

HERC IP Framework – Equipment Licence Agreement

Details Schedule

Item	Agreement Details	
1.	Licensor (granting entity)	Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>
2.	Licensee (receiving entity)	Name: <i>[insert]</i> ABN: <i>[insert]</i> Address: <i>[insert]</i> Email: <i>[insert]</i> Notices for attention of: <i>[insert]</i>
3.	Term	This Agreement commences on the Commencement Date and expires on <i>[insert date/period]</i> , unless terminated earlier in accordance with its terms.
4.	Details of related agreement (if any)	<i>[If the Equipment is being provided for use as part of a particular project, insert the details (e.g. title, date) of the relevant agreement for that project.]</i>
Details of Equipment		
5.	Equipment (clause 3)	<i>[Insert the Equipment to be provided to the Licensee, include a description of the Equipment and any relevant serial numbers.]</i>
6.	Terms of use (clause 3)	<i>[Insert any terms of use applicable to the Equipment.]</i>
7.	Parts and consumables	<i>[Insert any parts or consumables for the Equipment that the Licensor will provide to the Licensee under this Agreement.]</i>
8.	Servicing, cleaning, maintenance and general repair work	<i>[Insert any specific requirements with respect to servicing, cleaning and/or, maintaining the Equipment, as well as any other general repair work for the Equipment. If the default position in clause 3.4(c) applies, insert 'As per clause 3.4(c)'.]</i>
9.	Acknowledgement (clause 5)	<i>[Insert any requirement for the Licensee to acknowledge in publications (including the form of acknowledgement) its use of the Licensor's Equipment.]</i>

Guidance Note for items 1 and 2: These items set out the parties' representatives for the receipt of notices under the Agreement and can only be changed in writing.

The location of the Licensor is also the governing law and jurisdiction of the Agreement (see clause 12.2).

Guidance Note for item 3: The term of the Agreement (which is the term for which the licence rights are granted to the Licensee) should be specified here.

Guidance Note for item 5: The Equipment should be fully described in this item. If new Equipment is being manufactured to particular specifications, this should be detailed here (a separate attachment may be included if required).

Guidance Note for item 6: This item should specify any requirements that the Licensor has in relation to the use of its Equipment. For example, that the Equipment cannot be used in a particular manner or using particular products, that it must be used with particular ICT systems, or that only certain people may operate the Equipment. The parties should also specify in this item any storage and security requirements in relation to the Equipment.

Guidance Note for item 7: This item should specify any parts or consumables that the Licensor will provide to the Licensee. The Licensee will be responsible for supplying all other parts and consumables necessary to use and maintain the Equipment (see clause 3.4(e)).

Guidance Note for item 8: The default position in clause 3.4(c) is that the Licensor is responsible for undertaking all activities associated with servicing, cleaning and maintaining the Equipment and any other general repair work. If the parties require alternative arrangements to apply (for example, to require the Licensor to undertake such tasks or arrange for the original equipment manufacturer to undertake servicing and maintenance activities), these requirements should be specified in item 8.

Guidance Note for item 9: If the Licensor would like to be acknowledged in any publication that relates to the use of the Licensor's Equipment (for example, journal papers or articles), the details of the form of acknowledgement should be specified in item 9.

Payments

10.	Fee (AUD) (clause 7.1)	<p><i>[\$insert] (excluding GST)</i></p>
		<p>OR</p>
		<p><i>[\$insert] (excluding GST) to be paid [monthly / quarterly] in [advance / arrears]</i></p>

Guidance Note for item 10: The Fee and the manner of its calculation should be set out in item 10. For example, the Fee may be a single fixed payment for the Licensee's use of the Equipment for the Term or may be an amount per month.

Confidential Information details

11.	Confidential Information (clause 8)	Licensor	
		Description of Confidential Information	Period of confidentiality
		<p>Description: <i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential Information. If more space is required an attachment can be added.]</i></p>	<p>Period: <i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i></p>
		Licensee	
		Description of Confidential Information	Period of confidentiality
		<p>Description: <i>[Insert description of Confidential Information. If the parties agree to limit Confidential Information to the specific information described here, clearly state that only the information listed here is Confidential</i></p>	<p>Period: <i>[Insert the period it is required to remain confidential (eg 'perpetually' or '7 years from the date of disclosure').]</i></p>

Guidance Note for item 11: Information of a confidential nature will be protected as Confidential Information if it is **either** described here, **or** where a party knows or ought to know it is confidential.

If the parties agree to limit Confidential Information to only the specific information described here, this item needs to clearly state that **only** the information listed here is Confidential Information.

The parties may wish to list all information exchanged in relation to the Equipment or particular project that will use the Equipment as Confidential Information, or they may wish to limit it to specific information, meetings or documents. Parties should be careful to consider the implications of this.

Unless there is a good reason to specify otherwise, the period of confidentiality will ordinarily be the same for each party's Confidential Information.

		<i>Information. If more space is required an attachment can be added.]</i>
General		
12.	Liability cap (clause 9)	<i>[Insert liability cap amount.]</i>

Guidance Note for item 12: This item sets out the agreed maximum liability of a party for loss suffered by the other party.

The liability cap should be based on a risk assessment (refer to the HERC IP Practical Guide) and can be expressed as a monetary value, or linked to the Fees paid under this Agreement.

This liability cap does not apply to losses arising from the acts set out in clause 9(b).

For guidance only

Operative provisions

1. Definitions

Agreement means this equipment licence agreement, and any schedules, annexures and attachments to it.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the act is to be performed or where the notice is received.

Commencement Date means the date that the last party signs this Agreement.

Commonwealth Entity means any government body which is subject to the *Public Governance, Performance and Accountability Act 2013* (Cth).

Confidential Information means information that is by its nature confidential and:

- (a) is designated by a party as confidential in item 11 of the Details Schedule; or
- (b) a party knows or ought to know is confidential, unless the parties have specified otherwise in item 11 of the Details Schedule,

but does not include information that is:

- (c) publicly available other than as a result of unauthorised disclosure by a party;
- (d) independently known by or lawfully in the possession of the receiving party; or
- (e) independently created by the receiving party without access to the other party's Confidential Information.

Control of a corporation, partnership or other entity means:

- (a) direct or indirect beneficial ownership of more than 50% of its voting power, or 50% of the interest in its income;
- (b) the power to appoint the majority of its directors; or
- (c) the power otherwise to direct its business activities.

Details Schedule means the schedule of details particular to this Agreement and is set out on the front cover of this Agreement.

Equipment means the equipment identified in item 6 of the Details Schedule and includes any firmware, source code and machine code that is incorporated in the Equipment.

Fee means the charges payable to the Licensee in accordance with item 10 of the Details Schedule.

Intellectual Property Rights or **IPR** means patents, rights to exploit inventions, trade marks, service marks, registered designs, plant breeder's rights, copyrights and related rights, database rights, design rights, circuit layout rights, in each case whether registered or unregistered, including rights to apply for and be granted and applications for any of the above and any continuations, continuations-in-part, divisional applications, renewals or extensions of, and rights to claim priority from, those rights, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above.

Operator means Personnel who use and operate the Equipment.

Personnel means a party's officers, employees and contractors and in the case of a university, includes students. Personnel includes the Personnel of a contractor.

Guidance Note for the definition of Confidential Information: A party's Confidential Information includes information identified as being confidential in the Details Schedule and - unless clearly stated otherwise in the Details Schedule - any other information a party knows or ought to know is confidential.

Term means the period that the Recipient may have possession of the Equipment as set out in item 3 of the Details Schedule.

2. Precedence of documents

To the extent of any inconsistency between any of the documents forming part of this Agreement, those documents will be interpreted in the following order of priority:

- (a) clauses 1 to 12;
- (b) Details Schedule;
- (c) any annexures or attachments to this Agreement; and
- (d) any documents incorporated by reference in this Agreement.

3. Equipment

3.1 General

The Licensor grants a licence to the Licensee to use the Equipment on the terms and conditions of this Agreement.

3.2 Ownership

The Licensee:

- (a) acknowledges that the Equipment remains at all times the property of the Licensor and the Licensee has only a right to use it for the Term;
- (b) must not part with possession of the Equipment without the prior written consent of the Licensor; and
- (c) must not assign, transfer, give another party an interest in or create any form of security over the Equipment.

3.3 Condition of Equipment

- (a) The Licensee must inspect the Equipment before taking possession of it to ensure that it meets the requirements of this Agreement. The Licensor does not give any assurance that the Equipment is suitable for use or storage, and any use and storage of the Equipment will be at the Licensee's own risk.
- (b) Where item 6 of the Details Schedule identifies that the Equipment has been newly made to specific product specifications, the Licensor will ensure it meets those specifications at the time the Licensee takes possession of the Equipment.
- (c) Except where clause 3.3(b) applies, the Equipment is supplied to the Licensee on an 'as is' basis at the time that the Licensee takes possession of the Equipment, which means it may have inherent defects or deficiencies.

3.4 Use and care of the Equipment

- (a) The Licensor must provide or make available to the Licensee all applicable Equipment manuals that the Licensee must comply with under this clause 3.
- (b) The Licensee must, and must ensure that any Operator:
 - (i) only operates the Equipment in accordance with any applicable manufacturer's specifications and Equipment manuals;
 - (ii) complies with any restrictions on or terms for use of the Equipment as set out in item 6 of the Details Schedule;

Guidance Note for clause 2: This clause assists the parties in interpreting this Agreement. If inconsistency arises between Agreement documents (i.e. the Details Schedule and an attachment), the interpretation of the higher priority document is to be applied.

Guidance Note for clause 3.1: This clause grants the Licensee a licence to use the Equipment, subject to the terms of the Agreement. A licence is a contractual right to use and does not confer any other rights (for example, ownership) not specifically granted by the Agreement terms.

Guidance Note for clause 3.2: This clause provides that the Licensor retains ownership of the Equipment and the Licensee has a right to use it during the Term only. The Licensee must not part with possession or transfer the Equipment or create any interest in the Equipment.

Please be aware that the Agreement may result in creation of a security interest that is registerable under the Personal Property Securities Register. Failure to register a registerable security interest can result in loss of priority over ownership of the Equipment. Where Licensees are taking possession of the Equipment, Licensors are encouraged to seek further legal advice to determine if registration is applicable to their circumstances. Further advice is available from:

<https://www.ppsr.gov.au/registering/decide-if-you-should-register-ppsr/leases-bailments-consignments>.

Guidance Note for clause 3.3(a): This clause provides that the Licensee uses the Equipment at its own risk. The Licensor gives no assurances that the Equipment is suitable for use. The Licensee must inspect the Equipment and should not accept newly made Equipment if it does not meet the specific product specifications.

Guidance Note for clause 3.3(b): This clause provides that the Licensor is responsible for ensuring the Equipment that is newly made to specific specifications meets those specifications.

Guidance Note for clause 3.3(c): Other than new Equipment made to specific product specifications, Equipment is supplied in whatever condition it is in at the time the Licensee takes possession of it.

Guidance Note for clause 3.4(b): This clause sets out the usage conditions with which the Licensee must ensure that any Operator of the Equipment complies. The Licensor may include restrictions on or terms of use in item 6 of the Details Schedule. The Licensee must ensure that all Operators take proper care of the Equipment. The Licensee bears the responsibility for obtaining any permits and Operator qualifications that are required to operate the Equipment.

- (iii) complies with all laws and obtains all necessary permits and Operator qualifications relating to the use of the Equipment;
 - (iv) takes proper care of the Equipment;
 - (v) promptly gives the Licensor any information that the Licensor asks for in relation to the Equipment; and
 - (vi) does not use or otherwise deal with the Equipment in any way that may affect any Equipment warranties.
- (c) Subject to item 8 of the Details Schedule, the Licensee must at its cost undertake periodic servicing, cleaning, maintenance and general repair work required to be performed on the Equipment in accordance with any applicable manufacturer's specifications and Equipment manuals, including by arranging for any such maintenance services to be performed by the original Equipment manufacturer if required.
- (d) The Licensee must not modify, dismantle, reverse engineer or decompile the Equipment without first obtaining the Licensor's written approval.
- (e) Subject to item 7 of the Details Schedule, the Licensee is responsible for the supply of all parts and consumables necessary to use and maintain the Equipment.

Guidance Note for clause 3.4(c) and 3.4(e): These clauses require the Licensee to clean, service, maintain (including supplying all parts and consumables necessary for such maintenance) the Equipment.

Guidance Note for clause 3.4(d): This clause requires that the Licensor approve in advance, for example, any modifications to, or dismantling of, the Equipment that the Licensee wishes to make (if any).

3.5 Access

- (a) During the Term, and subject to the Licensor giving the Licensee reasonable prior notice, the Licensee must provide the Licensor with access to the Equipment to check whether the terms of this Agreement are being complied with.
- (b) Where the Licensor accesses the Licensee's premises in accordance with clause 3.5(a), the Licensor must, and must ensure that its Personnel, comply with any relevant health, safety and security requirements, directions, policies or codes of behaviour applicable to the Licensee's premises.

Guidance Note for clause 3.5: This clause requires the Licensee to allow the Licensor to check on the Equipment. The Licensor must give the Licensee reasonable prior notice prior to exercising this right.

Where the Licensor accesses the Licensee's premises, it must comply with all relevant safety and security policies applicable to those premises.

3.6 Possession

Unless otherwise agreed by the parties, the Licensee is responsible for obtaining the Equipment from the Licensor, at the Licensee's cost.

Guidance Note for clause 3.6: Unless otherwise agreed, the Licensee bears all responsibility for the collection of the Equipment.

3.7 Loss and damage

- (a) The Licensee must inform the Licensor in writing as soon as reasonably practicable and in any case within 3 Business Days if the Equipment or any part of it is stolen, lost, destroyed or damaged.
- (b) The Licensee is liable to the Licensor (from the time the Licensee takes possession of the Equipment until the Licensee receives notice from the Licensor that it has accepted return of the Equipment into its custody) for any loss or damage suffered by the Licensor by reason of the Equipment or any part of it being stolen, lost, destroyed or damaged.
- (c) If the Equipment or any part of it is stolen, lost, destroyed or damaged and the Licensee receives any payment from any insurer or other person, the Licensor is entitled to receive that payment and the Licensee holds the proceeds from that payment for and on behalf of the Licensor and must promptly pay the proceeds to the Licensor.

Guidance Note for clause 3.7(a): This clause requires the Licensee to notify the Licensor if the Equipment is stolen, lost, destroyed or damaged.

Guidance Note for clause 3.7(b): Risk for the Equipment is assumed by the Licensee from the time it takes possession of the Equipment until confirmation of return of the Equipment to the Licensor's custody. The Licensee is liable for any loss or damage of the Equipment which occurs during that time, whether that loss or damage occurs while the Equipment is being used or otherwise.

Guidance Note for clause 3.7(c): This clause provides that any insurance payment that is received by the Licensee in respect of loss of the Equipment belongs to the Licensor.

4. Intellectual Property Rights

No licence for any Intellectual Property Rights owned or controlled by the Licensor is granted or implied by this Agreement other than the right for the Licensee to have possession of, and use, the Equipment in accordance with the terms of this Agreement.

5. Use of the party's name and acknowledgement

- (a) Except with a party's prior written consent, the other party must not use:
 - (i) that party's name in a manner that suggests that the party endorses or is associated with the other party's business, products or services; or
 - (ii) that party's logo or branding.
- (b) The Licensee must acknowledge the Licensor's contribution in any publication that refers to the Equipment in accordance with any requirements specified in item 9 of the Details Schedule.

6. Insurance

During the Term, the Licensee must, at its own expense:

- (a) keep the Equipment insured against all risks of loss, theft, damage or destruction for the full replacement or reinstatement value; and
- (b) hold and maintain any insurance required by law to operate or use the Equipment.

7. Payment

7.1 Fee and payment terms

- (a) The Licensee must pay the Licensor the Fee in accordance with item 10 of the Details Schedule.
- (b) The Licensee must pay an invoice issued by the Licensor for Fees that are due and payable within 20 Business Days after the date of the invoice. For GST purposes all invoices or receipts issued by the Licensor are tax invoices.
- (c) If the Licensee does not pay on time then the Licensor may charge interest on the outstanding amount. Interest is calculated daily from the due date until the date the outstanding amount is paid at:
 - (i) in respect of the period from 1 January to 30 June in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced; and
 - (ii) in respect of the period from 1 July to 31 December in any year – the rate that is 4% above the cash rate last published by the Reserve Bank of Australia before that period commenced.

7.2 GST

- (a) In this clause 7.2, words and expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning as in the GST Act.
- (b) The Fee payable under this Agreement is exclusive of GST.

Guidance Note for clause 4: This clause provides that the licence granted does not confer to the Licensee any rights to the IPR in the Equipment other than the right to use the Equipment.

This Agreement does not include provisions to address the creation of IPR from use of the Equipment. Amendments will be required to this clause and potentially other provisions of this Agreement if the Equipment will be used in this manner.

Guidance Note for clause 5(a): This clause prevents either party from using the other party's name or logo without the other party's consent. For example, the Licensee cannot use the Licensor's logo on its website without the Licensor's prior written consent.

Guidance Note for clause 6: This clause requires the Licensee to maintain (at its cost): insurance to cover any loss to the Equipment; and any insurances that are required by law to use the Equipment.

Guidance Note for clauses 7.1(a) and 7.1(b): The Licensee must pay the Fee within 20 Business Days of the date of invoice. The Fee may be a fixed one off payment or periodic payments at intervals specified in item 10 of the Details Schedule.

Guidance Note for clause 7.1(c): The cash rate for the calculation of the additional charge is published by the Reserve Bank of Australia and can be found on its website: <https://www.rba.gov.au/statistics/cash-rate/>.

Guidance Note for clause 7.2: This clause provides that if GST is payable by the Licensor, then the Licensee will pay the Licensor the Fee plus any GST payable on that supply.

- (c) If GST is payable by a supplier on any supply made under this Agreement:
- (i) the recipient, upon receiving a tax invoice from the supplier, will pay to the supplier an amount equal to the GST payable on the supply; and
 - (ii) this amount will be paid in addition to, and at the same time, that the consideration for the supply is to be provided.

8. Use of Confidential Information

- (a) Except as set out in this clause 8, for the period that Confidential Information is to remain confidential as set out in item 11 of the Details Schedule, each party when receiving Confidential Information of the other party must:
- (i) only use the Confidential Information for the purpose of performing this Agreement; and
 - (ii) keep confidential and not further disclose the Confidential Information.
- (b) A party may only disclose Confidential Information to its Personnel for the purpose of performing this Agreement. Where Confidential Information of the other party is disclosed to a party's Personnel for the purpose of performing this Agreement, that party must ensure those Personnel are subject to equivalent (legally binding) obligations to those set out in this Agreement.
- (c) Each party may disclose Confidential Information of the other party:
- (i) with that other party's prior written consent;
 - (ii) to a professional adviser in order to comply with obligations, or to exercise rights, under this Agreement, provided that the adviser is subject to equivalent (legally binding) obligations to those set out in this Agreement; or
 - (iii) if required by law or rules of a securities exchange, but only to the extent of the legal requirement and after appropriate action is taken to protect the form and content of the disclosure. If a party is required to disclose any Confidential Information of the other party pursuant to this clause 8, that party must promptly notify the other party (to the extent notification is permitted by law).
- (d) Without limiting its obligations, each party:
- (i) undertakes to implement appropriate security practices to prevent any unauthorised copying, use or disclosure of the other party's Confidential Information; and
 - (ii) must promptly notify the other if the party becomes aware of any unauthorised use or disclosure of the other party's Confidential Information.
- (e) Notwithstanding any other provision of this Agreement, if a party is a Commonwealth Entity or a State or Territory government entity, that party will not be in breach of this clause 8 if the party is required to disclose the information to a Minister or a House or Committee of Parliament.
- (f) This Agreement does not limit any other agreement between the parties that provides authority for a party to disclose or use Confidential Information, where received or created under that other agreement.

Guidance Note for clause 8(a): This clause requires that the recipient of Confidential Information must ensure that it remains confidential for the period of time specified in item 11 of the Details Schedule. Confidential Information may only be used by the recipient for the purpose of performing this Agreement.

Exceptions (where disclosure or other uses are permitted) are set out in the remainder of clause 8.

Guidance Note for clause 8(b): Any Personnel that the Confidential Information is disclosed to are also subject to the obligations set out in this Agreement. These Personnel are not required to enter into a separate confidentiality agreement, but the recipient party must ensure that the Personnel are legally bound to comply with equivalent obligations (for example, pursuant to their employment agreement).

Guidance Note for clause 8(d)(i): The party receiving the Confidential Information is required to implement appropriate security practices and promptly notify the disclosing party of any actual or suspected unauthorised use or disclosure.

Guidance Note for clause 8(e): Government entities may be required, for public accountability reasons, to disclose Confidential Information in specific circumstances as set out in this clause.

- (g) At any time a party may request return or destruction of any or all copies of its Confidential Information (unless required by law to be retained). The other party must promptly comply with such request. On receipt of any such request the other party's right to use that Confidential Information ceases.
- (h) Notwithstanding clause 8(g), a party is entitled to keep a copy of Confidential Information of the other party for the sole purpose of managing legal obligations, or where stored in a back-up of an IT system. A party must continue to treat any such copy as Confidential Information of the other party which is subject to the terms of this Agreement.
- (i) The obligations under this clause 8 survive the return or destruction of any Confidential Information for the period of confidentiality specified in respect of that Confidential Information in item 11 of the Details Schedule.

Guidance Note for clauses 8(f) to 8(i)8(h): Either party may, at any time, request return or destruction of all copies of their Confidential Information. The other party cannot then continue to use or retain the Confidential Information unless required by law, to manage legal obligations, or where stored in a back-up of an IT system.

The return or destruction of Confidential Information does not affect the parties' obligations under this Agreement, which continue for the period specified in item 11 of the Details Schedule.

9. Limitation of liability

- (a) The aggregate liability of each party for loss suffered or incurred by the other party arising out of or in connection with this Agreement however caused whether in tort (including negligence), contract, statute, equity or otherwise is, to the full extent permitted by law:
 - (i) subject to clause 9(b), limited to the amount specified in item 12 of the Details Schedule;
 - (ii) excluded for any loss of anticipated profits or savings, business interruption, loss of revenue or loss of goodwill; and
 - (iii) reduced proportionately to the extent that the acts or omissions of the other party have contributed to the loss.
- (b) Any limit on or exclusion of the liability of each party under clause 9(a)(i) does not apply in relation to liability for:
 - (i) personal injury (including sickness and death);
 - (ii) an infringement of third party IPR;
 - (iii) a breach of any obligation of confidentiality; or
 - (iv) any wilful default or fraud.

Guidance Note for clause 9(a): This clause limits the amount of financial exposure each party faces in the event a lawsuit is filed or a claim is made by the other party.

The parties can agree to cap the total amount that a party may be liable to pay to the other party for loss suffered in relation to this Agreement. This cap should be set out in item 12 of the Details Schedule.

Guidance Note for clause 9(b): The liability cap specified in item 12 of the Details Schedule does not apply to the types of liability listed in clause 9(b). This means that the liability of each party for these types of claims is unlimited. These types of liability are typically unlimited in commercial arrangements because it is difficult to quantify (for the purposes of determining a liability cap) the losses that can arise from such claims.

10. Dispute resolution

- (a) Any dispute, controversy or claim arising out of or in connection with this Agreement, including its existence, breach, validity or termination (**Dispute**) must be dealt with in accordance with this clause 10. This clause 10 does not prevent either party from seeking urgent injunctive or similar interim relief from a court of competent jurisdiction.
- (b) The party claiming that there is a Dispute must notify the other party in writing and give details of that Dispute.
- (c) On receipt of a notification under clause 10(b), the parties must arrange for their respective representatives to meet within 20 Business Days to attempt to resolve the Dispute in good faith.
- (d) If the Dispute is not resolved within 20 Business Days of receipt of the notification (or longer period agreed by the parties) the parties will endeavour to settle the Dispute by mediation administered by the Australian Disputes Centre (ADC). The mediation must be conducted in accordance with the *ADC Guidelines for Commercial Mediation* operating at the time the matter is referred to ADC.

Guidance Note for clause 10(a): A party may go to court and urgently seek an order for injunctive or interim relief (for example, to prevent disclosure or use of Confidential Information), including prior to following the Dispute process. This is permitted because the value of the Confidential Information is lost once it is disclosed.

- (e) If the Dispute is not resolved within 30 Business Days from the date that the written notice of the Dispute is received, then either party may initiate proceedings in a court of competent jurisdiction.

11. Termination

- (a) Either party may terminate this Agreement by giving written notice to the other party if there is a material breach of this Agreement and (if it is capable of remedy) that breach is not remedied within 20 Business Days after written notice is received.
- (b) The Licensor may terminate this Agreement by giving written notice to the Licensee if the Licensee does not within 20 Business Days of written notice, pay any part of the Fees that are due and payable in accordance with this Agreement.
- (c) The Licensee may, at its cost, terminate this Agreement by returning the Equipment in good working order and condition to the Licensor.
- (d) Upon termination of this Agreement (and without limiting any other rights or obligations of a party):
 - (i) the Licensee must pay any amounts of the Fee due; and
 - (ii) if the Licensee has paid any of the Fee in advance, the Licensor must refund any portion that was not required to have been paid by or at the time of termination.
- (e) Unless this Agreement is terminated in accordance with clause 11(c), upon expiry or termination of this Agreement, the Licensee must, at its cost, return the Equipment to the Licensor in the condition it was in at the time the Licensee took possession of it, subject to any reasonable wear and tear.
- (f) If, on termination or expiry of this Agreement, the Equipment is not returned by the Licensee, the Licensor or its representative may repossess the Equipment and for this purpose may enter and remain upon any premises where the Licensor believes the Equipment is located. The Licensee must pay the costs incurred by the Licensor in repossessing the Equipment.

Guidance Note for clause 11(a): This Agreement may be terminated where a party has not complied with a material obligation. For example, the Licensee fails to secure or maintain the Equipment or the Licensor has failed to provide the required Equipment.

If the breach of the material obligation can be fixed by the party in breach, the other party must issue a notice requiring the breach to be remedied within 20 Business Days.

If the breach of the material obligation cannot be fixed by the breaching party, the Agreement may be terminated with immediate effect by the other party. The other party should carefully consider whether the breach can be fixed before terminating with immediate effect. Otherwise, the other party may be considered to have itself breached the Agreement and exercised its termination rights wrongfully.

Guidance Note for clause 11(b): This Agreement may be terminated by the Licensor if the Licensee does not pay any part of the Fees within 20 Business Days' notice requiring it to do so.

Guidance Note for clause 11(c): The Licensee may terminate the Agreement at any time by returning the Equipment to the Licensor and paying any amounts of the Fee that is required by clause 11(d).

Guidance Note for clause 11(f): The Licensor may repossess any Equipment that is not returned by the Licensee on expiration or termination of the Agreement.

12. General

12.1 Notices

- (a) The parties' respective representatives for the receipt of notices are as set out in items 1 and 2 respectively of the Details Schedule, until changed by written notice.
- (b) A notice is deemed to be received:
 - (i) if delivered by hand - upon delivery to the relevant address;
 - (ii) if sent by pre-paid express post - on the second Business Day after the date of posting; or
 - (iii) if transmitted by email - at the time sent (as recorded on the device from which the sender sent the email) unless, within 4 hours of sending the email, the party sending the email receives an automated message that the email has not been delivered.
- (c) A notice received after 5.00 pm, or on a day that is not a Business Day in the place of receipt, is deemed to be effected on the next Business Day in that place.

Guidance Note for 12.1: For any formal notices and communications, the parties should follow the requirements of clause 12.1 to ensure it is valid.

A notice will be deemed to be received upon delivery, as set out in clause 12.1(b).

While there are several ways to send notices, the most common approach (and the fastest) is via email. An email sent before 5pm on a Business Day in the place of receipt is deemed delivered at the time sent, unless an automated message is received that an email has not been delivered. There is no requirement to also post or hand deliver a copy of a notice once sent via email.

12.2 Governing law

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation are governed by, the laws of the State or Territory based on the location of the Licensor set out in item 1 of the Details Schedule. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of that State or Territory.

12.3 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts will collectively be taken to constitute one instrument.

12.4 Variation

No variation or amendment of this Agreement will be effective unless it is made in writing and signed by an authorised representative of each party.

12.5 No assignment

Except as permitted by the Licence, a party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

12.6 Entire agreement

This Agreement constitutes the entire Agreement between the parties in connection with its subject matter and supersedes all previous Agreements or understandings between the parties in connection with its subject matter.

Guidance Note for clause 12.2: The location of the party specified as the Licensor in the Details Schedule determines the applicable law and jurisdiction of the Agreement.

Guidance Note for clause 12.3: The purpose of this clause is to make it clear that the parties can sign separate copies of this Agreement (called 'counterparts') and the Agreement will be binding. The parties should ensure that the counterpart documents are exactly the same.

Guidance Note for clause 12.4: Despite the requirement for changes to be agreed and in writing, if the parties or their Personnel verbally agree changes or act as if the Agreement has been varied, this can become legally binding on them. The parties need to manage their conduct to ensure it is consistent with the agreed terms.

Guidance Note for clause 12.5: Assigning any rights will need written consent of the other party. Novation replaces a party with a new party and requires a deed to be **agreed** by all parties.

Guidance Note for clause 12.6: The purpose of this clause is to make clear that this Agreement is the entire agreement between the parties with respect to the licensing of the relevant Equipment.

Signing page

Signed as an agreement.

Signed for and on behalf of the [Insert Licensee/Licensor name and ABN] by its duly authorised representative:

Signature of authorised representative

Full name of authorised representative

Date

Signed for and on behalf of the [Insert Licensee/Licensor name and ABN] by its duly authorised representative:

Signature of authorised representative

Full name of authorised representative

Date

Guidance Note for execution: The default execution blocks below require both parties to arrange for an authorised representative to sign the Agreement.

However, the parties should amend these execution blocks if they are not appropriate for a party (for example, if a party is a company and prefers to sign the Agreement in accordance with section 127 of the *Corporations Act 2001* (Cth)), either by wet ink or electronically.

Each party is responsible for satisfying itself that the other party has validly signed the Agreement.

Once signed, there is no requirement to exchange physical versions of the Agreement with the other party and a PDF (of the whole signed document) could be exchanged if agreed by the parties.

Signature of witness

Full name of witness

Signature of witness

Full name of witness