

**Mary Donald Nominees Pty Ltd (ACN 008 804 368) as trustee for the DJ Maccormick Family Trust  
(ABN 96 126 176 094) trading as**

**GROUND SUPPORT SYSTEMS (AUST)  
CREDIT APPLICATION FOR A BUSINESS ACCOUNT**

**BUSINESS CONTACT INFORMATION**

Trading Name:

Company name (Full Legal Name):

Trust Name:

ABN:

ACN:

Business Type (please tick):     Sole Trader     Partnership     Company     Trust

Phone:

Fax:

E-mail:

Registered company address:

City:

State:

Postcode:

Date business commenced:

**BUSINESS AND CREDIT INFORMATION**

Primary business address:

City:

State:

Postcode:

Accounts Payable Contact :

Telephone:

Fax:

E-mail:

Bank name:

Bank address:

Phone:

City:

State:

Postcode:

Account Name:

BSB No.

Account No.

**BUSINESS/TRADE REFERENCES**

1 Company name:

Address:

Phone:

Fax:

E-mail:

2 Company name:

Address:

Phone:

Fax:

E-mail:

3 Company name:

Address:

Phone:

Fax:

E-mail:

**DIRECTORS**

1. Name:

Date of birth

/

/

Address

2. Name:

Date of birth

/

/

Address

3. Name:

Date of birth

/

/

Address

**CREDIT LIMIT APPLYING FOR**

AMOUNT OF CREDIT REQUIRED PER MONTH: \$

Initial \_\_\_\_\_

Initial \_\_\_\_\_

Initial \_\_\_\_\_

## ACKNOWLEDGEMENT AND AUTHORISATION

1. By signing this application below I/We agree to be bound by the Hire Agreement Terms and Conditions as received with this document and all future amendments.
2. I/We state that the information provided by me/us is accurate, correct and true.
3. In accordance with the *Privacy Act 1988* (Cth), I/We authorize GSS and its related bodies corporate (as defined in the *Corporation Act 2001* (Cth)), to exchange with credit providers, credit reporting agencies and credit providers named as obtained through those agencies, information about me/our personal credit, commercial activities or commercial credit worthiness.
4. I/We confirm that I/We are authorized by the applicant to enter into this contract and bind the applicant to GSS.
5. I/We agree to be bound by your credit term, where accounts are due and payable within thirty (30) days of the end of month of invoice. Credit may be cancelled / suspended without notice if accounts are not paid by the due date. Interest at the rate of the current bank overdraft interest rate plus 2.5% per annum calculated daily will be charged on overdue accounts.
6. I/We will pay GSS any commissions, legal costs or expense paid by GSS to its Mercantile or Collection Agents and/or Lawyers in relation to the collection of any moneys owed to GSS that are not paid within the terms of credit provided.

Signature :

Name :  
 Title:  
 Date:

Signature :

Name :  
 Title:  
 Date:

Initial \_\_\_\_\_

Initial \_\_\_\_\_

Initial \_\_\_\_\_

## GUARANTEE AND INDEMNITY

**To : Mary Donald Nominees Pty Ltd (ACN 008 804 368) as trustee for the DJ Maccormick Family Trust (ABN 96 126 176 094) trading as GROUND SUPPORT SYSTEMS (AUST) and its related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) hereinafter referred to as "GSS"**

**We GUARANTEE** payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer (as named in the "Credit Application" and which forms a part of this document) or any of us arising from any past, present or future dealing with you and any GST applicable thereto,

**WE IDEMNIFY** you against all loss or damage arising from any past, present or future dealing with the Customer or any of us.

**WE AGREE:**

1. That this is a continuing guarantee.
2. That you must pay GSS on demand all the costs, expenses and liabilities GSS incurs in connection with enforcing, attempting to enforce, exercising any power or remedy under, or taking any other action in connection with this guarantee. You agree to provide on a full indemnity basis all:
  - a. administration costs including enforcement charges;
  - b. legal fees (including the costs of GSS's legal fees and expenses)
  - c. advisor's and agent's costs; and
  - d. any transaction covered by this guarantee.
3. That our liability under this guarantee is joint and several and will not be affected, waived or discharged by the reason of any time or indulgences granted by GSS or any variation or replacement of any arrangement with the Customer and,
4. That our liability under this guarantee shall not be affected, waived or discharged by the Customer becoming insolvent or entering into a Deed of Company Arrangement (DOCA) or by GSS voting in favour of or against, or abstaining from voting, in relation to any proposal by the Customer to enter into a DOCA and,
5. That this guarantee becomes binding on such of us that sign this guarantee irrespective of whether or not all intended signatories execute this guarantee and,
6. That GSS is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor and,
7. That this guarantee may only be revoked as to future trading with the Applicant and any notice of revocation may only be given by pre-paid registered mail delivered to **Ground Floor, 200 Adelaide Terrace, Perth, Western Australia 6000** and shall not become effective until the expiration of **14 days** from the date of posting.
8. That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid and,
9. That we sign in both our personal capacity and as trustee of every trust of which we are trustee and,
10. That if the Customer is our subsidiary or any one of us is a director of the Customer, to notify you of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship within 5 days of the date of any such change.

**WE HEREBY CHARGE** in your favour all our estate and interest in any land and in any other assets, whether tangible or intangible, in which we now have any legal or beneficial interest or in which we later acquire any such interest, with payment of all monies owed by the Applicant or any of us and consent to the lodging by GSS of a caveat or caveats which note your interest in that real property.

**WE FURTHER AGREE** that this agreement and any claim or dispute between GSS, the Customer or any of us shall be governed by the law applicable in the State (as defined in the Hire Agreement Terms and Conditions) and submit to the jurisdiction of the appropriate Court nearest the capital city of that State.

**DEFINITIONS:** "We" and "us" means each of the Guarantors jointly and severally. "You" and "your" means **GSS and its associated entities.**

Initial \_\_\_\_\_

Initial \_\_\_\_\_

Initial \_\_\_\_\_

I/We have read and understood this document and have been advised, and given the opportunity, to seek independent legal advice.

DATED this                    day of                    20

Name and signature(s) of Guarantor

1. Signature :.....

2. Signature:.....

Name : .....

Name:.....

Address: .....

Address: .....

.....

.....

Witness' Signature :.....

Witness' Signature :.....

Witness' Name : .....

Witness' Name .....

**Hire Contract Terms and Conditions**

**Notice to all Customer –GSS reserves the right to amend these Hire Contract Terms and Conditions without notice from time to time. If GSS amends these Terms, that change will take effect from the date on which GSS notifies the Customer of those amendments.**

**Interpretation of Words in this Agreement:**

Agreement	Means this document including the Credit Application for a Business Account (if applicable), the Acknowledgement and Authorisation and the Guarantee and Indemnity as set out above, the Hire Schedule and any special terms of credit referred to in the 'Payments' clause below (if applicable).
Commencement	Means the date that the Customer takes possession of the Equipment or, if GSS delivers the Equipment, the time that GSS delivers the Equipment to the Site specified by the Customer.
Customer	Means the applicant described on the front page of this Agreement.
Equipment	Means all goods including but not limited to any kind of equipment, vehicles (including trucks) or trench boxes including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: earthmoving; generation and power distribution; ground equipment and shoring; pumps; traffic management including road barriers, and including all parts and accessories for any of the foregoing, which is hired by GSS to, or at the request of, the Customer, and includes any replacement, alteration or addition to the Equipment.
Force Majeure	Force Majeure means an event beyond a GSS's reasonable control which, by exercise of reasonable diligence and precautions, could not have been prevented or reasonably foreseen by GSS, including any: <ul style="list-style-type: none"> <li>A. act of God, unusually severe weather (including a cyclone/hurricane), earthquake, fire, subsidence, land slide, mud slide, wash-out, explosion, radioactive contamination or natural disaster;</li> <li>B. terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;</li> <li>C. adverse application of any Law or enforcement actions of any court, regulatory body or government agency;</li> <li>D. industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or</li> <li>E. epidemics, quarantine, biological contamination or customs entry and exit restrictions.</li> </ul>
GSS	Means Mary Donald Nominees Pty Ltd (ACN 008 804 368) as trustee for the DJ Maccormick Family Trust (ABN 96 126 176 094) trading as GROUND SUPPORT SYSTEMS (AUST).
Guarantor	Means each person or entity named as a guarantor in the Guarantee and Indemnity as set out above.
Hire Charge	Means the amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.
Hire Period	Means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if agreed in writing by GSS (in its sole discretion). GSS may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.
Hire Schedule	Means a document (including a quote, invoice or equipment receipt docket) which GSS provides to the Customer (and which GSS may require the Customer to sign (or accept in a way GSS requires)) including particulars of the Equipment, the Hire Charges, the expected Hire Period, the address at which the Equipment will be used and such other information as GSS may decide to require.
Insolvency Event	Means, in relation to the Customer or a Guarantor (in each case, <b>relevant party</b> ): <ul style="list-style-type: none"> <li>A. a receiver, receiver and manager, administrator, liquidator, provisional liquidator, or similar officer is appointed to the relevant party or any of its assets or if an application is made to a court for an order to appoint such a person and that application is not permanently stayed, withdrawn or dismissed within 14 days;</li> </ul>

Initial \_\_\_\_\_

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- B. the relevant party enters into, or resolves to enter into, a deed of company arrangement, scheme of arrangement, compromise or composition with any class of creditors;
- C. a resolution is passed or an application to a court is taken or an order is made for the winding up, dissolution, official management or administration of the relevant party;
- D. the relevant party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention not to pay its creditors;
- E. the relevant party is (or states that it is) insolvent or is deemed to be insolvent under the *Corporations Act 2001* (Cth);
- F. the relevant party commits an act of bankruptcy as defined under section 40 of the *Bankruptcy Act 1966* (Cth) or is declared bankrupt;
- G. the relevant party enters into a personal insolvency arrangement or a debt agreement under the *Bankruptcy Act 1966* (Cth); or
- H. anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- Loss** Means any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim), including penalties, fines and interest and including any that are prospective or contingent and any the amount of which for the time being are not ascertained or ascertainable.
- Off Hire Date** Means the date:
- (i) when the Equipment is returned to GSS by the Customer; or
  - (ii) when GSS issues an official off-hire number to the Customer after the Customer contacts the GSS' depot or authorised representative and correctly confirms that the Equipment is no longer required by the Customer and is available for collection.
- Operator** Means a person employed or engaged by GSS to operate the Equipment.
- State** Means the location which the Equipment is installed or used by the Customer.
- Terms and Conditions**
- Hire:** GSS will hire the Equipment to the Customer for the Hire Period, and the Customer agrees to take on hire the Equipment from GSS for the Hire Period, in accordance with the terms and conditions of this Agreement.
- Title:** The Customer has no interest in the Equipment other than as bailee and acknowledges that GSS owns the
- A. Equipment and in all circumstances GSS retains title to the Equipment.
  - B. The Customer must not without GSS's prior written consent:
    - (i) agree, attempt, offer or purport to sell, assign, sublet, lend, grant any security interest in respect of, or otherwise part with or attempt to part with the personal possession of, or otherwise deal with the Equipment; or
    - (ii) remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Equipment, except so as to indicate any permitted replacement, alteration or addition to the same.
- Affixation:** The Customer must not at any time attach, affix, or secure the Equipment upon any property without GSS's prior written consent. Even though the Equipment may be fixed or attached to any place, the parties record their intention that as between themselves, the Equipment is intended to be treated as personal property and not a fixture and GSS can remove it in accordance with its rights under this Agreement.
- Risk and expense:**
- A. Risk in the Equipment passes from GSS to the Customer upon the Customer taking possession of the Equipment.
  - B. The Customer must:
    - (i) use and keep the Equipment; and
    - (ii) comply with its obligations under this Agreement,
    - (iii) at its sole risk and expense.
- Hire Charges:** The Customer must pay the Hire Charges to GSS. The Hire Charges will be calculated on the basis set out in the Hire Schedule. The Hire Charges will apply for the Hire Period and continue until the Off Hire Date.
- Other fees** In addition to the Hire Charges, the Customer must pay:
- A. for any oil, fuel, consumables or materials GSS supplies to the Customer;

- B. the cost (if any) of delivery, collection or installation, as detailed in the Hire Schedule;
- C. charges for the cleaning and repair of the Equipment if the Equipment is not returned in a clean condition and in working order;
- D. any duty, levies, fines, penalties and any other government charges arising out of the Customer’s use of the Equipment;
- E. any charge specified in the Hire Schedule; and
- F. any other amount specified in this Agreement.

**Stand Downs:** If requested by the Customer, GSS may (in its absolute discretion) agree to a stand-down of the Equipment, on terms acceptable to GSS. GSS is not obliged to offer or agree to a stand down of the Equipment.

**Off hire:** If the Hire Schedule specifies that the GSS will pick up the Equipment at the end of the Hire Period, the Customer must notify GSS in writing of the time that the Equipment is available for collection (**Off Hire Notice**). If the Customer gives an Off Hire Notice, then GSS will give the Customer an off hire number with hour meter readings. If the Off Hire Notice is not provided prior to the end of the Hire Period, additional hire Charges may apply..

**Hour Meter:** Hour Meter Readings must be advised in writing to GSS for the duration of the hire.

**Equipment:** The Customer acknowledges that at the start of the Hire Period:

- A. it is satisfied that the Equipment is:
  - (i) safe and fit for the purpose it is to be used for;
  - (ii) in clean condition; and
  - (iii) in good and substantial working order, repair and condition; and
- B. it is aware of the proper use for which the Equipment is designed.

**Damages and repair of Equipment:**

- A. Subject to its daily servicing obligations under subclause A. of the ‘Responsibility’ clause below, the Customer must not undertake, or cause to undertake, any repairs to the Equipment without the prior written consent of GSS.
- B. The Customer must immediately notify GSS if:
  - (i) the Equipment becomes in any way out of order or repair, including but not limited to any problems discovered through the Customer’s daily servicing obligations under the ‘Responsibility’ clause below; or
  - (ii) the Equipment is damaged (howsoever caused),
 and upon such notice the Customer must make arrangements for GSS to assess the Equipment.
- C. GSS will be required to check the Equipment (to establish any unseen damage or disrepair) before the Equipment can be returned to the Customer.
- D. GSS will not be liable for any loss suffered whatsoever by the Customer as a result of any assessment or delay occasioned by it. Any damage or disrepair to the Equipment not assessed by GSS will be charged to the Customer’s account upon return of the Equipment to GSS.
- E. If the Equipment is damaged (for whatever reason), then the Customer must continue to pay the Hire Charge until the Equipment is repaired and returned to the Customer.

**Agreement to Continue:** This Agreement will not terminate, nor will the respective obligations of GSS or the Customer or the Guarantor be affected, by reason of:

- A. any defect in or damage to the Equipment or the Equipment’s condition, design, operation or fitness for use; or
- B. any prohibition or interruption of or other restriction against the Customer’s use, operation or possession of the Equipment for any reason whatever, or the interference with that use, operation or possession by any person or entity, including a Force Majuere Event.

**Fuel:** All Equipment is delivered with a full tank of fuel. Any fuel required to refill the tank when the hire ceases will be charged to the Customer’s account.

**Wet Hire** This clause applies to any hire of the Equipment which is specified in the Hire Schedule as a “wet hire” of Equipment by GSS to the Customer together with the provisions of an Operator (**Wet Hire**). The Hire Schedule will specify the additional Hire Charges that apply in respect of a Wet Hire.

If this clause applies:

- A. GSS must:

- B. provide the Customer with an Operator for the Equipment who is authorised and (if applicable) licensed to operate the Equipment. The Customer must notify GSS and the Operator in writing of each officer, representative, employee or agent of the Customer who is authorised to provide directions to the Operator on behalf of the Customer relating to the use of the Equipment (Authorised Person).
- C. The Customer must:
- (i) not direct, allow or permit any person other than the Operator to use or operate the Equipment, unless otherwise agreed by GSS in writing;
  - (ii) only direct the Operator to operate the Equipment in accordance with:
    - (a) recognised methods and standards for goods of their type;
    - (b) all applicable laws, regulations, requirements and rules relating to the Equipment and to its use; and
    - (c) any instructions and recommendations of the manufacturer relating to the Equipment and to its use;
  - (iii) permit the Equipment to be serviced, cleaned, fuelled and otherwise maintained in good and substantial repair and condition [(which will be carried out by, and at the expense of, GSS at a time agreed with the Customer)];
  - (iv) ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Equipment;
  - (v) ensure that all persons assisting the Operator wear appropriate protective clothing and any protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by the Operator or GSS.
- D. The Customer acknowledges and agrees that:
- (i) the Operator will operate the Equipment in accordance with the instructions provided by any of the Customer's Authorised Personnel; and
  - (ii) without limiting any other provisions of this agreement, GSS is not liable for any Loss suffered or incurred by the Customer or its officers, employees and agents arising out of the use or operation of the Equipment by the Operator in accordance with instructions provided by the Customer's Authorised Personnel.

For the avoidance of doubt, the other provisions of this Agreement will apply to a Wet Hire.

#### Installation

- A. If the Hire Schedule specifies that GSS will install the Equipment at the Customer's site, then this clause will apply.
- B. If this clause applies, GSS must, without any liability to the Customer, install the Equipment (**Installation**) at the location specified by the Customer (**Installation Location**). The cost of performing an Installation will be in addition to the Hire Fee and as specified by GSS in the Hire Schedule.
- C. The Customer is responsible for:
- (i) ensuring that the Equipment can be Installed in a safe and secure manner, including by ensuring that the selected ground position at the Installation Location is free of any electrical cables, pipes, reticulation devices, other structures or any utility infrastructure; and
  - (ii) ensuring that the Customer has all permits, licenses and authorisations necessary to conduct the Installation at the Installation Location.
- D. The Customer is only entitled to use the Equipment at the Installation Location, unless GSS agrees otherwise.

#### Use of Equipment:

- The Customer must:
- A. only operate and maintain the Equipment in accordance with recognised laws, methods and standards for equipment of its type and only by competent and (where appropriate) properly qualified, trained and licensed personnel and by appropriate methods and standards of operation;
- B. ensure that it and/or the operator of the Equipment (as applicable):
- (i) is the holder of all relevant licenses, permits and/or tickets; and
  - (ii) complies in all respects with all applicable laws, regulations, requirements and rules,
- with respect to the use, possession, maintenance and safe operation of the Equipment;
- C. not use the Equipment, or cause or permit the Equipment to be used, other than for the purpose for which the Equipment is designed; and



- D. without limiting the generality of this 'Use of Equipment' clause, the Customer must comply in all respects with the instructions and recommendations of GSS relating to the use, possession, maintenance and safe operation of the Equipment.
- Dewatering conditions
- If the Equipment is used for the purposes of moving, pumping or transferring liquid (**Dewatering**), then the following clause applies:
- A. Prior to the commencement of the installation, and during the Hire Period (if required), the Customer must, at its own expense:
- (i) obtain all necessary approvals relating to the installation of the Equipment; the supply and discharge of water; any licence to take water;
  - (ii) conduct all water testing, monitoring, treatment and disposal, and any associated environmental services;
  - (iii) clearly mark, identify and re-locate if required, any in-ground and buried services prior to the commencement of the installation and use of Equipment;
  - (iv) undertake any necessary pre-drilling of well point holes;
  - (v) undertake any excavation, drilling or restoration necessary to ensure that the area for installation of the Equipment is free of any obstruction (including, but not limited to, rubble, road base, concrete, limestone, footpaths and fencing) and is suitable for the operation of the Equipment; and
  - (vi) organise a power connection to the Equipment if connecting from the main power line.
- B. The Customer is responsible for all pumped discharge and all matter relating to the storage and disposal of the discharge.
- C. Without limiting any other provision of this agreement, GSS excludes all liability for, and the Customer releases GSS from all liability for, the use of the Equipment for Dewatering, including liability for damage to all existing, adjacent or surrounding structures on, above or below the ground, including damage caused by subsidence or to utilities or services located on, above or below the ground.
- Responsibility
- THE CUSTOMER IS RESPONSIBLE FOR:
- A. SECURITY of the Equipment (any vandal and/or weather damage caused to the Equipment will be charged to the Customer's account);
  - B. DAILY SERVICING of the Equipment, including but not limited to checking all fluid levels, greasing, air cleaner checks and loose bolts or components and/or fluid leaks;
  - C. the cleanliness and appearance of the Equipment (all cleaning costs are charged to the Customer's account);
  - D. directing and monitoring the operator as to the work done when using the Equipment. Any damage to property caused by the use of the Equipment is the Customer's responsibility; and
  - E. keeping the Equipment in proper and working order and condition, and in good and substantial repair (fair wear and tear excepted), having regard to the ordinary use of the Equipment and the age and condition of the Equipment as at their delivery to the Customer, in accordance with all maintenance instructions provided by GSS (if any).
- Inspection of Equipment:
- A. At all reasonable times upon GSS giving the Customer reasonable notice and without unduly interfering with the Customer's operations, the Customer grants GSS the right to:
- (i) enter with any experts upon or into the place where the Equipment is located;
  - (ii) inspect the state of repair of the Equipment;
  - (iii) observe the use of the Equipment;
  - (iv) inspect any maintenance records in respect of the Equipment;
  - (v) do any act, manner or thing which may be required to be done to give proper effect to the terms of this Agreement or to protect GSS's rights in the Equipment.
- B. In the case of an emergency, in GSS's reasonable opinion, no notice will be required to be given by GSS to the Customer under subclause A. of this clause and the prohibition in subclause A. of this clause on GSS unduly interfering with the Customer's operations does not apply.
- Insurance:
- A. Subject to subclause F of this 'Insurance' clause, the Customer must effect and maintain at all times during the Hire Period the following insurances:
- (i) insurance of the Equipment for its full replacement value against (a) damage or destruction caused by theft or accident of any kind; and (b) any insurable

- risk commonly insured against in regard to equipment of a similar nature to the Equipment: and
- (ii) insurance against all third party risks including liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by law for no less than \$10,000,000.
- B. The insurances required by subclause A. of this 'Insurance' clause must be taken out in the names of GSS and the Customer for their respective rights and interests. The insurances required by subclause A.(i) of this 'Insurance' clause must include a first loss payee clause in favour of GSS.
- C. The Customer must not, without the prior written consent of GSS, permit any reduction in limits or coverage in any insurance policy affecting or relating to the Equipment or this Agreement.
- D. The Customer must promptly deliver to GSS, prior to the Commencement and then on or about each anniversary date of the Commencement, a copy of each certificate of currency in respect of each of the insurances required in subclause A. of this 'Insurance' clause.
- E. The insurance proceeds will be applied at the option of GSS towards replacing or repairing the Equipment or repaying any monies that the Customer owes to GSS under this Agreement.
- Liability:
- A. The Customer is liable to GSS for any loss suffered by GSS and caused by the Customer's failure to meet its responsibilities in accordance with this Agreement. The Customer is also liable to GSS for any costs of repairing the Equipment or loss or damage to the Equipment, howsoever arising, caused during the Hire Period or any extension thereof.
- B. Subject to the other terms of this clause, GSS excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms that are not expressly set out in this Agreement to the maximum extent permitted by law.
- C. Subject to the other terms of this clause, GSS's maximum aggregate liability to the Customer for any loss or damage or injury arising out of or in connection with the performance or non-performance of this Agreement, including any breach by GSS of this Agreement however arising, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by the Customer under this Agreement.
- D. Subject to the other terms of this clause, GSS excludes any liability to the Customer, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Agreement.
- E. Nothing in this Agreement limits or excludes GSS's liability:
- (i) for death or personal injury caused by its negligence or wilful misconduct or that of its employees, agents or subcontractors as applicable;
- (ii) for fraud or fraudulent misrepresentation by it or its employees, agents or subcontractors as applicable; or
- (iii) where liability cannot be limited or excluded by applicable law.
- (iv) GSS will not be liable for any claim under or in relation to or arising out of this Agreement including a breach of any warranty unless:
- (v) the Customer has first made a claim under any insurance policy held by the Customer that may cover that claim; and
- (vi) that claim has been denied in whole or partly by the relevant insurer.
- F. Notwithstanding anything else in this clause, GSS's liability will be reduced to the extent the loss or damage is caused by or contributed to by the Customer, the Customer's employees, agents or contractors, including a failure to provide all requested information in respect of dewatering management plans, acid sulphate soil dewatering management plans or similar.
- G. GSS is not liable in respect of a claim unless the Customer has notified GSS of the claim as soon as practicable after it becomes aware of it.
- H. GSS will not be liable to the Customer for any acts or omissions of any Operator supplied by GSS where that Operator is acting under the Customer's direction and control during the Hire Period and the Customer indemnifies GSS against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded

against GSS and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

Tyres:

Repairing or replacing flat tyres are for the account of the Customer. Excess wear and tear or damaged tyres will be charged to the Customer’s account on a pro rata basis including transport and fittings. The Hire Charge will continue to be charged during any period of time when the Equipment is having its tyres repaired or replaced.

Return Equipment:

- A. Upon the expiry of the Hire Period, or upon earlier termination of this Agreement, the Customer must immediately deliver the Equipment, at the Customer’s cost, to the location directed by GSS in a good serviceable condition and in proper working order and in substantial repair.
- B. If the Equipment is not returned to GSS in a good serviceable condition and in proper working order and in substantial repair, then the Customer must continue to pay the Hire Charge to GSS until GSS repairs the Equipment and the Equipment is available again for hire.
- C. If the Equipment is not returned to GSS as and when required in accordance with subclause A. above, then at the Customer's cost:
  - (i) GSS may retake possession of the Equipment;
  - (ii) GSS may, without notice, liability or legal process, enter upon or into the place where the Equipment is located and may break open any gate, door or fastening and detach or dismantle the Equipment from any part of the place where the Equipment is located to which the Equipment has been affixed; and
  - (iii) the Hire Amount will continue to be charged on a daily basis from the final day of the Hire Period to the actual date that the Equipment is returned to GSS.
- D. GSS will not be liable for any damage or loss caused to any person or property in exercising its rights under this clause.

Indemnity:

- A. The Customer agrees to release and indemnify GSS and keep GSS indemnified against all claims, actions, suits, demands, costs, expenses and losses whatsoever (including, without limitation, all legal costs on a solicitor and client basis) in any way arising in respect of the Customer’s hire or use of the Equipment, including but not limited to:
  - (i) loss or damage (including consequential loss) to the environment, property or structures, whether belonging to the Customer or a third party, occurring in any way, including if the loss or damage is caused by or arises as a result of a breach, act or omission by GSS, its employees, agents or subcontractors;
  - (ii) personal injury to any person, damage to any property or any claim by a third party;
  - (iii) use of the Equipment by the Customer or its servants or agents or any other person whatsoever during the Hire Period or any extensions thereof;
  - (iv) Inspecting or reporting on the Equipment;
  - (v) any amendment of or waiver or consent given under this Agreement;
  - (vi) any breach by the Customer of any warranties or terms of this Agreement;
  - (vii) an Event of Default under this Agreement;
  - (viii) the exercise or attempted exercise of any right, power, privilege, authority or remedy of GSS under or by virtue of this Agreement including all amounts incurred in preparation and service of a notice under this Agreement and in repossessing the Equipment from the Customer under the terms of this Agreement and in enforcing this Agreement generally against the Customer or the Guarantor; and
  - (ix) any costs associated to repairing, installing or removing the Equipment or loss or damage to the Equipment, howsoever arising, caused during the Hire Period or any extension thereof;

Payments:

- A. Subject to any special terms of credit agreed by the Customer and GSS in writing, the Customer must pay to GSS all Hire Charges and any other moneys payable under this Agreement in the manner specified in this Agreement and, if no manner is specified, the Customer must pay all Hire Charges / other moneys no later than 30 days from the date of the tax invoice.
- B. Payment must be made from the Customer to GSS by cash, electronic funds transfer or, at GSS’s discretion, by cheque, credit card, direct debit or any other method of payment.
- C. The Customer acknowledges and agrees that the Customer’s obligation to pay the Hire Charge and the rights of GSS in and to the Hire Charge:

- (i) is absolute and unconditional; and
- (ii) is not subject to any abatement, reduction, set off, defence, counterclaim or recoupment whatever,

it being the intention of the parties that the Hire Charge will continue to be payable in all events and in the manner and at the times stipulated unless the obligation to pay is terminated under the express provisions of this Agreement.

- D. GSS may charge the Customer for any variation to the terms of any hire the Equipment.
- Event of Default:
- A. Each of the following is an ‘**Event of Default**’:
- (i) if the Customer or the Guarantor defaults on making any payment due under this Agreement and that default continues for more than 3 days;
  - (ii) if the Customer does not comply with an obligation under the ‘Insurance’, ‘PPS Law’, ‘On supply’ or ‘Assignment’ clauses set out below;
  - (iii) if the Customer does not comply with any of the obligations under this Agreement (other than those specified in subclauses (i) and (ii) above) and, if the failure is capable of remedy, it continues unremedied for 10 days (or such longer period agreed by GSS in writing) after the earlier of receipt by the Customer of a notice from GSS identifying the failure to comply or GSS becoming aware of the failure to comply;
  - (iv) if the Customer or the Guarantor suffers an Insolvency Event;
  - (v) if the Customer ceases to carry on its business;
  - (vi) if any insurer in respect of the Equipment cancels any insurance or disclaims liability by reason of misstatement in any proposal for insurance or for any other reason and as a result the Equipment or any part of them is uninsurable for any period; and
  - (vii) if GSS ascertains that the Customer or the Guarantor has made any false, inaccurate or misleading statement having a material effect in relation to the making of this Agreement or any related or collateral document.
- B. If an Event of Default occurs, then:
- (i) GSS may immediately terminate this Agreement and all amounts owing to GSS under this Agreement will become immediately due and payable;
  - (ii) GSS has an immediate right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Equipment, and the Customer agrees that GSS may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence; and
  - (iii) the Customer, irrevocably and to the full extent permitted by law, authorises GSS to (without prior notice) do everything necessary to re-take possession of the Equipment (including, without limitation, enter any property at which GSS reasonably believes the Equipment to be located).
- C. If this Agreement is terminated by GSS due to an Event of Default by the Customer, then:
- (i) GSS will be entitled to retain all amounts previously paid by the Customer or the Guarantor pursuant to this Agreement; and
  - (ii) GSS may recover from the Customer or the Guarantor any loss or damage occasioned by it as a result of the termination.
- D. GSS is not liable to the Customer for any loss whatsoever suffered by the Customer as a result of GSS exercising its right to re-take possession of the Equipment. Further, the Customer indemnifies GSS for any loss or liability whatsoever incurred by GSS in exercising that right (including, without limitation, any liability to any third party for trespass or damage to property occasioned by GSS exercising the right).
- Interest
- The Customer must pay interest on all monies due but unpaid under this Agreement at the current bank overdraft interest rate plus 2.5% per annum, calculated daily from the date on which the payment became due until the date on which the payment is made.
- PPS Law
- A. This clause applies to the extent that this Agreement provides for a ‘security interest’ for the purposes of the *Personal Property Securities Act 2009* (Cth) (“PPS Law”). References to PPS Law in this Agreement include references to amended, replacement and successor provisions or legislation. Terms used in this Agreement that are defined in the PPS Law have the same meaning as in the PPS Law unless the context indicates otherwise.
- B. If GSS does not have at Commencement a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which

the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than:

- (i) 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
  - (ii) a year in any other case.
- C. The Customer undertakes not to lodge a financing change statement or make an amendment demand pursuant to section 178 of the PPS Law in respect of such registration.
- D. GSS may register any interest it has arising under or in respect of this Agreement which constitutes a security interest under the PPS Law, which is capable of registration. The Customer must do anything (such as obtaining consents and signing documents) which GSS requires for the purposes of:
- (i) ensuring that GSS's security interest is enforceable, perfected and
  - (ii) otherwise effective under the PPS Law;
  - (iii) enabling GSS to gain first priority (or any other priority
  - (iv) agreed to by GSS in writing) for its security interest; and
  - (v) enabling GSS to exercise rights in connection with the
  - (vi) security interest.
- E. The rights of GSS under this document are in addition to and not in substitution for GSS's rights under other law (including the PPS Law) and GSS may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it, GSS's security interest will attach to proceeds.
- F. To the extent that Chapter 4 of the PPS Law applies to any security interest under this Agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires GSS to give a notice to the Customer); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires GSS to give a notice to the Customer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- G. The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on GSS. If GSS is served a notice under section 64 of the PPS Law, then GSS shall have the same rights outlined under subclauses B.(ii) and B.(iii) of the 'Event of Default' clause above.
- H. The Customer waives its rights to receive a notice under section 135 of the PPS Law and a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- I. GSS and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to GSS the benefit of section 275(6)(a) and GSS shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
- J. The Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of GSS.

- On supply:
- K. The Customer agrees to notify GSS in writing of any change to the Customer's details set out in this Agreement, within 5 days from the date of such change.
  - A. The Customer must not sell, lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless GSS (in its absolute discretion) first consents in writing (upon such conditions as it thinks fit). Any such sub-hire must be in writing in a form acceptable to GSS and must be expressed to be subject to the rights of GSS under this Agreement. The Customer may not vary that sub-hire agreement without the prior written consent of GSS (which may be withheld in its absolute discretion).
  - B. The Customer must ensure that GSS is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
  - C. If the Customer makes any sub-hire of the Equipment, then the Customer must take all steps, including registration under PPS Law, as may be required to:
    - (i) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
    - (ii) enabling the Customer to gain (subject always to the rights of GSS) first priority (or any other priority agreed to by GSS in writing) for the security interest; and
    - (iii) enabling GSS and the Customer to exercise their respective rights in connection with the security interest.
  - D. The Customer must provide GSS with written evidence of any registration referred to in subclause C. of this 'On supply' clause (including the relevant verification statement and token issued).
- Holding over
- If the Customer remains in possession of the Equipment after the Hire Period, then the terms of this Agreement will continue to apply to the hire of the Equipment, except that GSS may terminate the Agreement at any time by notice to the Customer. :
- Power of attorney:
- To assure performance of its obligations under this Agreement, the Customer hereby gives GSS an irrevocable power of attorney to do anything GSS considers the Customer should do under this Agreement. GSS may recover from the Customer the cost of doing anything under this clause, including registration fees. The Customer agrees to rectify and confirm whatever GSS does in exercising powers under the power of attorney contained in this clause.
- Assignment:
- The Customer must not dispose of or assign its rights under this Agreement unless GSS (in its absolute discretion) first consents in writing (upon such conditions as it thinks fit).
- GST:
- A. Any reference in this 'GST' clause to terms defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("Act") is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
  - B. Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is **exclusive of any GST** unless indicated otherwise.
  - C. GST is payable in respect of any taxable supply made under this Agreement.
  - D. In respect of any taxable supply made under this Agreement for which:
    - (i) the consideration attributable to that taxable supply is exclusive of GST, the recipient must pay to the supplier the amount equal to the GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under this Agreement. The GST liability for that taxable supply is the amount equal to the rate of GST multiplied by the consideration attributable to the taxable supply made by the supplier to the recipient; or
    - (ii) the consideration attributable to that taxable supply is inclusive of GST, the recipient is only required to pay to the supplier the consideration for that taxable supply by the date required under this Agreement. The GST liability for that taxable supply is the amount determined in accordance with the Act.
  - E. If one of the parties ("Paying Party") is required to reimburse or make a payment to another party ("Receiving Party") under or in connection with this Agreement that is

referable to a cost, expense or other amount (“Amount”) paid or incurred by the Receiving Party, the amount of the reimbursement or payment to be made by the Paying Party will be net of any input tax credits which may be claimed by the Receiving Party or by the representative member of the GST Group in which the Receiving Party is a member in relation to the Amount.

F. The supplier or the relevant representative member of the GST group (as applicable) must issue:

- (i) a tax invoice to the recipient of any taxable supply in respect of that taxable supply; and
- (ii) any relevant adjustment note to the recipient of a taxable supply in respect of any adjustment that arises from an adjustment event relating to that taxable supply.

G. If there is an adjustment to any of the consideration payable for a taxable supply which gives rise to an adjustment event, the GST liability for that taxable supply must be recalculated in accordance with this clause based on the adjusted consideration and where applicable, an appropriate payment on account of the adjusted GST liability is to be made between the parties.

Severability: If any term or condition or part of a term or condition in this Agreement is illegal, unenforceable or invalid, then that term, condition or part is excluded from this Agreement without affecting the remaining terms and conditions.

Customer to notify of change: The Customer must notify GSS of any change in its structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship within 5 days of the date of any such change.

Governing law: This Agreement and any claim or dispute between GSS, the Customer or any of us shall be governed by the law applicable in the State or Territory and submit to the jurisdiction of the appropriate Court nearest the capital city of that State or Territory.

Indemnities:

- A. Each of the indemnities in this Agreement survives the performance of obligations relating to this Agreement and the termination of this Agreement.
- B. It is not necessary for GSS to incur expense or make payment before enforcing a right of indemnity under this Agreement.
- C. Each indemnity given under this Agreement:
  - (i) is separate and independent from any other obligation of the party giving it; and
  - (ii) is absolute, irrevocable, unconditional and payable on demand.

Privacy: The Customer agrees that personal information (as that term is defined in the *Privacy Act 1988 (Cth)*) provided may be used and retained by GSS for: marketing of Equipment by GSS; analysing, verifying and checking the Customer’s credit, payment and status in relation to provision of hiring of the Equipment; processing of any payment instructions, direct debit facilities or credit facilities requested by the Customer; or enabling the daily operation of the Customer’s account and the collection of amounts outstanding in the Customer’s account in relation to the Equipment.

Set off: The Customer does not have any right to set-off against the Hire Charges any amounts due or claimed to be due from GSS.

Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, undertakings and agreements.

Variation: The parties can vary this Agreement only if the variation is in writing signed by each party.

No Reliance: No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this Agreement.

Force Majeure:

- A. GSS is excused from performance of and is not liable to the Customer or any other party for any failure in fulfilment of any obligation imposed upon it by this Agreement, if and only to the extent and for the time that such performance or fulfilment is prevented by Force Majeure, the result of which GSS could not have prevented or overcome by exercising a reasonable standard of care and prudence.
- B. A party claiming the benefit of subclause A above upon occurrence of an event of Force Majeure must:

- (i) promptly give written notice to any other affected parties of that occurrence and the circumstances in relation to which the claim arises;
  - (ii) take all reasonable steps to ameliorate and remedy the consequences of that Force Majeure occurrence without delay; and
  - (iii) resume performance un full of all obligations under this Agreement as soon as reasonably practicable.
- C. GSS is not required to ameliorate or remedy the consequences of any occurrence by the settlement of any strike, lockout, labour disturbance or lawful or unlawful labour dispute.
- D. Where an event of Force Majeure continues for a period of 90 days or more, GSS may terminate this Agreement immediately by providing written notice to the Customer.