TERMS OF TRADE

1A. DEFINITIONS

In this Contract, unless the context otherwise requires, the following words have these meanings:

Contract means the Terms of Trade and the relevant Order.

Credit Application means a written credit application with the Owner for the provision of credit by the Owner to the Customer.

Customer means:

(a) if the Customer has provided the Owner with a Credit Application, the customer specified in the Credit Application; or

(b) if the Customer has not provided the Owner with a Credit Application, the customer specified in the Order.

Delivery Fee means the fee charged from time to time by the Owner relating to the delivery, collection or movement of Equipment (as the case may be).

Equipment means all plant, equipment, vehicles, machinery and other items, including all tools, accessories (such as harnesses) and spare parts supplied by the Owner, which the Owner hires to the Customer.

Excess Period means the period in excess of the periods specified in **clause 2.4.** For clarity, if more than one of the periods specified in **clause 2.4** applies to a particular time period, then it is the longer of those periods that constitutes the excess period.

Excess Usage Charge means the applicable daily Hire Rate for the relevant piece of Equipment for each day (or part thereof) of the Excess Period.

Futile Transport Fee means the fee charged in respect of the failed collection of Equipment or the cancellation of an Order, as the case may be, as determined by the Owner.

GST means the goods and services tax payable pursuant to the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)* and the regulations thereunder.

Hire Rate means the amount(s) payable by the Customer for the hire of the Equipment together with any GST.

Invoice means a Tax Invoice if GST applies to the items in the invoice, otherwise a non-Tax Invoice.

Minimum Hire Fee means an amount equal to one day's Hire Rate for the relevant piece of Equipment.

Order means any agreement (verbal and/or written) between the Owner and the Customer for the hire of the Equipment.

Owner means Longreach Access Rentals Pty Ltd ATF Longreach Access Rentals Trust ABN 37 946 047 877.

Owner's Premises means the place where the relevant Equipment is kept by the Owner.

PPS means the *Personal Property Securities Act 2009 (Cwlth)* and the regulations thereunder.

PPSR means the Personal Property Securities Register.

Tax Invoice means an invoice that complies with the GST Act.

Terms of Trade means these terms of trade (as may be varied from time to time).

WHS laws means all applicable laws, regulations and codes of practice relating to work health and safety.

1B. INTERPRETATION

In this Contract, unless the context otherwise requires: (a) headings are for convenience only and do not affect the interpretation of this Contract; (b) words importing the singular include the plural and vice versa; (c) reference to a 'person' includes a company, partnership, joint venture, association, trust, corporation and vice-versa; (d) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute; (e) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Contract or any part of it; (f) the words "includes", "including", "for example" or "such as" or similar expressions are not words of limitation; (g) all references to "$" or "dollars" are to the lawful currency of Australia; (h) a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.

1 PERIOD OF HIRE AND TERMINATION

1.1 In respect of the hire of the Equipment the subject of the relevant Order, the minimum period of hire is one day and **commences** on the earlier of:

(a) the time of collection of the Equipment from the Owner's Premises; or

(b) the time the Equipment leaves the Owner's Premises;

and **ends** on the earlier of:

(c) the time the Equipment is returned to the Owner's Premises during the Owner's business hours and is signed off as receipted by the Owner;

(d) the time the Equipment is collected by the Owner from an agreed location. In this respect, it is the Customer's responsibility to ensure the Owner can safely and lawfully access the location on a date agreed with the Owner or, if there is no agreement, on the date that is practicable to the Owner acting reasonably to collect the Equipment – for clarity, sending an email or SMS or leaving a voicemail message saying the Equipment is available for collection does not constitute "on a date agreed with the Owner"; or

(e) the date of cessation of the period of hire pursuant to the Terms of Trade.

1.2 Notwithstanding anything to the contrary, and without prejudice to any other rights or remedies the Owner may have against the Customer, the Owner may end the period of hire:

(a) by giving to the Customer at least 24 hours notice of termination at anytime in which case the period of hire ends at the time of expiration of that notice period;

(b) immediately if the Customer breaches any term of the Contract;

(c) immediately if the Customer has a receiver, receiver and manager, administrator, liquidator, provisional liquidator or external controller appointed to it, or becomes bankrupt, insolvent or is wound-up, or has a resolution passed for its winding-up or commits an act of insolvency or bankruptcy, or enters into any scheme or arrangement with its creditors; or

(d) immediately if the Customer fails to pay any monies due to the Owner within the timeframe for payment specified in these Terms of Trade or by the Owner.

1.3 Termination shall not affect any provision of the Contract expressed or capable of operating or having effect subsequent to termination and shall be without prejudice to any accrued right or remedy of a party in relation to any breach of or default by the other party occurring prior to termination.

1.4 Upon termination of the hire period, the Owner shall be entitled to take possession of the Equipment without notice and for this purpose the Customer hereby irrevocably authorises the Owner, its servants and agents to enter upon any land or premises where the Equipment is situated to search such premises and to remove the Equipment and the Customer indemnifies the Owner in respect of any claims, damages or expenses arising out of any action taken under this condition.

2 CHARGES

2.1 The Customer shall pay the Hire Rate to the Owner in respect of each piece of hired Equipment as follows:

(a) if the Customer does not have an active approved Credit Application, then at or before the time of hire or such later time as specified by the Owner; or

(b) if the Customer has an active approved Credit Application, then within 30 days from the date of Invoice.

2.2 There is a minimum Hire Rate charge for each piece of hired Equipment which is the Minimum Hire Fee.

2.3 The Hire Rate starts on the commencement of the period of hire and ends on the earlier of:

(a) the date determined under **clause 1.1(c)**; or

(b) the date determined under **clause 1.1(d).**

For clarity, the Hire Rates continue to apply until either of these events occur even if the Contract is terminated or the agreed hire period has lapsed.

2.4 If the relevant piece of Equipment is used:

(a) more than 8 hours in any day;

(b) more than 48 hours in any week; and/or

(c) more than 7 consecutive days;

the Customer must pay the Excess Usage Charge to the Owner in addition to other monies paid or payable.

2.5 The Owner reserves the right at any time to revise the Hire Rate (including during a period of hire), in which case such new Hire Rate shall apply as from the time that the Customer has been informed of the change.

2.6 All government charges, rates, duties (including stamp duty) on hiring arrangements and GST are payable by the Customer to the Owner in addition to all other monies payable. All amounts are expressed exclusive of GST unless otherwise stated.

2.7 If the Owner attends at the agreed location on the date determined under **clause 1.1(d)** to collect the Equipment but is unable to collect same other than due to default of the Owner or the Customer cancels the relevant Order after the relevant Equipment has left the Owner's Premises, then the Customer must pay the Futile Transport Fee in addition to all other monies payable.

2.8 If the Customer cancels an Order before the period of hire has commenced, the Customer shall pay the Owner for the loss suffered by the Owner as a result of that cancellation.

2.9 If the Customer makes payment by credit card, the Owner may charge the relevant merchant fee in addition to the amount payable.

2.10 The Customer must also pay to the Owner (if applicable to the relevant Order):

(a) the Delivery Fee each time the Owner delivers, collects or moves any of the Equipment;
(b) any costs charged by third parties to the Owner in respect of the hire of Equipment;
(c) sundries as set out in the Order; and
(d) the cost of all consumables supplied by the Owner (such as fuel, cleaning products) in respect of the Equipment.

2.11 If the Customer does not make a payment on time, interest shall apply to the relevant overdue amount for the relevant overdue period (which commences on the day after payment was due) at the rate of 8% per annum calculated daily.

2.12 Unless otherwise specified in these Terms of Trade, all amounts (other than the Hire Rate) are payable as follows:
(a) if the Customer does not have an active approved Credit Application, then at the time specified or demanded by the Owner; or
(b) if the Customer has an active approved Credit Application, then within 30 days from the date of Invoice.

2.13 All payments are to be made by the method allowed by the Owner from time to time.

2.14 The Owner may add to the amounts payable by the Customer any fee paid or payable by the Owner for registering any Contract or Order on the PPSR.

3 BREAKDOWNS

3.1 In the event of breakdown, failure or loss of the Equipment, the Customer:
(a) must notify the Owner immediately; and
(b) must follow the directions of the Owner relating to the Equipment.

3.2 To the fullest extent permitted by law, the Owner shall not be liable to the Customer for breach of contract, negligence or other claim for any loss or damage suffered by the Customer arising from or relating to defects, breakdown or failure of the Equipment and the Customer hereby releases the Owner from all such claims and demands.

5. CUSTOMER'S OBLIGATIONS

5.1 In respect of the Equipment, the Customer must (and at their own expense):
(a) use, assemble and dismantle it in a skilful, safe, lawful and proper manner and only for the purposes and within the capacity for which it was designed – for clarity, only Equipment meant to be assembled or dismantled (such as scaffolding) is to be assembled or dismantled;
(b) comply with all WHS laws and all other applicable laws and regulatory and Government requirements;
(c) ensure all persons using, assembling or dismantling it are suitably trained, instructed and supervised and hold all necessary qualifications and licences;
(d) ensure all persons using, assembling or dismantling it use all necessary safety equipment – for clarity, any safety equipment not supplied by the Owner (which could include safety harnesses, safety glasses, ear muffs and boots) is the responsibility of the Customer to provide;
(e) keep it safely and securely stored when not in use;
(f) not repair, damage, destroy or improperly interfere with it (fair wear and tear excepted);
(g) inspect the Equipment and comply with the daily or regular checks specified in the manufacturer's operator manual and log book supplied with the Equipment, and arrange regular servicing of the Equipment by the Owner in accordance with the manufacturer's operator manual;
(h) ensure all fuels, oils, battery water levels and other consumables are maintained at safe and proper levels and that only the right type of fuel and other consumables for that Equipment are used – in this respect, the Customer must maintain a log book (and provide it to the Owner on demand) which records that the Customer performed relevant checks of these items before use of the relevant item each day;
(i) keep it clean and ensure it is clean at the time of return to/collection by the Owner – this includes being clean from dirt, paint, concrete and any other substances;
(j) pay the cost to repair or replace all flat or damaged tyres;
(k) not part with possession or sub-hire or licence it or seek to create any charge, security interest in favour of any third party under the PPS or encumbrance over it or any Contract;
(l) move it to or store it at a location other than the location agreed with the Owner (except to return it to the Owner's Premises);
(m) not remove, deface or cover up any plates or marks attached to it;
(n) use, assemble and dismantle it at their own risk;
(o) allow the Owner access to it (and the site where the Equipment is located) for inspection, maintenance and repair at any reasonable time specified by the Owner;
(p) maintain a log book detailing the times when the Equipment is in use;
(q) take out and maintain their own insurances in respect of the Equipment including public liability insurance and insurances required by law (such as workers compensation). The Customer must provide the Owner with copies of relevant certificates of currency for such insurance whenever requested.

6. INDEMNITY

6.1 To the fullest extent permitted by law, the Customer indemnifies the Owner against any loss, cost, damage or expense (including legal costs and disbursements on a full indemnity basis and any debt collection agency fees on a full indemnity basis), and any claims, demands, suits, actions and proceedings suffered, paid or incurred by the Owner, resulting from or arising out of any breach of this Contract by the Customer or the cancellation of any Order or Contract by the Customer (including if cancelled with the consent of the Owner). To the fullest extent permitted by law, such indemnity extends in favour of the employees and directors of the Owner even though same may not be a party to the Contract.

6.2 Without limiting the foregoing, if Equipment is collected by/returned to the Owner damaged, destroyed or in a condition that is in breach of these Terms of Trade (such as being unclean), the Owner may charge the Customer for the costs and/or loss suffered or incurred by the Owner in respect of repairing or replacing the Equipment or remedying the relevant breach, as the case may be, including any lost hire fees..

7. RISK AND DELIVERY

7.1 The Customer bears all risk of damage or destruction to the Equipment (fair wear and tear excepted) starting on the commencement of the period of hire and ending on the earlier of:
(a) the date determined under **clause 1.1(c)**; or
(b) the date determined under **clause 1.1(d)**.

7.2 Although the Owner will use reasonable endeavours to provide the Equipment by the due date, this time is not of the essence. The Owner shall not be liable to the Customer for any loss or damage of any kind suffered by the Customer arising out of any failure by the Owner to provide the Equipment on the agreed or specified date or within a reasonable time. Without limiting the foregoing, should the provision of the Equipment be prevented, delayed or hindered directly or indirectly by circumstances beyond the Owner's reasonable control then either the time for provision of the Equipment shall be extended until the effect of the delaying cause has ceased or the Owner or Customer may cancel the Contract. To the fullest extent permitted by law, the Owner shall not be liable for any loss or damage of any kind suffered by the Customer for the resultant delay or cancellation of the Contract.

7.3 Notwithstanding anything contained in these Terms of Trade, the onus shall be on the Customer to ensure that the Equipment is returned to the Owner's Premises or is collected by the Owner.

8. LIMITATION OF LIABILITY

8.1 To the fullest extent permitted by law:
(a) the Owner shall not be liable to the Customer for any consequential, special, incidental or other indirect loss or damage including loss of profit, business, revenue, goodwill or anticipated savings arising out of the performance, non-performance or defective performance of the obligations of the Owner irrespective of whether or not the Owner was made aware of the possibility of such loss;
(b) all express and implied warranties, terms and conditions in relation to the obligations of the Owner including those implied by use, trade, custom or otherwise are hereby excluded;
(c) the Customer agrees that the Owner is not liable or responsible for any loss or damage that the Customer suffers or incurs due to circumstances beyond the reasonable control of the Owner;
(d) subject to the foregoing, the Owner's total liability to the Customer for breach of its obligations to the Customer is, at the option of the Owner, the cost of resupplying the Equipment or paying for the cost of resupplying the Equipment or the total of all amounts paid by the Customer under the relevant Contract.

9. **INSPECTION AND WARRANTY**

9.1 The Customer acknowledges and agrees that:
(a) they have had a reasonable opportunity to inspect the Equipment prior to accepting the Equipment and unless the Customer notifies the Owner of any damage at the time of inspection the Customer agrees that it is satisfied the Equipment is in clean condition and in good and substantial

working order, repair and condition;

(b) it is aware of the proper use for which the Equipment is designed and that the Customer is competent to use the Equipment;

(c) it will read and ensure compliance with all information provided by the Owner as to any dangers associated with the Equipment, specifications of the Equipment and the conditions necessary to ensure that persons properly using the Equipment are not exposed to hazards – for clarity, this does not limit the Customer's obligations in respect of WHS laws;

(d) to the fullest extent permitted by law, except as set out in these Terms of Trade no warranty or condition express or implied is given by the Owner as to the description, quality or condition of the Equipment or as to the suitability or fitness of the Equipment for any purpose.

10. PRIVACY ACT/CREDIT INQUIRIES

10.1 The Customer agrees that:

(a) the Owner may make such enquiries as it sees fit in order to satisfy itself as to the creditworthiness of the Customer and to assess any Credit Application;

(b) the inquires may include applying to and obtaining from any credit reporting agency a credit report of the Customer which may contain personal information, in accordance with *s18K(1)(b)* of the *Privacy Act 1988 (Cwlth)* ("**Act**"), and to obtain a report containing information from a person or business which provides information about the commercial credit worthiness of a person in relation to credit provided by the Owner in accordance with *s18L(4)* of the Act;

(c) the Owner is authorised in terms of *s18N(1)(b)* of the Act to disclose information of a report received by it and to exchange information with other credit providers for the purpose of notifying other credit providers of a default by the Customer, assessing an application for credit by the Customer, and assessing the creditworthiness of the Customer;

(d) the Owner may give information about the Customer or the Customer's business to a credit reporting agency for the purpose of obtaining a consumer credit code report, and/or to allow the consumer credit reporting agency to create or maintain a credit information file about the Customer or the Customer's business; and

(e) the Customer consents to the Owner disclosing the Customer's information to a credit reporting agency as outlined above.

11. APPLICATION AND SEPARATE CONTRACTS

11.1 These Terms of Trade apply to every Order between the Owner and the Customer for the Goods (even if not attached or referred to in an Order). Each Contract is a combination of these Terms of Trade and the relevant Order and each such Contract constitutes a separate and independent agreement. Any action taken in respect one Contract does not automatically affect any or all other Contracts.

11.2 The Owner is not obliged to accept any Order. The Contract shall only be or be deemed to have been entered into between the Owner and the Customer for the provision of the Equipment when the Order has been accepted by the Owner (which may be done in writing, verbally or by the Owner commencing to fulfil the Order). The Owner is entitled to assume that anyone on behalf of the Customer who places an Order with the Owner has full power and authority to bind the Customer.

12. INCONSISTENCY

12.1 If there is any inconsistency between the Terms of Trade and the Order, the terms of the Order prevail to the extent of the inconsistency.

12.2 These Terms of Trade prevail to the extent of any inconsistency with any terms put forward by the Customer relating to the hire of the Equipment.

13. VARIATIONS TO ORDER

13.1 If the Customer wishes to revise or change in any way the Contract after acceptance by the Owner, the Owner reserves the right to revise the Hire Rate and/or any other aspects of the Contract to take account of such changes. The Owner is not obliged to accept any variations put forward by the Customer after the Contract has been accepted by the Owner.

14. VARIATIONS TO TERMS

14.1 The Owner may vary these Terms of Trade from time to time, in which case those new terms of trade shall apply to every new Order after the Customer is notified in writing of the new terms of trade. Subject to the foregoing and any other provision of these Terms of Trade, any variation, amendment or consent to departure by any party from the Contract shall have no force or effect unless agreed in writing by the Owner.

15. PPS

15.1 In respect of the PPS, each Contract as well as the Credit Application (if applicable), and all Invoices issued to the Customer applicable to the relevant Contract constitute a "security agreement" for the purposes of the PPS.

15.2 For the purposes of *s115* of the PPS, the parties agree that to the fullest extent permitted by law, they have agreed to: (i) contract out of ss95, 117, 118, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142 and 143 of the PPS; and (ii) contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS.

15.3 To the fullest extent permitted by law, the Customer hereby waives its rights to receive any notice under s157 of the PPS pursuant to s157(3)(b) of the PPS.

15.4 The Customer acknowledges that it does not receive any right, title or interest in the Equipment except as hirer of the Equipment pursuant to these Terms of Trade.

16. MISCELLANEOUS

16.1 This Contract shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia.

16.2 Any legal action or proceedings with respect to this Contract against any party or any of its property and assets may be brought in the Courts of the State of New South Wales, Australia and each party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State.

16.3 Subject to the express written terms of the Contract, the Contract shall confer rights and benefits only upon a person expressed to be a party and not upon any other person.

16.4 The Customer shall not transfer, sub-contract or assign its rights or obligations under this Contract without the prior consent in writing of the Owner. The Owner may assign its rights or obligations under this Contract and if this occurs it shall give written notice to the Customer.

16.5 The failure to exercise or delay in exercising by any party of any right conferred by the Contract shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.

16.6 Subject to the terms of the Contract, the rights of a party conferred by the Contract are cumulative and are not exclusive of any rights provided by law.

16.7 Each party shall execute all documents and perform all acts necessary to give full effect to the Contract.

16.8 Apart from the Credit Application (if applicable), the Contract expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement. Neither party shall, after the Contract has been entered into, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by the Contract or the Credit Application (if applicable).

16.9 Any provision of the Contract which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of the Contract or affecting the validity or enforceability of that provision in any other jurisdiction.

16.10 No provision of the Contract shall merge on completion of the Contract.

16.11 If by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Owner, the Owner is unable to perform in whole or in part any obligation under a Contract, the Owner shall be relieved of that obligation to the extent and for the period that it is so unable to perform and are not liable to the Customer for any loss or damage of any kind suffered by the Customer arising out of such inability to perform.