is in breach of this Contract, including whether there are any outstanding amounts payable by the Hirer to SilverChef under this Contract; and
- (2) if the Hirer only wishes to assign part of the Rental, whether the remaining Security Bond held by SilverChef under this Contract after the transfer will be equal to or greater than the Remaining Portion Security Bond.

## 25. OTHER ASSIGNMENT

SilverChef may, subject to the requirements of any law, assign, transfer, novate or participate to any person, trust or other entity, or otherwise deal in any manner with any of its rights, obligations or interests in the Equipment or under this Contract provided that any such dealing does not detrimentally affect the Hirer's rights under this Contract. The Hirer agrees, at its own cost, to sign or execute any agreement, notice or document produced or provided by SilverChef addressed to or in favour of any such other person, trust or entity for the purposes of this clause.

## 26. DEFAULT

- (a) If SilverChef reasonably believes that there is or may be a potential default event or a default event has occurred:
  - (i) SilverChef may appoint a representative (which could include an investigating accountant) to investigate whether this belief is accurate and to consider, and report to SilverChef, the financial affairs and business of the Hirer; and
  - (ii) SilverChef or its representative shall upon giving reasonable notice be permitted to enter the Installation Site and any land or buildings owned or occupied by the Hirer where records are kept, in order for SilverChef or its representative to access, inspect or copy during normal business hours the books of account, business records and accounting records of the Hirer.
  - (iii) The Hirer acknowledges and agrees that it will co-operate and assist fully with SilverChef and its representative in connection with any investigation under this **clause 26(a)**.
  - (iv) The Hirer must pay to SilverChef all costs, charges and expenses incurred by SilverChef or its representative in connection with an investigation under this **clause 26(a)**.
- (b) If the Hirer is in default of any of its obligations under this Contract, SilverChef may rectify that default as the Hirer's agent. All fees, charges, costs and expenses incurred by SilverChef in rectifying the default will be a liquidated debt payable by the Hirer to SilverChef on demand.
- (c) The termination of the Rental Facility or the expiration of the Term or the termination of the Rental (or any Month to Month Rental or holding over) shall not prejudice or affect any rights or remedies of SilverChef against the Hirer on account of any antecedent breach by the Hirer of any of the terms and conditions on the part of the Hirer under this Contract.
- (d) Should the Hirer fail to make any payment required by this Contract, then the Hirer shall pay interest at the Interest Rate to SilverChef on the amount which is outstanding from the due date for payment until the date it is actually paid.
- (e) Each of the following is an event of default ("**Event of Default**"), namely, if:
  - (i) any money payable to SilverChef pursuant to this Contract is not paid by seven (7) clear days after the due date for payment;
  - (ii) the Hirer has failed to punctually perform or observe any of the terms and conditions on the part of the Hirer under this Contract and such failure has remained unremedied for a period of seven (7) clear days after notice in writing is served upon the Hirer by SilverChef specifying the default;
  - (iii) SilverChef ascertains that the Hirer has made any false, inaccurate or misleading statement having a materially adverse effect in relation to the making of this Contract or any related or collateral document;
  - (iv) the Hirer exceeds the Rental Facility Limit without SilverChef's prior written consent;
  - (v) there is a material adverse change in the financial condition of the Hirer;

- (vi) the Hirer, being a natural person, dies, commits any act of bankruptcy or is convicted upon indictment of a criminal offence or sentenced to a term of imprisonment;
- (vii) execution is levied by any court against the Hirer and such execution is not satisfied within fourteen (14) days;
- (viii) where the Hirer is a company:
  - (1) a resolution for its winding up is passed or any order by any court is made for its winding up or a controller, provisional liquidator, receiver or receiver and manager or voluntary administrator is appointed in respect of the Hirer or in respect of the whole or any part of its assets;
  - (2) any director of the Hirer is convicted upon indictment of a criminal offence or sentenced to a term of imprisonment;
  - (3) without SilverChef's prior written consent (which consent will not be unreasonably withheld), the Hirer reduces its share capital or attempts to do so;
  - (4) without SilverChef's prior written consent (which consent will not be unreasonably withheld), effective control of the Hirer is altered to any material extent from that subsisting at the Date of Contract and for the purposes of this sub-clause, "**effective control of the Hirer**" means:
    - (a) control of the composition of the board of directors of the Hirer;
    - (b) control of more than one half of the voting power of the Hirer; or
    - (c) control of more than one half of the issued share capital of the Hirer excluding any part of it which carries no right to participate beyond a specified amount in the distribution of either profit or capital;
- (ix) where the Hirer is the trustee of a trust (whether or not it is disclosed):
  - (1) the Hirer without SilverChef's prior written consent (which consent will not be unreasonably withheld), ceases to be sole trustee of the trust;
  - (2) any part of the capital of the trust fund is distributed without SilverChef's prior written consent (which consent will not be unreasonably withheld);
  - (3) any warranty in **sub-clause 33(i)** is proved to be untrue or incorrect in any material respect;
  - (4) any application or order is sought or made in any court for the removal of the Hirer as trustee of the trust or for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court or under the court's control;
  - (5) any notice is given or meeting summoned or proposal put forward for the removal of the Hirer as trustee of the whole or any part of the trust fund or the appointment of any other person as trustee with the Hirer;
  - (6) without the prior written consent of SilverChef (which consent will not be unreasonably withheld), any alteration is made to the terms of the trust deed or through the exercise of any power under such instrument, to the constitution of the trust fund or any other trust fund which might in the opinion of SilverChef detrimentally affect SilverChef's position under this Contract; or
  - (7) if the trust is a unit trust, any unit in the trust is issued, transferred, redeemed, encumbered or otherwise dealt with, without SilverChef's prior written consent (which consent will not be unreasonably withheld);
- (x) the Equipment is abandoned or condemned or is seized or appropriated by any lawful authority and not released within twenty-one (21) days or is attached, sequestered, impounded or restrained upon and not released within twenty-one (21) days; or
- (xi) any Guarantor:
  - (1) is unable to pay its debts when they are due;
  - (2) commits an act of bankruptcy or is convicted upon indictment of a criminal offence or sentenced to a term of imprisonment;
  - (3) dies and the Hirer is unable to replace the guarantor with a suitable alternative guarantor or security that is acceptable to SilverChef; or
  - (4) if a company, is subject to an event stated in **sub-clauses 26(d)(viii)(1) to (4)**.

- (f) Upon the occurrence of any one or more of the events described in **sub-clause 26(e)** SilverChef may (at its option) by notice in writing to the Hirer terminate the Rental Facility and/or terminate the Rental (or any Month to Month Rental or holding over) and immediately recover possession of the Equipment.
- (g) Upon termination of the Rental Facility pursuant to **sub-clause 26(f)**, SilverChef is entitled to recover as liquidated and ascertained damages an amount equal to all the fees, charges, costs and expenses incurred by SilverChef, including legal fees on a full indemnity (solicitor and own client) basis, in enforcing the terms of this Contract in respect of the Rental Facility.
- (h) Upon termination of the Rental (or any Month to Month Rental or holding over) pursuant to **sub-clause 26(f)**, SilverChef is entitled to recover as liquidated and ascertained damages an amount equal to the sum of the following:
  - (i) any amount of money due and owing to SilverChef pursuant to this Contract as at the date of termination but unpaid by the Hirer;
  - (ii) interest on such unpaid amounts at the Interest Rate;
  - (iii) the balance of Rent payable for the Term from the date of termination to the Rental Expiration Date; and
  - (iv) all fees, charges, costs and expenses incurred by SilverChef, including legal fees on a full indemnity (solicitor and own client) basis, in:
    - (1) obtaining or attempting to obtain payment of such unpaid amounts;
    - (2) otherwise enforcing the terms of this Contract;
    - (3) recovering or attempting to recover possession of the Equipment; and
    - (4) arranging for the Equipment to be brought to the state required in **sub-clause 29(c)**.

## 27. RENTAL EXPIRATION AND MONTH TO MONTH RENTAL

- (a) At the Rental Expiration Date, the Rental will convert to a rental on a month to month basis ("**Month to Month Rental**") commencing on the day after the Rental Expiration Date unless:
  - (i) the Rental has been terminated at an earlier date;
  - (ii) the parties have reached an alternate agreement in writing;
  - (iii) a mandatory provision of law operates to prohibit the conversion, in which case the Rental will end at the Rental Expiration Date;
  - (iv) at least four (4) weeks before the Rental Expiration Date the Hirer gives to SilverChef written notice that it requires the Rental to end at the Rental Expiration Date with no conversion to a Month to Month Rental, in which case the Rental will end at the Rental Expiration Date; or
  - (v) by the Rental Expiration Date SilverChef gives the Hirer written notice that it does not agree to a conversion of the Rental to a Month to Month Rental, in which case the Rental will end at the Rental Expiration Date.
- (b) Nothing in this Contract shall oblige SilverChef to agree to a conversion of the Rental to a Month to Month Rental.
- (c) If the Rental is converted to a Month to Month Rental, the Hirer will hire the Equipment from SilverChef under the Month to Month Rental:
  - (i) at a weekly rent equal to the Weekly Rent;
  - (ii) upon the terms and conditions of this Contract applicable to the Rental (with the necessary changes being made to apply to a month to month term) unless otherwise agreed in writing between the parties; and
  - (iii) the Month to Month Rental may be terminated by the parties in accordance with **clauses 26, 28 and 31**.

## 28. TERMINATION OF THE RENTAL AND MONTH TO MONTH RENTAL

- (a) At any time during the Term, the Hirer may terminate the Rental by giving to SilverChef four (4) weeks' prior written notice (effective from the Common Payment Day next falling

after the notice is given) of its intention to do so and upon SilverChef accepting the termination. SilverChef will accept the termination of the Rental when the Hirer has:

- (i) paid the full amount of the Rent payable for the Term up to the Rental Expiration Date (which may be paid off in one or more lump sums before the Rental Expiration Date); and
  - (ii) paid all other amounts payable under this Contract in respect of the Rental.
- (b) At any time during the Month to Month Rental, the Hirer may terminate the Month to Month Rental by giving to SilverChef four (4) weeks' prior written notice (effective from the Common Payment Day next falling after the notice is given) of its intention to do so and upon SilverChef accepting the termination. SilverChef will accept the termination of the Month to Month Rental when the Hirer has:
- (i) paid the full amount of the rent payable for the duration of the Month to Month Rental; and
  - (ii) paid all other amounts payable under this Contract in respect of the Month to Month Rental.
- (c) At any time during the Month to Month Rental, SilverChef may terminate the Month to Month Rental by giving to the Hirer four (4) weeks' prior written notice (effective from the Common Payment Day next falling after the notice is given).

## 29. END OF RENTING

- (a) In this Contract, the “**End of Renting**” means the earliest to occur of:
- (i) the termination of the Rental before the Rental Expiration Date; or
  - (ii) the Rental Expiration Date (if the Rental is not converted to a Month to Month Rental); or
  - (iii) the termination of the Month to Month Rental (if the Rental is converted to a Month to Month Rental).
- (b) Upon the date of the End of Renting, subject to **clause 31**, the Hirer must return the Equipment to SilverChef by:
- (i) delivering the Equipment to SilverChef in the manner and to the place directed or agreed by SilverChef; or
  - (ii) instead of complying with **sub-clause 29(b)(i)**:
    - (1) doing all things necessary to facilitate the collection of the Equipment by SilverChef at the reasonable time required by SilverChef; and
    - (2) paying to SilverChef an amount advised by SilverChef at the relevant time to reimburse it for the collection costs.
- (c) When the Equipment is due to be returned to SilverChef pursuant to this Contract (including by recovery of possession in the event of termination after default), the Equipment must be returned to SilverChef in the order and condition required by **clause 16** and:
- (i) the Equipment must otherwise be free from damage and deficiencies with all accessories and services complete and functioning properly;
  - (ii) all labels and signs (other than those applied by the manufacturer or SilverChef or those required by law) must be removed and the affected area made good; and
  - (iii) the Equipment must be compliant with all statutory, governmental and other legal requirements (including workplace health and safety and environmental legislation) in relation to the continued operation of the Equipment and the Equipment must be capable of being immediately operated by a third party without any repair or replacement required.
- (d) If the Hirer returns the Equipment in a state that is not consistent with the obligations under **sub-clause 29(c)**, SilverChef may undertake the work necessary to bring the Equipment to the required state as the Hirer's agent and all fees, charges, costs and expenses incurred by SilverChef in undertaking the necessary cleaning and repair of the Equipment will be a liquidated debt payable on demand by the Hirer to SilverChef.
- (e) The Hirer may elect to return the Equipment in a state that is not consistent with the obligations under **sub-clause 29(c)** for the purpose of SilverChef undertaking the work

necessary to bring the Equipment to the required state as the Hirer's agent at the Hirer's cost PROVIDED THAT the Hirer must first pay to SilverChef upon demand an amount advised by SilverChef at the relevant time to reimburse it for the fees, charges, costs and expenses of SilverChef undertaking the necessary cleaning and repair of the Equipment.

- (f) If the Equipment is damaged beyond repair at any time so that in SilverChef's reasonable opinion the Hirer cannot comply with **sub-clause 29(c)** and SilverChef cannot rectify that default, then at the time the damage occurs the Hirer must pay to SilverChef the Recovery Value of the Equipment to reimburse SilverChef for its loss of the Equipment by way of liquidated damages and not as a penalty and in addition to any liquidated claim made by SilverChef under **sub-clause 26(h)**. To remove doubt, the Hirer will be responsible for the payment of the Rent for the Term up to the Rental Expiration Date (even if the Equipment is damaged beyond repair before the Rental Expiration Date).
- (g) If the Equipment is lost or stolen at any time so that the Hirer cannot return it to SilverChef when it is due to be returned, then at the time the theft occurs the Hirer must pay to SilverChef the Recovery Value of the Equipment to reimburse SilverChef for its loss of the Equipment by way of liquidated damages and not as a penalty and in addition to any liquidated claim made by SilverChef under **sub-clause 26(h)**. To remove doubt, the Hirer will be responsible for the payment of the Rent for the Term up to the Rental Expiration Date (even if the Equipment is lost or stolen before the Rental Expiration Date).
- (h) If the Hirer does not return the Equipment to SilverChef upon the date of the End of Renting (where **sub-clauses 29(f)** and **(g)** do not apply), then without limiting SilverChef's rights and remedies available under **clause 26**, SilverChef may deem that the Hirer is holding over and if so, the Hirer must continue to pay rent weekly to SilverChef in the amount of the Weekly Rent and to be bound by the terms and conditions of this Contract applicable to the Rental (with necessary changes to apply to a holding over basis) until either the Equipment is returned to SilverChef or SilverChef receives payment of the Recovery Value of the Equipment to reimburse SilverChef for its loss of the Equipment by way of liquidated damages and not as a penalty.

### 30. TERMINATION OF THE RENTAL FACILITY

Where the total of all purchase prices (including GST) paid by SilverChef for all equipment (including any Transferred Equipment) hired by the Hirer under this Contract and any other rental contract entered into by the parties in connection with the Rental Facility, whenever hired (subject to **sub-clause 3(b)**) is less than the Rental Facility Limit, either party may give notice to the other of its intention to terminate the Rental Facility and upon the giving of such notice, the parties agree that:

- (a) if the Rental has not been terminated and the Term has not yet expired, the Rental will end at the Rental Expiration Date (with no conversion to a Month to Month Rental);
- (b) if the Rental has converted to a Month to Month Rental which has not yet been terminated, the party giving the notice under this **clause 30** will be deemed to have at the same time also given the notice under **clause 28** for the purpose of terminating the Month to Month Rental in four (4) weeks' time (effective from the Common Payment Day next falling after the notice is given) unless the parties agree to an alternative timing;
- (c) if the Hirer is holding over, the holding over will end in accordance with this Contract;
- (d) the parties will not enter into any further rental contracts for equipment in connection with the Rental Facility;
- (e) any other current rental contract for the rental of equipment in connection with the Rental Facility shall remain in force until the valid end of that rental; and
- (f) the Rental Facility shall be terminated at the last to occur of:
  - (i) the termination of the Rental;
  - (ii) the expiry of the Term;
  - (iii) the termination of the Month to Month Rental (if any);
  - (iv) the end of the holding over period (if any); or

- (v) the valid end of any remaining rental of equipment under any other rental contract in connection with the Rental Facility.

### 31. OFFER TO PURCHASE

- (a) The Equipment remains the property of SilverChef at all times during the Term and any Month to Month Rental or holding over period subject to a sale of the Equipment by SilverChef.
- (b) SilverChef may advise the Hirer of the Agreed Price of the Equipment as at a particular time upon the Hirer's request at any time during the Term, any Month to Month Rental or holding over period.
- (c) The Hirer may make an offer to purchase the Equipment from SilverChef at any time during the Term, any Month to Month Rental or holding over period PROVIDED THAT the Hirer is not in breach of this Contract at the relevant time, and such offer ("**Offer**") may (but need not) be made:
  - (i) in writing; and
  - (ii) for the Agreed Price of the Equipment.
- (d) SilverChef may (but is not obligated to) consider the Hirer's Offer.
- (e) SilverChef may, in its sole and absolute discretion, accept or decline the Offer. Nothing in this Contract obliges SilverChef to accept the Offer or guarantees SilverChef's acceptance of the Offer, nor do the provisions of this Contract apply to any terms of the Offer (other than those stated in **sub-clause 31(f)**).
- (f) The parties agree that any sale by SilverChef and purchase by the Hirer of the Equipment shall include the following terms:
  - (i) property in and title to the Equipment shall pass free of any encumbrances to the Hirer upon payment of the purchase price agreed by the parties (including GST) ("**Agreed Purchase Price**"), without the necessity for actual or formal delivery or conveyance of the Equipment;
  - (ii) after the Hirer's payment of the Agreed Purchase Price, SilverChef shall notify the Hirer immediately if and once it becomes aware of any reason why property in and title to the Equipment is prevented from passing free of any encumbrances to the Hirer;
  - (iii) SilverChef makes no warranty regarding the state, condition or location of the Equipment before the sale of the Equipment by SilverChef to the Hirer;
  - (iv) the Hirer purchases the Equipment on an "as is, where is" basis in whatever state, condition or location it may be at the time of the sale;
  - (v) to the fullest extent permitted by law, all guarantees, conditions and warranties which might otherwise be implied into the terms of the sale pursuant to this clause by law are excluded; and
  - (vi) if SilverChef is not in possession of the Equipment at the time of the sale, SilverChef is not obliged to deliver possession to the Hirer and the Hirer must itself obtain possession of the Equipment in the manner determined by the Hirer.
- (g) The Rental or Month to Month Rental or holding over (as the case may be) will terminate upon the Hirer's payment of the Agreed Purchase Price and the Hirer will not be required to return the Equipment to SilverChef.
- (h) To remove doubt, the Hirer will:
  - (i) be responsible for the payment of the Rent for the Term up to the Rental Expiration Date unless the Hirer purchases the Equipment before the Rental Expiration Date;
  - (ii) be responsible for the payment of all rent for the duration of any Month to Month Rental or holding over period until termination pursuant to this clause; and
  - (iii) be responsible for the payment of all other amounts payable by the Hirer under this Contract during the Term and the duration of any Month to Month Rental or holding over period until termination pursuant to this clause.

### 32. GOODS AND SERVICES TAX

- (a) If GST is imposed on any supply made by SilverChef pursuant to this Contract, the Hirer must pay, in addition to any GST-exclusive consideration for the supply payable pursuant to this Contract, an additional amount calculated by multiplying the prevailing GST rate by the GST-exclusive consideration. Specifically, the Hirer must pay any GST payable in relation to its hire of the Equipment from SilverChef and any GST payable in relation to the Hirer exercising its right to offer to purchase the Equipment under **clause 31**.
- (b) In relation to GST payable on Rent payments, the Hirer shall pay the GST amount on each payment of Rent at the same time as paying such payment of Rent to SilverChef.
- (c) In relation to GST payable on the sale of the Equipment to the Hirer upon its exercise of the option to purchase such Equipment under **clause 31**, the Hirer shall pay the GST amount at the same time as the purchase price is payable pursuant to this Contract and/or the accepted Offer to purchase.

### 33. MISCELLANEOUS

- (a) **Continuing obligation:** The obligations of the Hirer under this Contract, including the obligation to pay Rent, shall continue notwithstanding any defect, breakdown, accident to, theft of or seizure of the Equipment.
- (b) **Entire agreement:** Except as otherwise expressly agreed in writing, this Contract contains all the terms of the agreement between SilverChef and the Hirer in respect of the Equipment (but not necessarily of the Rental Facility) and all terms, conditions, provisions, arrangements and stipulations (if any) made or referred to between the parties prior to the Date of Contract in respect of the Equipment are (except to the extent that they are embodied in this Contract) of no force or effect whatsoever.
- (c) **Governing law:** This Contract shall be governed by the laws of the State of Queensland, Australia. Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Queensland situated in Brisbane and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Contract; and
  - (ii) waives any objection it may now or in the future have to the venue of any such proceedings and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.
- (d) **Severability:** In the event that any term or condition of this Contract is found to be void or voidable by reason of any statute or rule of law or equity, then that term or condition will be of no force or effect and will be severed from this Contract without affecting the validity and enforceability of the remaining terms and conditions.
- (e) **Amount owing:** A statement in writing made up from the books of SilverChef and signed by an authorised officer of SilverChef evidencing the amount still owing by the Hirer at the date mentioned in such statement is evidence that the amount is due and owing pursuant to this Contract and of all matters set out in the statement.
- (f) **Time of the Essence:** Time shall be deemed to be of the essence in respect of all the Hirer's obligations in this Contract.
- (g) **Waiver:** No breach by the Hirer of any term or condition of this Contract shall be deemed to have been waived or released by SilverChef unless a waiver or release is made in writing under the hand of a director or secretary of SilverChef or an officer of SilverChef whose title includes the word "manager". No waiver by SilverChef of any breach will constitute a waiver of any subsequent, continuing or recurring breach, whether similar to the breach waived or not.
- (h) **Hirer's Warranties:** The Hirer acknowledges, warrants and represents to SilverChef that:
  - (i) where the Hirer is:
    - (1) an individual, the Hirer has full power and capacity to enter into and observe and perform the terms and conditions of this Contract; or
    - (2) a company, the Hirer is duly incorporated and validly existing under the law of its State of incorporation and has full power and authority to enter into and observe and perform the terms and conditions of this Contract;

- (ii) all consents and approvals required in order for the Hirer to execute this Contract and to perform and observe every term and condition of this Contract have been obtained and are in full force and effect;
  - (iii) this Contract creates legal, valid and binding obligations on all parties to this Contract;
  - (iv) to the best of the knowledge and belief of the Hirer, no information furnished by the Hirer to SilverChef in connection with this Contract contains any material misstatement of fact or any omission of a material fact;
  - (v) the execution of this Contract does not, and the performance and observance by the Hirer of every term and condition of this Contract will not, violate any relevant law, regulation, agreement or instrument to which the Hirer is a party or by which any of its assets are bound, including, where the Hirer is a company, the constitution of the Hirer;
  - (vi) the Hirer is conducting its business and operations in compliance with all applicable laws and rules and, where the Hirer is a company, its constitution;
  - (vii) the Hirer (whether as a body corporate, individual or trustee of a disclosed or undisclosed trust (including of more than one trust fund)) is capable of complying with **clause 37** and has or will be able to obtain the consent of any existing security holder as required; and
  - (viii) no Event of Default exists and no event has occurred or is continuing which constitutes or might, with the passing of time or giving of notice or both, constitute an Event of Default.
- (i) **Trustee Hirer:** Where the Hirer is acting in its capacity as trustee (or nominee) of a trust fund (including where the Hirer acts as trustee of more than one trust fund) and whether or not such trust has been disclosed to SilverChef, the Hirer acknowledges, warrants and represents to SilverChef that:
- (i) the trust is a valid and subsisting trust as at the Date of Contract and full particulars of the trust were disclosed to SilverChef prior to the execution of this Contract;
  - (ii) all of the powers and discretions conferred on the Hirer as trustee of the trust fund are, at the Date of Contract, capable of being validly exercised by it as trustee of the trust fund (notwithstanding any conflict of interest which may arise for the Hirer as trustee in performing this Contract), no action has been taken to vary or revoke those powers and discretions and the covenants, undertakings and agreements given by the Hirer to SilverChef are so given pursuant to the powers contained in the trust deed;
  - (iii) the Hirer is sole trustee of the trust and no action has been taken to replace the Hirer as such sole trustee and, as sole trustee, the Hirer has full and unfettered power under the trust deed to execute, and perform its obligations under, this Contract on behalf of the trust and all action necessary under the trust deed has been taken to authorise the execution and performance of this Contract;
  - (iv) this Contract is binding upon the Hirer personally and in its capacity as trustee of the trust and nothing contained or implied in this Contract or in any notification given or deemed to be given to SilverChef will prejudice, affect or in any way limit the liability of the Hirer on its own account as hirer under this Contract;
  - (v) this Contract is not affected by the fact that the Hirer is the trustee of the trust or is otherwise a trustee or nominee whether or not disclosed to SilverChef or by any change whatsoever which is made or takes place in the position of the Hirer as such trustee or nominee;
  - (vi) nothing contained or implied in this Contract or in any notification given or deemed to be given to SilverChef by any person will:
    - (1) oblige or require SilverChef to take notice of any actual, contingent or future interest of any person in or under the trust or in respect of any beneficiary or otherwise in regard to any trustee or nominee relationship of the Hirer; or
    - (2) prejudice, affect or limit any rights or remedies conferred by law or in equity upon SilverChef against the Hirer or any present or future beneficiary of the trust or in respect of any beneficiary or any other person referred to in the trust deed or any



- other relevant agreement or claiming any interest under the trust deed or other relevant agreement or otherwise in regard to any trustee or nominee relationship, including all rights to trace, follow or levy execution upon or against all or any assets;
- (vii) SilverChef may exercise all the rights, powers, authorities and discretions conferred by this Contract or implied by law or in equity upon SilverChef and SilverChef will be entitled to full recourse and resort to an indemnity from time to time held by the Hirer as trustee or nominee in the same manner and to the same extent as if the Hirer were the sole unencumbered legal and beneficial owner of its assets;
- (viii) the Hirer considers that this Contract is being executed and entered into as, and all transactions contemplated by this Contract are or will be entered into as, part of the due and proper administration of the trust fund and for the benefit of the beneficiaries of the trust;
- (ix) the Hirer has a right to be fully indemnified out of the trust fund for obligations and liabilities undertaken by the Hirer in its capacity as trustee of the trust fund under this Contract and no action has been taken to limit or restrict that right;
- (x) no default has occurred or, having occurred, is subsisting under the trust deed;
- (xi) no vesting date for the trust fund has been determined; and
- (xii) it will not permit (in so far as it is able to do so), without the prior written consent of SilverChef:
- (1) any re-settlement, appointment, appropriation or distribution of capital of the trust fund;
  - (2) where the trust deed constitutes a unit trust, any issue, transfer or repurchase of units;
  - (3) any retirement or replacement of the Hirer as trustee of the trust fund (whether in addition to, or in substitution for, the Hirer);
  - (4) any amendment of the trust deed;
  - (5) any breach of the trust deed; or
  - (6) any encumbrance, mortgage or charge whatsoever on any of the assets of the trust fund which are encumbered, mortgaged or charged for the benefit of SilverChef.
- (j) **Survival of Warranties:** The warranties and representations set out in **sub-clauses 33(h)** and **33(i)** shall survive the execution of this Contract and will be deemed to be repeated (updated as appropriate) on each Rent payment date under or pursuant to this Contract.
- (k) **Communications:** Any communication (including a notice) under or in connection with this Contract:
- (i) must be in writing;
  - (ii) must be signed by the party making the communication or on its behalf by its solicitor or by any attorney, director, secretary or authorised agent of that party (or in the case of the Hirer, any Authorised Signatory);
  - (iii) must be:
    - (1) delivered, or posted by prepaid post, to the following address:
      - (a) if to SilverChef, to the address as shown in **sub-clause 1(ee)** or as otherwise notified by SilverChef from time to time to the party making the communication; or
      - (b) if to the Hirer, to the address specified in **Item 2** of the Schedule or as otherwise notified by the Hirer from time to time to the party making the communication; or
      - (c) if to the Guarantor (if any), to the address specified for that Guarantor in **Item 3** of the Schedule or as otherwise notified by that Guarantor from time to time to the party making the communication; or
    - (2) sent by facsimile to the facsimile number of the addressee as notified by that party to the other party from time to time; or

- (3) sent by email or other means of Electronic Communication to the email address, other electronic address or number of the addressee as notified by that party to the other party from time to time;
- (iv) will be deemed to be received by the addressee:
  - (1) (in the case of delivery) on delivery at the address of the addressee, unless that delivery is made on a day that is not a Business Day or after 5:00pm on a Business Day, when that communication will be deemed to be received at 9:00am on the next Business Day;
  - (2) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Australia and on the fifth Business Day after the date of posting to an address outside Australia;
  - (3) (in the case of facsimile) at the local time (in the place of receipt of that facsimile) which then equates to the time at which that facsimile is sent as shown on the transmission report which is produced by the machine from which that facsimile is sent and which confirms transmission of that facsimile in its entirety, unless the local time is not a Business Day or is after 5:00pm on a Business Day, when that communication will be deemed to be received at 9:00am on the next Business Day; or
  - (4) (in the case of email or other Electronic Communication):
    - (a) at the time when the electronic communication becomes capable of being retrieved by the addressee at the electronic address or number designated by the addressee, unless that time is not a Business Day or is after 5:00pm on a Business Day (in the place of receipt), when that communication will be deemed to be received at 9:00am on the next Business Day; and
    - (b) at the place where the addressee has its place of business, which is either:
      - (i) the location indicated by the addressee as its place of business; or
      - (ii) if no place of business is indicated by the addressee and it has only one place of business, that place of business; or
      - (iii) if no place of business is indicated by the addressee and it has more than one place of business, the addressee's place of business with the closest relationship to the underlying transaction having regard to the circumstances known to or contemplated by the parties at any time or otherwise the addressee's principal place of business; or
      - (iv) if the addressee is an individual with no place of business, the place of the addressee's habitual residence; and
- (v) in the case of email or other Electronic Communication (but not facsimile), will be deemed to be dispatched by the sender:
  - (1) at the time when the electronic communication leaves an information system under the control of the sender or if it has not left such an information system, the time when the electronic communication is received by the addressee; and
  - (2) at the place where the sender has its place of business, which is either:
    - (a) the location indicated by the sender as its place of business; or
    - (b) if no place of business is indicated by the sender and it has only one place of business, that place of business; or
    - (c) if no place of business is indicated by the sender and it has more than one place of business, the sender's place of business with the closest relationship to the underlying transaction having regard to the circumstances known to or contemplated by the parties at any time or otherwise the sender's principal place of business; or
    - (d) if the sender is an individual with no place of business, the place of the sender's habitual residence.
- (l) **Addresses:** The Hirer and any Guarantor must promptly notify SilverChef of any changes in their respective addresses to which communications may to be sent by SilverChef (including any change of email addresses).

- (m) **Communications by SilverChef:** SilverChef's preferred method of communication is by Electronic Communication. Notwithstanding **sub-clause 33(k)**, SilverChef may make information available at its website for retrieval by the Hirer and/or any Guarantor and notify the Hirer and/or any Guarantor by Electronic Communication or otherwise that the information is available for retrieval and in that case, the Hirer and any Guarantor acknowledge they are each responsible for:
  - (i) accessing and retrieving the relevant information promptly; and
  - (ii) for the installation, maintenance and operation, at their own cost, of their own computers, internet access, browsers, software, printers and other devices necessary to download and print or save any information they wish to retain.
- (n) **Schedule Variation:** Notwithstanding **sub-clause 35(b)**, the parties agree that SilverChef may from time to time review and vary the items in the Schedule PROVIDED THAT notice is given to the Hirer.
- (o) **Consents:** Where any provision of this Contract requires SilverChef to consent, SilverChef will act reasonably in determining to give such consent. SilverChef may impose reasonable conditions on any such consent and the Hirer must comply with such conditions.

#### **34. FACSIMILE OR ELECTRONIC COPIES, COUNTERPARTS AND ELECTRONIC COMMUNICATION**

- (a) A reference to the parties in this **clause 34** includes any Guarantor.
- (b) This Contract may be signed by any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.
- (c) This Contract may be entered into by the parties:
  - (i) upon a party signing the Rental Contract & Tax Invoice which has been signed by another party (or a photocopy, facsimile or email copy of it) and transmitting a facsimile or email copy of that document to the other party; or
  - (ii) by means of Electronic Communication, including by a party signing the Rental Contract & Tax Invoice by way of an electronic signature, as and in the manner permitted by law.
- (d) For the purposes of the *Electronic Transactions Act 1999 (Cth)* and the *Electronic Transactions (Queensland) Act 2001* ("**Electronic Transactions Laws**"), each party consents as follows:
  - (i) where a signature of another party is required to be given to a party ("**the receiving party**") for the formation or performance of this Contract, the receiving party consents to the requirement being met by way of the use of an Electronic Communication pursuant to the Electronic Transactions Laws;
  - (ii) where information is required or permitted to be given by another party to a party ("**the receiving party**") in relation to this Contract (including any notice), the receiving party consents to the information being given by an Electronic Communication; and
  - (iii) where a document is required or permitted to be produced by another party to a party ("**the receiving party**") in relation to this Contract (including any notice), the receiving party consents to the production, by means of an Electronic Communication, of an electronic form of a document, unless and until the receiving party withdraws its consent by notice in writing to each other party.
- (e) To remove doubt, where an Authorised Signatory acts on behalf of the Hirer:
  - (i) SilverChef consents to:
    - (1) being given the signature of an Authorised Signatory by Electronic Communication when required;
    - (2) being given information from an Authorised Signatory by Electronic Communication when required or permitted; and

- (3) receiving an electronic form of a document from an Authorised Signatory by Electronic Communication when required or permitted.
- (ii) Where an Authorised Signatory has been authorised by the Hirer under **clause 23** and the Hirer has not withdrawn its consent as set out in **sub-clause 34(d)**, the Authorised Signatory is deemed to have consented to receiving Electronic Communications as set out in **sub-clause 34(d)** unless and until it or the Hirer withdraws such consent by notice in writing to the parties.

### 35. SPECIAL CONDITIONS AND VARIATIONS

- (a) One or more special conditions (which may vary these Standard Terms and Conditions) ("**Special Conditions**") may be annexed to the Rental Contract & Tax Invoice and if so, will form part of it.
- (b) This Contract will only be varied or amended after the Date of Contract by a document in writing duly executed by the parties.

### 36. PPS

- (a) The Hirer and any Guarantor:
  - (i) acknowledge this Agreement is a Security Agreement for the purposes of the *PPS Act*;
  - (ii) consent to the Owner registering its security interest on the PPSR;
  - (iii) consent to the Owner applying any monies received, firstly, against the Owner's costs and disbursements in recovering such monies on a full indemnity basis, secondly against any interest accrued and finally against any amount due; and
  - (iv) the Hirer agrees to the debiting of its account with the Owner of the cost of registration of the Owner's security interest and all other associated costs with perfection and enforcement of such security interest on a full indemnity basis.
- (b) So far as permitted by Section 107 of the *PPS Act*, the Hirer will have no rights under Sections 114, 120 and 113 of the *PPS Act* including the right to receive any notices. The Hirer waives its rights to receive a verification statement in respect of any financing statement or financing change statement registered by the Owner. The Hirer agrees to the Owner exercising its rights under Sections 109 and 120 concurrently and to the Owner retaining any repossessed equipment immediately so that the Owner's rights under Section 123 of the *PPS Act* shall become effective immediately upon repossession.
- (c) The Hirer agrees that repossession and retention of the equipment under Sections 120-123 will only satisfy so much of the Hirer's debt to the Owner at the date of repossession and the repossession and retention will immediately extinguish any rights and/or interest the Hirer has in the equipment.

### 37. GUARANTEE

- (a) This clause applies if there is one or more persons specified as Guarantor in the Schedule.
- (b) In consideration of SilverChef, at the request of the Guarantor, hiring out the Equipment to the Hirer upon the terms and conditions contained in this Contract, the Guarantor guarantees to SilverChef:
  - (i) the due and punctual payment by the Hirer of the Rent in accordance with the terms of this Contract;
  - (ii) the due and punctual payment by the Hirer of every other amount payable by the Hirer under this Contract; and
  - (iii) the performance and observance by the Hirer of all the terms and conditions on the part of the Hirer under this Contract, ("**Guaranteed Obligations**").
- (c) The Guaranteed Obligations continue until all the Rent and other amounts payable pursuant to this Contract have been paid and until all other terms and conditions on the part of the Hirer under this Contract have been performed, observed and satisfied and

- the Guaranteed Obligations shall not be avoided and the Guarantor shall not be released nor discharged from this guarantee by:
- (i) the granting of any time concession or indulgence by SilverChef;
  - (ii) the making of any composition with SilverChef;
  - (iii) SilverChef agreeing to or refusing to agree to any consent requested by the Hirer under this Contract;
  - (iv) the avoidance (by statute or for any other reason whatsoever) of any payment due to SilverChef by or on behalf of the Hirer;
  - (v) any moratorium arising from any statute or order of any court or any other stay or suspension of all or any of the rights and remedies of SilverChef;
  - (vi) the waiver of any breach or default of the Hirer by SilverChef;
  - (vii) the neglect or forbearance of SilverChef to enforce the terms and conditions of this Contract or of this guarantee;
  - (viii) the release or discharge by SilverChef of any other Guarantor;
  - (ix) any assignment of the rights of SilverChef under this Contract; or
  - (x) any other fact, matter, act or thing.
- (d) In the event that this Contract becomes unenforceable by SilverChef against the Hirer by reason of any legal disability, this guarantee shall be construed as an indemnity and the Guarantor hereby agrees to indemnify and to continue to indemnify SilverChef in respect of every failure of the Hirer to pay the Rent and other amounts payable in accordance with the terms and conditions of this Contract to the intent that the Guarantor shall pay such Rent and other amounts upon demand being made by SilverChef and the Guarantor further indemnifies SilverChef in respect of every failure of the Hirer to observe and perform all other terms and conditions contained in this Contract.
- (e) The indemnity in **sub-clause 37(d)** shall extend to all losses, damages, costs (including legal), expenses and all other liabilities which may be incurred by SilverChef in connection with any matter contained in this Contract or by reason of any breach, failure or default by the Hirer in performing or observing all the terms and conditions on the part of the Hirer under this Contract.
- (f) All dividends, compositions and payments received by SilverChef from the Hirer or from the Hirer's estate, whether in bankruptcy, liquidation or otherwise, must be taken and applied by SilverChef as payments without there being any deduction in respect of any claim arising under this guarantee. The Guarantor's right to be subrogated to SilverChef in respect of this guarantee does not arise until SilverChef has received the full amount of all of SilverChef's claims against the Hirer.
- (g) This guarantee is enforceable against the Guarantor notwithstanding that any negotiable or other securities referred to in this guarantee, or to which it extends or is applicable, are outstanding or in circulation at the time of proceedings taken against the Guarantor under this guarantee.
- (h) No changes in the constitution of SilverChef or the Hirer can impair or discharge the Guarantor's liability under this guarantee.
- (i) In order to give effect to this guarantee, the Guarantor declares that SilverChef is at liberty to act as though the Guarantor were the Hirer (within the limits of this guarantee) and the Guarantor waives all and any of its rights as guarantor which may at any time be inconsistent with any of the foregoing provisions regardless of whether any demand, written or otherwise, has been made upon the Hirer to pay the amounts owing under this Contract. The Guarantor will not be entitled to call upon SilverChef to establish that the Hirer is in default under this Contract and the amounts owing will be payable unless the Guarantor establishes that no default has occurred under this Contract.
- (j) The Hirer and the Guarantor expressly authorise and permit SilverChef to obtain as often as SilverChef so requires any statement of account and/or payout figure from any mortgagee or security holder to enable the enforcement by SilverChef of any order, judgment or right under this Contract.

- (k) This guarantee binds each of the persons executing it as Guarantor notwithstanding that one or more of them may not execute or may not be bound by this guarantee or may subsequently execute this guarantee.
- (l) This guarantee will continue to be effective or will be reinstated, as the case may be, if at any time the whole or any part of any payment or satisfaction of the whole or any part of any of the Guaranteed Obligations:
  - (i) is avoided by the operation of any law; or
  - (ii) must be repaid or restored by SilverChef or any other recipient of that payment, or beneficiary of that satisfaction, to the Hirer or Guarantor by reason of preference or for any other reason whatever,and that payment or satisfaction is deemed not to have discharged any of the Guaranteed Obligations or part of them, as if that payment or satisfaction had not been made.

### 38. CAVEAT/MORTGAGE AND CROSS SECURITY WITH RELATED CONTRACTS

- (a) The Hirer and each Guarantor (if any) charge all their property, both real and personal, in favour of SilverChef as security for payment of all amounts now or in the future payable to SilverChef under this Contract and any Related Contract that the Hirer and/or a Guarantor (if any) is a party to.
- (b) The Hirer and each Guarantor (if any) acknowledge and agree that the charge given in **sub-clause 38(a)** of this Contract charges all property, real and personal, and any interest in that property. It includes any property or interest that is:
  - (i) presently held or acquired in the future; or
  - (ii) held in its own right or as trustee of any trust.
- (c) The charge given in **sub-clause 38(a)** of this Contract also secures amounts owed to SilverChef under any Related Contract and is a cross security. The effect of this is that the charge granted to SilverChef under this Contract secures, and the person that grants the charge is liable to SilverChef for, any money that the Hirer or a Guarantor (if any) may from time to time owe to SilverChef under a Related Contract.
- (d) If requested by SilverChef, the Hirer and the Guarantor (if any) must, at their own expense, execute and deliver to SilverChef:
  - (i) a consent to caveat or other like instrument under the real property legislation of any jurisdiction in the form prepared by SilverChef or its solicitors over any or all of the Hirer's and the Guarantor's property;
  - (ii) a mortgage or charge or other like instrument that is registrable on the title of any real property under the real property legislation of any jurisdiction over any or all of the Hirer's and the Guarantor's (if any) property, in a form and containing the terms and conditions approved by SilverChef (acting reasonably); and
  - (iii) any document required by SilverChef in order for SilverChef to register or perfect any security interest granted to it under this Contract on any personal property securities register of any jurisdiction.
- (e) A certificate or other document provided by SilverChef, or its representative, stating an amount owing to SilverChef as at a particular date under this Contract is sufficient evidence of the amount owing against the Hirer and each Guarantor (if any) unless proved incorrect. If requested, SilverChef can provide a statement of debits and credits that show how the amount owing to SilverChef under this Contract has been determined.
- (f) The Hirer and each Guarantor (if any) agree to pay to SilverChef all legal costs which SilverChef incurs in giving effect to this **clause 38**.

### 39. POWER OF ATTORNEY

- (a) For valuable consideration and by way of security for the interest of SilverChef in the Equipment and for the performance of the obligations owed by the Hirer and the Guarantor (if any) to SilverChef under this Contract, the Hirer and the Guarantor (if any) irrevocably appoint jointly and each of them severally:
  - (i) SilverChef; and

- (ii) any director for the time being of SilverChef; and
- (iii) any secretary for the time being of SilverChef; and
- (iv) any officer or attorney for the time being of SilverChef who has been authorised by the board of SilverChef,

to be the attorney or attorneys of the Hirer and the Guarantor to:

- (v) do all acts and things which the Hirer or the Guarantor is obliged to do or which SilverChef is empowered or authorised to do under this Contract including to execute and sign any of the instruments referred to in **sub-clause 38(c)** and to procure such instruments to be registered; and
  - (vi) from time to time appoint and revoke a substitute or substitutes, and the Hirer and the Guarantor (if any) agree to ratify and confirm all and whatever the attorney or attorneys or any substitute or substitutes lawfully do or cause to be done for that purpose. The attorney or attorneys may act irrespective of any conflict of interest and/or duty that may arise.
- (b) The Hirer and the Guarantor (if any) agree this power of attorney is irrevocable and remains in full force and effect until the obligations owed by the Hirer and the Guarantor to SilverChef under this Contract are discharged.
  - (c) Upon the exercise of any power or authority contained or implied in this Contract, including the power conferred on SilverChef by **sub-clause 39(a)**, no person dealing with SilverChef or any attorney appointed under this Contract shall be bound to inquire:
    - (i) whether any event of default has occurred;
    - (ii) whether this Contract has been repudiated by the Hirer and such repudiation accepted by SilverChef;
    - (iii) as to the due appointment of any attorney; or
    - (iv) otherwise as to the propriety or regularity of the exercise of any power or authority under this Contract.

No such person shall be affected by notice, express or otherwise, that any such exercise is unnecessary or improper. Notwithstanding any irregularity or impropriety in the power or authority, its exercise shall as regards to the protection of other persons be deemed authorised by that power and authority and shall be valid and effectual accordingly.

- (d) If requested by SilverChef, the Hirer and the Guarantor must, at their own expense, promptly execute and sign (not by way of electronic communication) before a qualified witness and deliver to SilverChef a power of attorney form prepared by SilverChef containing the provisions of this **clause 39**.
- (e) The Hirer and the Guarantor agree to pay to SilverChef all legal costs on a full indemnity (solicitor and own client) basis which SilverChef incurs in giving effect to this **clause 39**.

#### 40. PRIVACY, CALL RECORDING AND CREDIT INFORMATION

- (a) The Hirer acknowledges that SilverChef may collect, use and disclose 'personal information' in accordance with SilverChef's Privacy Policy (as amended from time to time), including by providing personal information to third parties such as dealers and credit reporting agencies. SilverChef's Privacy Policy can be found at <https://www.silverchef.com.au/privacy-policy>. The Hirer also acknowledges that SilverChef may collect, use and disclose credit information in accordance with SilverChef's Credit Reporting Policy (available at: <https://www.silverchef.com.au/credit-reporting>) It sets out how to access, seek correction of, and complain about matters relating to, credit information. It also sets out mandatory matters under the Credit Reporting Privacy Code (including about rights to access information and to make requests that information not be used for certain marketing purposes or where you believe you are the victim of fraud).
- (b) The Hirer acknowledges that SilverChef records telephone conversations for quality and training purposes, and the Hirer consents to that recording. The Hirer must inform each of its personnel and procure that each of their personnel provide express consent to

- SilverChef for the recording (in the form required by SilverChef from time to time) before the relevant personnel participate in telephone calls with SilverChef.
- (c) The Hirer and the Guarantor (if any) represent and warrant that all credit and financial information submitted to SilverChef prior to entering into this Contract or at any time during the currency of this Contract, is and will be true and correct.
  - (d) The Hirer and the Guarantor acknowledge that pursuant to the *Privacy Act 1988* (“**the Act**”) at the time of or before acquiring personal information of the Hirer and/or the Guarantor, SilverChef has informed the Hirer and/or the Guarantor that the information might be disclosed to a credit reporting body. The information which may be given to an agency includes:
    - (i) identity particulars, including name, gender and date of birth, current and two previous addresses, current or last known employer and driver’s licence number;
    - (ii) the fact that the Hirer has applied for credit under this Contract or that the Guarantor (if any) applied to be accepted as guarantor and the extent of its liability;
    - (iii) the fact that SilverChef is a current credit provider to the Hirer;
    - (iv) repayment history information;
    - (v) in specific circumstances, default information;
    - (vi) advice that payments are no longer overdue and the date on which overdue payments were made;;
    - (vii) if cheques drawn by the Hirer or the Guarantor (if any) have been dishonoured more than once;
    - (viii) in specified circumstances where in the opinion of SilverChef the Hirer has committed a serious credit infringement, that such an infringement has occurred; and
    - (ix) that credit provided to the Hirer by SilverChef has been paid or otherwise discharged.
  - (e) The Hirer and the Guarantor (if any) hereby consent and give SilverChef the authority to obtain from a credit reporting body a credit report containing personal information about the Hirer or the Guarantor.
  - (f) The Hirer and the Guarantor (if any) understand that the information obtained pursuant to **sub-clause 40(e)** may be used for the following purposes:
    - (i) to notify other credit providers of the default by the Hirer or the Guarantor;
    - (ii) to exchange information with other credit providers as to the status of this Contract where the Hirer or the Guarantor is in default of other agreements of credit providers, provided that the other credit providers have an Australian link;
    - (iii) to other persons for the purpose of that person deciding whether to act as guarantor or offer property as security for the credit, provided that person has an Australian link; and
    - (iv) to assess the Hirer’s or any Guarantor’s creditworthiness.
  - (g) SilverChef uses Equifax Pty Ltd. Their contact details and credit reporting policies are available at [www.equifax.com.au](http://www.equifax.com.au).
  - (h) SilverChef may disclose your credit information to a third party overseas. That party may be in New Zealand, Canada or the USA.



# Privacy Policy

SilverChef's commitment to its contractors, customers, shareholders and the community is spelled out in the company's Privacy Policy.

SilverChef is committed to the protection of your personal information. This Privacy Policy applies to Silver Chef Rentals Pty Ltd and each of its subsidiaries, and the expressions "SilverChef", "we", "us" and "our" are a reference, collectively and individually, to Silver Chef Rentals Pty Ltd and each of its subsidiaries.

Our Privacy Policy contains the following important information:

- Australian Privacy Principles
- Collection of your personal information
- How we use and disclose your personal information
- Security of your personal information
- How to access, correct or update your personal information
- How to contact us
- Internet privacy

## Australian Privacy Principles

We are bound by the Australian Privacy Principles ("APPs") under the Commonwealth Privacy Act 1998 ("Privacy Act"). This policy explains how we handle personal information in accordance with the APPs.

The APPs and this policy do not apply to our acts and practices directly related to records about our current or former employees and their employment relationship with us. The expression "personal information" is used in this statement to refer to information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether recorded in material form or not.

Our separate credit reporting policy sets out how we deal with credit-related information.

## Collection of your personal information

We collect personal information so that we can conduct our business.

We collect a broad range of personal information about our customers, prospective customers, agents, dealers, contractors, suppliers, service providers and employees.

The types of personal information that we collect from you will depend on how you interact with us. For example, your personal information will be collected when you purchase products, fill in an application form or send us a letter and it may be collected when you visit this website.

This information may include, but is not limited to, names and contact details, date of birth, place or work, credit history, credit card or bank account numbers and other financial details.

When we collect personal information directly from you, we will take reasonable steps at or before the time of collection to ensure that you are aware of certain key matters, such as the purposes for which we are collecting the information, the organisations (or types of organisations) to which we would normally disclose information of that kind, the fact that you are able to access the information and how to contact us (or example, where personal

information is collected on a form, we will generally include a written privacy statement on the form which sets out these details).

We will collect your personal information directly from you where it is reasonable and practicable to do so. Where we collect information about you from a third party, we will still take reasonable steps to ensure that you are made aware of the details set out above.

If you do not provide the personal information we request, we may not be able to provide our services to you, or may not be able to provide the level of service we usually provide.

### **How we use and disclose personal information**

The personal information that you provide to us during interaction on this site, and in other interactions between us, is used to provide you with better service for the supply of our products and services to you. For example, the information we gather from your use of this web site enables us to provide more personalised products and services that are tailored to your needs.

We will not sell, rent or trade your personal information without your consent.

We will only use and disclose information about you for the purpose for which you gave us that information. We may disclose personal information about you to third party services providers who assist us in operating our business (and these service providers may not be required to comply with our privacy policy), our dealers and related bodies corporate, finance partners such as InKind Cards Pty Ltd, credit providers and credit reporting bodies, credit remediation providers, third party call centres, our professional advisors and government and regulatory agencies. If you are operating a business under a franchise, we may also disclose personal information about you (including your location, financial performance and the details about your agreement(s) with us) to your franchisor for the purpose of discussing your performance under your agreement with us or enforcing your contractual obligations. We will take reasonable steps to ensure that such franchisors handle your personal information in accordance with our privacy policy.

We may use, or allow our dealers to use, your personal information for the purposes of direct marketing or promoting our services. You may ask us not to use your information in this way.

We may also use and disclose, or allow our dealers to use, personal information about you for a purpose (the "secondary purpose") other than the main purpose for which you gave us the information (the "primary purpose") where:

- You would reasonably expect us to use or disclose the personal information for that secondary purpose and that secondary purpose is related to the primary purpose for which we collected the information (and directly related in the case of sensitive information);
- You have given us your consent for the personal information to be used or disclosed for the secondary purpose.
- Where there are reasonable grounds to believe that use or disclosure is necessary to prevent a threat to life or health;
- Where we suspect that unlawful activity is or has been engaged in and we use or disclose the personal information to investigate the suspected unlawful activity; or
- The use or disclosure is authorised by law or reasonably necessary to enforce the law.

We may disclose your personal information to third party service providers who are based overseas, for the purposes set out above. Presently, the recipients may be in the USA, and in South East Asia (including Malaysia).

#### **Security of your personal information**

We will take all reasonable steps to ensure that all personal information we collect, use or disclose is stored in a secure environment accessed only by authorised persons.

We will take reasonable steps to destroy or de-identify personal information when it is no longer required for the purposes for which we collected it or for legal requirements.

We will properly dispose of all paper files, letters and any other hard copy documents that contain personal information that is no longer required. All information stored in electronic form that is no longer needed will be deleted from our systems. While SilverChef employs advanced data encryption technology when interfacing with its customers, suppliers and other partners, users should be aware that there is a residual risk in transmitting any data electronically. This risk is inherent in all Internet dealings.

#### **How to access, correct or update your information**

We will take all reasonable steps to ensure that all information we collect, use or disclose is accurate, complete and up-to-date. Please contact us if your details change or if you believe the information we have about you is not accurate or complete.

We will, on request, provide you with reasonable opportunity to access your personal information and to request that it be corrected or updated within a reasonable time of the request being made. A fee may apply to such access (but not to the making of the request or for correcting the personal information). Exceptions to your access rights include:

- Where providing access will pose a serious threat to the life or health or any individual or pose an unreasonable impact on the privacy of an individual;
- Your request for access is frivolous or vexatious;
- Where the information relates to existing legal proceedings between SilverChef and you and the information would not be discoverable in the process of those legal proceedings; or
- Where providing access would be unlawful, may prejudice an investigation of possible unlawful activity, may prejudice enforcement of laws, or denying access is specifically authorised by law.

In some circumstances we are permitted to refuse to give access or to correct your personal information. If this occurs, we will provide you written reasons (unless it would be unreasonable to give reasons) and if required, advise you of your right to complain.

#### **Queries and Complaints**

If you have an access request or if you have any questions or complaints about the manner in which your personal information has been collected or handled by us, you can contact us to discuss as follows:

Contact: The Privacy Officer

Postal address: PO Box 1760 Milton BC QLD 4064

Email address: [privacy@silverchef.com.au](mailto:privacy@silverchef.com.au)

Telephone: 1800 119 687

Fax: 07 3335 3399

If you wish to make a complaint, we will acknowledge the complaint in writing within 7 days of you contacting the Privacy Officer. We may request the complaint be made in writing. We will then investigate the complaint and consult with third parties we consider it necessary to consult

with. We will endeavor to fully investigate your complaint and provide you our decision within 30 days from the date of your complaint. Where we are unable to provide a decision regarding your complaint within 30 days we will communicate this to you along with the reason for the delay and the new timeframe for resolving the complaint.

If you are not satisfied with the outcome of any investigation you may request an independent review by an Executive of SilverChef.

### **Internet privacy**

In addition to the provisions of the SilverChef Privacy Policy, this section further explains the management of personal information collected through your use of the SilverChef website. When you use this website our Internet Service Provider (ISP) may make a record of your visit and log your server address, your domain name, the date, time and duration of your visit, the pages and documents you accessed, the previous site you had accessed (ie the referring url) and the type of browser you are using. This information is collected for statistical purposes only, and SilverChef will not make any attempt to identify users according to their browsing activity.

In the unlikely event of an investigation, a law enforcement agency or other government agency may exercise its legal authority to inspect our ISP's logs.

It is also possible that your ISP is logging your activity while you visit our site. This is obviously beyond the control of SilverChef.

While you are visiting our site we may use cookies. Cookies do not identify you personally, but they may link back to a database record containing personal information about you. You can set your browser to accept or reject cookies, or to notify you whenever cookies are created so that you can decide each time whether to accept them. If you set your browser to reject cookies from our site, your ability to use our site may be limited as certain features may not function correctly, and we may be unable to provide you with the products or services you are seeking. The main purpose of cookies is to identify users (using their IP address) and to facilitate a more personalised web browsing experience.

We also use advertising cookies to collect anonymous data (including users' demographics and interests), which we may provide to third party vendors such as Google or Salesforce as part of our implementation of some advertising activities, including in connection with Google Analytics.

We and our third party vendors use first party cookies or other first party identifiers, and third party cookies or other third party identifiers, to optimise and serve advertisements to you and to analyse your interaction with advertisements.

We expressly exclude any responsibility for any act or omission of these entities and their collection and use of your cookies and other data.

More information about these third parties' privacy practices and how to opt-out of their use of your data can be found at:

- Google Analytics: <https://tools.google.com/dlpage/gaoptout>; and
- Salesforce: [https://www.salesforce.com/company/privacy/full\\_privacy/](https://www.salesforce.com/company/privacy/full_privacy/)

Where you volunteer personal or business information we will not procure information about you via any alternative means while you visit our site.

The SilverChef website contains links to websites of third party providers of goods and services. Such websites should contain their own privacy statements and SilverChef is not responsible for the privacy practices or content of any websites linked to this website.

### **Changes to this Policy**

SilverChef will occasionally update this Privacy Policy to reflect company and customer feedback. SilverChef encourages you to periodically review this Policy to be informed of how SilverChef is protecting your information.

# Credit Reporting Policy and Statement of Notifiable Matters

Silver Chef Rentals Pty Ltd and its related companies (referred to in this document as **we, us or our**) recognise that your privacy is very important and we are committed to protecting the personal information we collect from you. The Privacy Act 1988 (Cth) (**Privacy Act**), Australian Privacy Principles and registered privacy codes govern how we must manage your personal information.

The Credit Reporting Policy applies to all customers and guarantors.

This Credit Reporting Policy sets out how we collect, use, disclose and otherwise manage credit-related information.

Our separate Privacy Policy sets out how we collect, use, disclose and otherwise manage other types of personal information.

Both this Credit Reporting Policy and the Privacy Policy are available at [www.silverchef.com.au](http://www.silverchef.com.au), or on request by contacting us as set out below.

## Collection

### Kinds of information collected

If you apply for credit facilities to support a rental contract, we may collect and hold various information related to your assets and financial position, including income details, expense details, asset values and taxation information.

We also collect and use all types of 'credit information', 'credit eligibility information' and 'CP derived information' (as those terms are defined in the Privacy Act).

Credit information is the information we may collect and give to a credit reporting body such as Equifax Pty Ltd (Equifax). This information includes:

- a) identity details;
- b) the fact that you have applied for credit and the amount;
- c) the fact that we are a credit provider to you;
- d) repayment history information;
- e) in specified circumstances, default information (including payment information if you pay a defaulted amount previously listed with a credit reporting body);
- f) advice that payments are no longer overdue and the date on which overdue payments were made;

- g) in specified circumstances, our opinion that you have committed a serious credit infringement and the fact that credit provided to you has been paid or otherwise discharged (including the date of discharge).

Credit eligibility information is the information credit reporting bodies (like Equifax) provide to us.

CP-derived information means any personal information that is derived from information provided to us by a credit reporting body. This could be, for instance, a credit score.

In this policy, we refer to 'credit-related information' to capture some or all information referred to above (as the context requires).

### **Method of Collection**

We will collect your consumer and commercial credit-related information if you apply for credit from us or our related entities. We will collect this information directly from you in most cases, for instance through telephone calls, through our application forms and processes or via email. We may also collect it from persons acting on your behalf (for instance, dealers, brokers, or financial advisors) or from our related entities.

We also collect your consumer and commercial credit-related information from credit reporting bodies (such as Equifax) or from other credit providers where permitted by the Privacy Act.

## **Purposes of collection, use and disclosure**

We collect and use your consumer and commercial credit-related information to assess your application for commercial credit (or assess your application to be a guarantor in relation to such credit), for securitisation-related purposes, for our internal management purposes that are directly related to the management of commercial credit, including collecting overdue payments, where we reasonably believe that you have committed a serious credit infringement, and where otherwise required or permitted by law.

We may disclose credit-related information about you to:

- a) our related entities, or a person who manages credit, to process an application or manage credit or for related internal management purposes that are directly related to the provision or management of commercial credit;
- b) other persons where we believe on reasonable grounds that you have committed a serious credit infringement;
- c) external dispute resolution providers;
- d) third parties for securitisation purposes;
- e) third parties for the purposes of considering whether to accept an assignment of debt, or to take an interest in the credit provider;

- f) other credit providers where you have consented and where permitted by law;
- g) guarantors or proposed guarantors, where you have consented and where permitted by law;
- h) mortgage insurers;
- i) debt remediation providers (including call centre providers) and debt collectors; and
- j) other persons where required or authorised by law.

We may disclose your credit information to Equifax or other credit reporting bodies as set out in this Credit Reporting Policy from time to time. Details of how to obtain a copy of Equifax's credit reporting policy are set out in the Notifiable Matters section below.

#### **Overseas Disclosures**

We do not presently store credit-related information overseas, but we may disclose credit-related information to credit reporting bodies and other parties overseas. Those parties are located in the USA and South East Asia (including Malaysia). We will take reasonable steps to ensure that the recipient does not breach the APPs. Reasonable steps may include contractual arrangements; assessment of the security measures of the overseas recipient; or an appropriate indemnity to ensure the APP entity is protected.

## **Access and Correction**

You may access the credit information we hold about you, by making a written request. We will respond to your request within a reasonable period. In relation to credit eligibility information specifically, we will provide access within 30 days unless unusual circumstances apply.

Except where prohibited by the Privacy Act and Credit Reporting Privacy Code, we may charge you a reasonable fee for providing access to your personal information (but not for making a request for access or for correcting the information).

We may decline a request for access in circumstances prescribed by the Privacy Act, and if we do, we will provide you with a written notice that sets out the reasons for the refusal (unless it would be unreasonable to provide those reasons) and notify you that you may make a complaint to the Information Commissioner.

To ensure you have access to the most up-to-date information, you should also request access to credit reporting information held by credit reporting bodies.

#### **Correction**

You can ask us to correct your credit-related information. If we are satisfied that your information is inaccurate, out of date, incomplete, irrelevant or misleading, we will take reasonable steps to update your information within 30 days (or such longer period you agree to in writing) and will provide written notice of that correction to you within 5 business days.



If we form the view that we will not be able to resolve your correction request within the 30-day time period, we will write to you seeking an extension of time.

### **Security of your credit information**

We will take all reasonable steps to ensure that all credit information we collect, use or disclose is stored in a secure environment accessed only by authorised persons.

We will take reasonable steps to destroy or de-identify credit information when it is no longer required for the purposes for which we collected it or for legal requirements.

We will properly dispose of all paper files, letters and any other hard copy documents that contain credit information that is no longer required. All information stored in electronic form that is no longer needed will be deleted from our systems. While SilverChef employs advanced data encryption technology when interfacing with its customers, suppliers and other partners, users should be aware that there is a residual risk in transmitting any data electronically. This risk is inherent in all Internet dealings.

## **Issues and Complaints**

If you have an issue in relation to your Contract with us, please contact us on 1800 119 687 and speak to one of our team members. If we are unable to satisfactorily address your issue, then please contact the Customer Resolution Officer as follows:

Contact: The Customer Resolution Officer

Postal address: PO Box 1760 Milton BC QLD 4064

Email address: [privacy@silverchef.com.au](mailto:privacy@silverchef.com.au)

Telephone: 1800 119 687

Facsimile: 07 3335 3399

Within 7 days of contacting the Customer Resolution Officer we will acknowledge the complaint in writing. We may request the complaint be made in writing. We will then investigate the complaint and consult with third parties we consider it necessary to consult with. We will endeavor to fully investigate your complaint and provide you our decision within 30 days from the date of your complaint. Where we are unable to provide a decision regarding your complaint within 30 days we will communicate this to you along with the reason for the delay and the new timeframe for resolving the complaint.

If you are not satisfied with the outcome you may request an independent review by an Executive of SilverChef.

## Statement of Notifiable Matters under the Credit Reporting Privacy Code

Under the Credit Reporting Privacy Code, there are several 'notifiable matters' that we are required to disclose to you at or before the time of collecting personal information that is likely to be disclosed to a credit reporting body. Those matters are:

- a) the credit reporting body may include the credit information we provide to it in reports, which it then provides to other credit providers to assist those other credit providers to assess your credit worthiness;
- b) if you commit a serious credit infringement, we may disclose this to a credit reporting body;
- c) you can request a copy of this Credit Reporting Policy by contacting us, or obtain it directly from our website;
- d) you can request a copy of Equifax's credit reporting policy from its website [www.equifax.com.au/privacy](http://www.equifax.com.au/privacy) or by contacting them directly on 188 332 or visiting their website [www.equifax.com.au](http://www.equifax.com.au);
- e) you have the right to access credit information we hold about you, request that we correct the information, and make a complaint, as set out in this Credit Reporting Policy;
- f) you can request a credit reporting body not to use your credit reporting information for the purposes of pre-screening of direct marketing by us; and
- g) you can request a credit reporting body not to use or disclose your credit reporting information if you believe on reasonable grounds that you have been, or are likely to be, the victim of fraud.

You can ask us to provide you a hard copy of this policy (including the Statement of Notifiable Matters).