

## Supplier Agreement

### Parties:

#### De Lage Landen Pty Limited

ABN 20 101 692 040 of Level 20, 201 Kent Street, Sydney NSW 2000 ("DLL")

[Name of Supplier]:

ABN of

(Address) ("Supplier")

### Recitals:

- A. From time to time the Supplier intends to request DLL to purchase Equipment for the purpose of renting to Customers.
- B. The parties wish to agree the basis upon which the Equipment will be supplied and rented on the terms of this agreement.

### Operative Provisions:

#### 1) Definitions and Interpretation

In this Agreement, unless the context otherwise requires:

"**Customer**" means a customer of the Supplier.

"**Equipment**" means equipment purchased or proposed to be purchased (as the case may be) by DLL from the Supplier for renting or leasing or hire purchase to a Customer under a Rental Agreement.

"**GST**" means goods and services tax imposed by the GST Law.

"**GST Act**" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and all related and auxiliary legislation as amended from time to time.

"**GST Law**" means the same as the term "GST law" defined in the GST Act.

"**Initial Term**" means the initial term of the Rental Agreement referred to in the schedule to the Rental Agreement without extension.

"**Invoice**" means, in respect of Equipment, an invoice given by the Supplier to DLL setting out the purchase price and full description of that Equipment, which is a proper tax invoice for the purpose of the GST Law.

"**Recipient Created Tax Invoice**" means an invoice issued by the entity that receives the taxable supply.

"**Rental Agreement**" means an agreement for the rental or lease of Equipment entered into between DLL and a Customer.

"**Service Agreement**" means an agreement between the Supplier and a Customer for the provision of maintenance.

In this Agreement unless the context otherwise requires:

- a) words importing the singular include the plural and vice versa;
- b) words denoting a gender include all genders; and
- c) references to persons include references to corporations and other bodies and entities.

#### 2) Purchase of Equipment

- a) Where DLL intends to enter into a Rental Agreement, the Supplier must provide DLL with an Invoice in relation to the Equipment to be purchased together with such information or documents as DLL may from time to time require.
- b) All terms and conditions relating to the supply of Equipment to DLL are as set out in this Agreement or as otherwise agreed in writing between DLL and the Supplier. Any terms and conditions included on Invoices or other documentation shall not apply unless expressly agreed to in writing by DLL.
- c) DLL will not be bound to purchase any Equipment. At all times prior to a Rental Agreement being entered into by the Customer and DLL, the Customer (and not DLL) will be responsible for the payment of the Invoice for the Equipment.
- d) DLL will process settlement for payment for the purchase of Equipment from the Supplier within 3 business days of all of the following conditions being satisfied:
  - i) a Rental Agreement is in place between DLL and a Customer;
  - ii) DLL has received acknowledgement of delivery from the Customer;
  - iii) an Invoice satisfactory to DLL has been received from the Supplier; and
  - iv) any other documentation which DLL requires as advised to the Supplier.

#### 3) Delivery of Equipment

- a) The Supplier shall be responsible for the delivery of the Equipment to the Customer.
- b) The presentation of an Invoice to DLL will constitute a warranty by the Supplier to DLL that the Equipment as described in the Invoice has been delivered to, installed and accepted by the Customer.

#### 4) DLL Undertakings

- a) DLL will endeavour to provide approvals and settlements in a timely manner.
- b) DLL will co-ordinate the signing and settlement of all documentation.

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## 5) Supplier Warranties

The Supplier warrants in favour of DLL:

- a) that at the time of purchase of the Equipment by DLL and also at the time of delivery of the Equipment to the Customer:
  - i) the Equipment is of merchantable quality and is fit for the purpose for which it is supplied;
  - ii) the Equipment is new if it is supplied as such;
- b) DLL will receive full legal and beneficial title in the Equipment, free of any mortgage, lien, charge or other encumbrance;
- c) the Equipment complies with any mandatory environmental, health or safety standards prescribed by law;
- d) the purchase price does not exceed its recommended retail price;
- e) the Supplier will supply the Equipment as principal and not as agent of any third party;
- f) the Supplier is not, and will not represent itself to be, DLL's agent for any purpose or to have any authority to bind DLL in any way;
- g) the Supplier will not make any representation regarding the terms, nature or effect of any Rental Agreement during the sales or documentation process, nor make any representation regarding the rights of a Customer with respect to the Equipment following the expiry or termination of a Rental Agreement;
- h) the Supplier will maintain records relating to the Equipment and provide DLL with access to such records, if and when required; and
- i) the Supplier will, if requested, repair or refurbish any repossessed Equipment to put it in a saleable condition, the reasonable costs of which will be borne by DLL.

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## 6) Indemnities

- a) The Supplier undertakes to DLL that it will duly and punctually perform all of its obligations to each Customer under all agreements or arrangements between the Supplier and Customers, including (without limitation) all obligations of the Supplier relating to the maintenance and servicing of Equipment.
- b) The Supplier agrees to indemnify DLL against any loss, damage or liability suffered or incurred by DLL arising directly or indirectly from:
  - i) any failure by the Supplier to observe its obligations under this Agreement;
  - ii) any failure of the Supplier to observe its obligations to a Customer under any statute or any agreement or arrangement between the Supplier and a Customer, whether for consulting, servicing or maintenance of Equipment or otherwise;

- iii) any warranty given by the Supplier in this Agreement being untrue or misleading; and
- iv) any representation, act or omission of the Supplier, its employees, agents or contractors.
- c) The Supplier must notify DLL immediately upon becoming aware of any event which may give any Customer any right or claim against the Supplier or DLL to which these indemnities may apply; or if the Supplier may be unable to meet its obligations to any Customer.
- d) The indemnities contained in this Agreement are in addition to any statutory indemnities in favour of DLL and will continue in full force and effect notwithstanding the termination of this Agreement.

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## 7) Continuity of Rental Agreements

The Supplier must not or purport to:

- a) vary any of the terms and conditions of a Rental Agreement;
- b) issue any consent or approval in connection with the Rental Agreement; or
- c) to waive or release any party from its obligations under a Rental Agreement.

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## 8) Termination

- a) Either party may terminate this Agreement by notice in writing to the other upon first giving 60 days written notice.
- b) Termination of this Agreement will not affect the rights and obligations of the parties with respect to any Rental Agreement entered into prior to the date of termination.
- c) Immediately following termination of this Agreement the Supplier must return to DLL any material supplied by DLL to the Supplier.

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## 9) General

- a) **(Waiver)** No waiver of any breach of this Agreement will be effective unless such waiver is in writing and signed by the party against whom such waiver is claimed. No waiver of any breach will be deemed to be a waiver of any other or subsequent breach.
- b) **(Governing law)** This Agreement will be governed by and construed in accordance with the laws of the state of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of such state.
- c) **(Variation)** The provision of this Agreement may not be varied unless in writing signed by the parties.
- d) **(Entire agreement)** This Agreement constitutes the entire agreement between the parties in relation to its subject matter. Any prior arrangements, agreements, representations or undertakings are superseded and replaced by this Agreement.
- e) **(Relationship)** The relationship of the parties is one of independent contractors. Nothing in this Agreement

will be construed as rendering the relationship one of principal and agent, partnership or joint venturers.

- f) **(Counterparts)** This Agreement may be executed in any number of counterparts. All of such counterparts taken together will be deemed to constitute one and the same instrument.

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## 10) GST

- a) If any GST is payable on any supply made by a party (**supplier**) to another party (**recipient**) under or in connection with this Agreement in accordance with GST Law, then the recipient must pay to the supplier the amount of such GST (to the extent that it is not already specifically included) in addition to the consideration otherwise payable for the supply.
- b) The supplier must provide the recipient with a tax invoice in such form as will permit the recipient to claim an input tax credit for the amount of such GST should it be so entitled.
- c) If the recipient is obliged to reimburse or indemnify the supplier for any amount paid or payable by the supplier to a third party (**Third Party Payment**), then:
- i) the amount payable by the recipient shall be reduced by the amount of any input tax credit to which the supplier is entitled in relation to the Third Party Payment; and
  - ii) the recipient will only be obliged to pay any applicable GST on that reduced amount.

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## 11) Supplier Authorisation - Service Charges

If the Supplier has executed a Service Agreement with the Customer for the provision of maintenance to the Equipment and the Rental Agreement authorises DLL to collect charges for maintenance on behalf of the Supplier:

- a) the Supplier acknowledges and agrees that DLL collects such proceeds on behalf of the Supplier as a mere collection agent of the Supplier, and DLL is not responsible for the provision of services, any failure by the Supplier to provide such services, or any failure by the Customer to pay for such services;
- b) the Supplier authorises DLL to issue Recipient Created Tax Invoices to the Customer for the provision of service or maintenance collected under the Rental Agreement;
- c) the Supplier acknowledges that it will not issue tax invoices in respect of service or maintenance referred to in clause 11(a);
- d) the Supplier acknowledges that it is registered for GST upon entering the agreement and will notify the supplier if it ceases to be registered;
- e) the Supplier indemnifies DLL for any liability for GST and penalty that may arise from an understatement by DLL, on an invoice it issues to the Customer, of the GST payable on any acquisition of services by the Customer from the Supplier;
- f) DLL will use its best endeavours to collect the service or maintenance component of the

customer's payment. DLL will pass on such proceeds received from the Customer, but will be under no obligation to make payments to the Supplier for maintenance under any Service Agreement unless and until such payments are received from the Customer;

- g) for the avoidance of doubt, all payments received from a Customer will be applied first to any amounts due and payable to DLL under a Rental Agreement, including any taxes payable; and
- h) the Supplier acknowledges and agrees that it will not make any claim against DLL for non-payment of the service or maintenance charges, and indemnifies DLL for any loss or cost incurred by DLL for any such claim.

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## 12) Assignment and capacity

- a) It is acknowledged that DLL may sell or assign either absolutely or by way of security the Equipment or any of its rights or obligations under any Rental Agreement or this Agreement.
- b) The rights and obligations of the Supplier under this Agreement may not be assigned without the prior written consent of DLL.
- c) DLL may enter into this Agreement and any Rental Agreement as agent for another person (whether that principal is disclosed or otherwise) and in such a case that principal shall have the benefit of all rights, warranties, undertakings and indemnities of or in favour of DLL under this Agreement.

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## 13) Notices

- a) Notices under this Agreement may be delivered by hand, pre-paid mail, or by facsimile to the addresses specified in this Agreement or such other address as one party may notify to the other for the purposes of this Agreement.
- b) A notice will be deemed given:
- i) in the case of hand delivery or pre-paid mail, upon delivery (which, in the case of pre-paid mail shall be deemed to be made three (3) business days after posting); and
  - ii) in the case of facsimile, upon successful completion of transmission to the other party.

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## 14) Personal Property Securities Registration

- a) Without affecting the obligations of Supplier under this Agreement, if, in the opinion of DLL a PPS Law applies, or will in the future apply to this Agreement or any Rental Agreement or any of the transactions provided for or contemplated under this Agreement and that PPS Law:
- i) adversely affects or would adversely affect DLL's security position or its rights or obligations under or in connection with this Agreement or the Rental Agreement ("**Adverse Affection**"); or
  - ii) enables or would enable DLL's security position to be improved without adversely affecting Supplier in a material respect ("**Improvement**"),

DLL may by notice to Supplier require it to do anything (including amending this Agreement and/or any Rental Agreement or executing any new document) that in DLL's opinion is necessary or desirable to ensure that, to the maximum possible extent, DLL's security position, and its rights and obligations, are not subject to an Adverse Affection or are improved by an Improvement. Supplier must comply with the requirements of that notice within the time stipulated in the notice.

- b) "PPS Law" means the Personal Property Securities Act 2009 (Cth) ("PPSA") and any regulations enacted from time to time thereunder, any amendment made at any time to the Corporations Act 2001 (Cth) or any other legislation as a consequence of the PPSA.

#### 15) Confidentiality

- a) Each party agrees that this Agreement and all information provided by each of them and the affiliates and authorised agents of each of them (including financial information) is confidential, and neither party nor its affiliates or agents shall disclose the terms of this Agreement or any information provided by the other or its affiliates or agents without the prior written consent of the other party.
- b) The obligations of confidentiality under clause 14a) do not apply to any information that:
- i) was in the public domain at the time it was disclosed to the receiving party or becomes part

of the public domain after such disclosure (other than by reason of a breach of this Agreement);

- ii) was known to the receiving party at the time of its disclosure or becomes known to the receiving party without breach of this Agreement;
  - iii) is independently developed by the receiving party hereafter;
  - iv) is disclosed to the receiving party by a third party without restriction on such third party's rights to disclose or use the same;
  - v) is required to be disclosed by any applicable law, but only after reasonable advance Notice is given to the disclosing party with an opportunity to contest such order or requirement; or
  - vi) is approved for release by the disclosing party's prior written consent.
- c) The obligations contained in this clause will survive the termination of this Agreement, without limit in point of time.

#### 16) Bank Account Details

The Supplier's bank account details are:

Account Name:

BSB No:

Account No:

#### Signing Section:

Where the Supplier is a company, the signatories will sign in accordance with section 127(1) of the *Corporations Act* 2001 (Cth) by two directors or by one director and a company secretary. Where the Supplier is a partnership, the partner signing does so under authority from the other partners.

<b>Executed by the Supplier *:</b>	<b>Signature:</b>	
	<b>Print Full Name:</b>	(Director / Partner / Sole Trader)
	<b>Email:</b>	@
	<b>Date:</b>	
	<b>Signature:</b>	
	<b>Print Full Name:</b>	
	<b>Title:</b>	Director / Company Secretary / Witness
	<b>Date:</b>	

\* If the Supplier is a sole trader or partnership, please also return a signed Privacy Act Consent Form.

<b>Signed for and on behalf of DLL</b>	<b>Signature:</b>	
	<b>Print Full Name:</b>	
	<b>Date:</b>	