

Terms and Conditions - Hire

address provided in the Tax Invoice,

and continues until the End Date or such time as the Equipment is returned by the Hirer to the possession, custody or control of the Owner.

1. Application

- 1.1 These Terms and Conditions apply to all hire of the Owner's Equipment despite any contrary terms in any of the Hirer's documents and constitutes the entire agreement between the parties to the exclusion of all other terms and conditions.
- 1.2 In the absence of written confirmation, the Hirer:
 - 1.2.1 taking possession of the Equipment; or
 - 1.2.2 accepting delivery of the Equipment at the address provided in the Agreement Details or Tax Invoice, as the case may be,

indicates the Hirer's acceptance of these Terms and Conditions unamended.
- 1.3 No representations, inducements, promises or agreements between the parties will be of any force or effect in varying these Terms and Conditions unless in writing and signed by both parties.
- 1.4 The Hirer warrants that the Equipment will be used for the purposes for which they are intended only.
- 1.5 For the avoidance of doubt, the hire of the Owner's Equipment by the Hirer under the terms of this Hire Agreement constitutes:
 - 1.5.1 the provision of Services by the Owner as a registered NDIS Registered Provider; and
 - 1.5.2 the Hire Fees and all other charges under this Hire Agreement constitute Support Fees.

2. Booking

- 2.1 The Owner agrees to exclusively hire the Equipment to the Hirer on these Terms and Conditions and the terms of the Agreement Details and Tax Invoice. If there are any inconsistencies between these Terms and Conditions and the Agreement Details or Tax Invoice, the Agreement Details and Tax Invoice prevail to the extent of any inconsistency with the Terms and Conditions.
- 2.2 Upon receipt of payment from the Hirer (or the Payment Provider) to the Owner for the Tax Invoice, the Booking is confirmed by the Owner.

3. Legal Capacity

- 3.1 The Hirer must be at least eighteen (18) years of age to place a Booking and to hire Equipment from the Owner.
- 3.2 The Owner reserves the right to take legal action and seek compensation from the parent or guardian of a minor who causes a Booking to be placed, Tax Invoice issued and/or hire of Equipment, including for any loss or damage the Owner may suffer as a result of a transaction entered into by a minor.

4. Hire Period

- 4.1 Subject to clause 5, the Hire Period commences on the earlier of, the Hirer:
 - 4.1.1 The date set out in the Agreement Details;
 - 4.1.2 taking possession of the Equipment; or
 - 4.1.3 accepting delivery of the Equipment at the

- 4.2 For the avoidance of doubt, the Hire Period includes any weekends and public holidays.

5. Minimum Hire Period

- 5.1 The Hirer must hire the specified items of Equipment for the Minimum Hire Period as set out in the Agreement Details or Tax Invoice as the case may be.

6. Cancellation

- 6.1 The Owner reserves the right to cancel the Booking prior to the Hirer:
 - 6.1.1 taking possession of the Equipment; or
 - 6.1.2 accepting delivery of the Equipment at the address provided in the Agreement Details or Tax Invoice, as the case may be.
- 6.2 If the Owner cancels the Booking under clause 6.1, the Owner will refund any deposit paid by the Hirer under clause 10. The Hirer agrees that they will have no claim whatsoever against the Owner for any loss or damage which may result from cancellation by the Owner.
- 6.3 If the Hirer cancels the Booking following payment of the Tax Invoice and prior to the Hirer:
 - 6.3.1 taking possession of the Equipment; or
 - 6.3.2 accepting delivery of the Equipment at the address provided in the Agreement Details or Tax Invoice, as the case may be,

the Owner is entitled to retain any amounts as property of the Owner. The Hirer does not have any entitlement to a refund.

7. Return of Equipment

- 7.1 At the expiry or termination of the Hire Period, the Hirer must return all Equipment to the Owner in good and clean condition and working order excepting only fair wear and tear.
- 7.2 All Equipment shall be deemed in good condition and working order unless the Owner notifies the Hirer to the contrary within seven (7) Business Days of return of the Equipment.
- 7.3 The Hirer must return the Equipment to the Owner no later than midday on the Return Date for the Booking (as set out in the Agreement Details or Tax Invoice as the case may be) to the location the Equipment was hired. The Hirer will be charged additional hire charges for late return of Equipment.
- 7.4 Two clear Business Days' notice is required in order to arrange pick up of any Equipment by the Owner from the Hirer. If the Owner has agreed to collect the Equipment from the Hirer, the Hirer must ensure the Equipment is kept safe and secure until the time of collection.
- 7.5 The Hirer's responsibility for the preservation and safe keeping of the Equipment will not be determined until the Equipment is physically handed over to Owner by the Hirer.
- 7.6 When Equipment is returned to the Owner by the Hirer, the Owner will issue a Hire Return Verification issued

which will be *prime facia* proof of the return of the quantity of the Equipment listed thereon but not of their condition.

8. Hire Fees

- 8.1 The Hirer must pay to the Owner all Hire Fees in connection with the hire of all Equipment from the Owner.
- 8.2 Subject to clause 5, the Hirer will be charged for the hire of Equipment for the entire period the Equipment remains out of the possession or control of the Owner.
- 8.3 For the avoidance of doubt, the Hirer must:
 - 8.3.1 continue to pay the Hire Fees and any Additional Charges if the Hirer has not returned the Equipment to the Owner by the expiry of the Hire Period.
 - 8.3.2 pay the Hire Fees and any Additional Charges for the Minimum Hire Period, if the Hirer returns the Equipment prior to termination or expiration of the Minimum Hire Period.

9. Additional Charges

- 9.1 In addition to any Hire Fees payable under clause 8, the Hirer must pay to the Owner:
 - 9.1.1 any costs for consumables or trade materials which the Owner supplies to the Hirer in connection with the hire of the Equipment;
 - 9.1.2 any costs for delivery, unloading, reloading, collection and installation of the Equipment;
 - 9.1.3 any charges for the cleaning of the Equipment on return of the Equipment to the Owner;
 - 9.1.4 any costs caused by inaccuracies arising through orders, instructions or information given by Hirer to the Owner;
 - 9.1.5 any costs of from changes to installation or delivery requirements of the Hirer prior to, during, or after installation or delivery of the Equipment;
 - 9.1.6 any applicable tax, Goods and Services Tax (GST), stamp duty, fee, levy or charge of any nature whatsoever imposed by any semi government or government authority in respect of the hire; and
 - 9.1.7 any other charges detailed in the Tax Invoice.
- 9.2 If the Hirer requests operational guidance or training on the use of the Equipment, the Owner will provide such guidance or training to the extent that the Owner is able and the Hirer agrees to pay the cost for the provision of those services at the standard hourly rates as determined by the Owner from time to time and as otherwise agreed between the parties.

10. Payment of Hire Fees and Additional Charges

- 10.1 The Hirer must pay to the Owner the amount of the Tax Invoice for the Hire Fee for each item of Equipment on Tax Invoice.
- 10.2 Payment may be made by a third party (including but not limited to a Payment Provider) on the Hirer's behalf.
- 10.3 If the Hirer is a Participant under the NDIS, the Owner may, but not is obliged to, issue the Tax Invoice to the Payment Provider for payment. The Hirer principally remains under this Hire Agreement at all times.

- 10.4 Unless otherwise stated in writing, all invoices, Hire Fees (less any deposit paid under 10.1), Additional Charges and any other costs or charges of any kind are payable net 7 days from date of invoice.
- 10.5 Where delivery of Equipment is effected by part deliveries the Owner is entitled to pro rata progress payments in respect thereof.
- 10.6 While any payment to be made by the Hirer is overdue the amount outstanding from time to time shall bear interest at the maximum rate charged by the Owner's bank from time to time on an unsecured overdraft in excess of one hundred thousand dollars. A certificate by any bank manager of any branch of such bank shall in the absence of manifest error be conclusively binding on the parties as to the interest rate. The Owner is entitled to charge and recover from the Hirer any costs and expenses incurred by the Owner in recovering any unpaid amounts under this Hire Agreement.
- 10.7 A dispute will not affect payment of non-disputed amounts on the same invoice or the payment of any other invoices due by the Hirer. The Hirer has no right of set off or deduction.
- 10.8 The Owner is entitled to set off or deduct any amount against any amount the Owner owes the Hirer and any amount the Hirer owes to the Owner.
- 10.9 The Hirer agrees to provide the Owner with the Hirer's credit card number, expiry date and any other information which may be necessary to debit the Hirer's credit card prior to delivery of the Equipment.
- 10.10 Subsequent charges for cleaning, loss, damage, repairs or other expenses are to be paid within seven (7) days of the relevant invoice.
- 10.11 The Hirer hereby authorises the Owner to debit the Hirer's credit card with the amount shown on the relevant invoice if the Hirer has not paid that amount within seven (7) days of the date of the relevant invoice.
- 10.12 The Hirer agrees to pay any expenses incurred or loss suffered by the Owner as a result of breach by the Hirer of its obligations pursuant to these Terms and Conditions (including legal costs on a solicitor-client basis) and to pay all costs and expenses incurred by the Owner, its legal advisers, mercantile agents and others in respect of anything instituted or being considered against the Hirer, whether for debt, possession of any Equipment or otherwise.

11. Hirer's Obligations

- 11.1 The Hirer hires the Equipment at the Hirer's risk, and bears responsibility for the Equipment hired from the time of its delivery into the possession of the Hirer until collection by or return to the Owner.
- 11.2 The Hirer must upon installation, delivery or collection of the Equipment, immediately examine the Equipment to satisfy itself as to the Equipment's condition and suitability and fitness for the purpose to which the Hirer requires the Equipment. The Hirer must notify the owner within 24 hours of any broken, damages or defective Equipment. If the owner is not notified within this period, the Equipment is deemed in good condition and working order.
- 11.3 The Hirer, where necessary, is responsible to obtaining the necessary licences or permits and to pay such fees as may be required to use the Equipment.
- 11.4 The Hirer acknowledges that, the Hirer:
 - 11.4.1 has duly examined the Equipment and has satisfied itself as required; and
 - 11.4.2 has not in any way relied upon the skill or judgement or any representation made by or

on behalf of the Owner in respect of the Equipment, its purpose, suitability or performance.

- 11.5 The Hirer must in use of the Equipment:
- 11.5.1 do so safely and strictly in accordance with all laws and regulations;
 - 11.5.2 do so in a proper, safe and prudent manner and only for the purpose and capacity for which it was designed;
 - 11.5.3 comply with any written instructions given to the Hirer or accompanying the Equipment;
 - 11.5.4 only for its intended use and in accordance with the manufacturer's instructions;
 - 11.5.5 ensure any person operating or using the Equipment are suitably supervised (as required);
 - 11.5.6 ensure that no persons operating the Equipment are under the influence of drugs or alcohol; and
 - 11.5.7 ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines.
- 11.6 At all times during the Hire Period, the Hirer must:
- 11.6.1 not in any way alter, modify, tamper with, damage or repair the Equipment without the prior written consent of the Owner. Any repairs must be undertaken by the Owner;
 - 11.6.2 not deface, remove, vary or erase any identifying marks or safety information on the Equipment;
 - 11.6.3 not remove the Equipment from the location designated in the Agreement Details or Tax Invoice, as the case may be (to the extent applicable);
 - 11.6.4 not sub-hire, part with possession or part with control of, the Equipment, without the Owner's written permission;
 - 11.6.5 store the Equipment safely and securely and protect the Equipment from theft, seizure, loss or damage; and
 - 11.6.6 undertake any test and certification if necessary for use of the Equipment.

12. NDIS Participant Warranties

- 12.1 If the Hirer is a Participant, they (and their Nominee) represent and warrant that:
- 12.1.1 the Hirer is a participant in the NDIS with a NDIS Plan;
 - 12.1.2 the NDIS Plan will remain in effect during the Hire Period;
 - 12.1.3 the Hirer will immediately notify the Owner if, during the Hire Period:
 - 12.1.3.1 the NDIS Plan at time of Booking is replaced by a new NDIS Plan; or
 - 12.1.3.2 the Participant ceases being a participant in the NDIS.
 - 12.1.4 the Hirer will only seek the supply of Supports under this Hire Agreement as part of the performance of the Services that are reasonable and necessary supports eligible

and as specified in the statement included, under subsection 33(2) of the NDIS Act, in the Hirer's NDIS Plan currently in effect under section 37 of the NDIS Act and otherwise available for funding by way of application of the NDIS Amount in accordance with the NDIS Act;

- 12.1.5 the Hirer has nominated the Payment Provider (if any) to manage the NDIS Amounts;
- 12.1.6 the Hirer has NDIA Amounts allocated and available to apply towards the Support Fees for the hire of the Equipment under this Hire Agreement.
- 12.1.7 the Hirer will use their best endeavours to ensure the NDIS Amounts managed by the Payment Provider are solely applied towards payment of the Support Fees;

13. Limitation of Liability

- 13.1 The Equipment comes with guarantees that cannot be excluded under the Australian Consumer Law.
- 13.2 The Hirer is entitled to:
- 13.2.1 a replacement or refund for a major failure and compensation for any reasonably foreseeable damage;
 - 13.2.2 have the Equipment repaired or replaced if the Equipment fails to be of acceptable quality and the failure does not amount to major failure.
- 13.3 To the extent that any statute permits the Owner to limit the Owner's liabilities to compensate or indemnify any person for breach of a condition or warranty implied thereby, then the respective liabilities of the Owner for such breach shall be limited in the case of Equipment to:
- 13.3.1 the replacement of the Equipment or the supply of equivalent Equipment,
 - 13.3.2 the repair of Equipment;
 - 13.3.3 the payment of the costs of replacing the Equipment or of acquiring equivalent Equipment; or
 - 13.3.4 payment of the cost of having the Equipment repaired, and in the case of services to the re-supply of the services; or the payment of the cost of having the services supplied again.
- 13.4 Subject to clauses 13.1 to 13.3 and any legislation to the contrary:
- 13.4.1 the Owner provides makes no representations and gives no guarantee or warranty that the Equipment is fit or suitable for the Hirer's intended purpose.
 - 13.4.2 any representations and agreements not expressly contained herein shall not be binding upon the Owner as conditions, warranties or representations; all such conditions warranties and representations on the part of the Owner, whether express or implied, statutory or otherwise, whether collateral or antecedent or otherwise are hereby expressly negated and excluded;
 - 13.4.3 the Owner is not liable to the Hirer for any loss or for damage to persons or property or for death or injury except to the extent the loss or damage is caused by the negligent acts or omissions of the Owner;

13.4.4 the Hirer shall indemnify the Owner against any claims made against the Owner by any third party in respect of any such loss, damage, death or injury and the Hirer further agrees to indemnify the Owner against all losses and expenses which the Owner may suffer or incur due to the failure of the Hirer fully to observe its obligations under this Hire Agreement, except to the extent that any losses or expenses are caused by the negligent acts or omissions of the Owner.

13.5 To the maximum extent permitted by law, the Hirer will not pursue any claim against the Owner or hold the Owner liable for any fines, penalties, taxes (except GST) and any exemplary, aggravated or punitive damages, liquidated damages or any indirect or consequential loss (including but not limited to loss of business, loss of revenue, loss of contract, loss of production, lost opportunity costs), legal costs and expenses (except reasonable legal costs awarded by a court) or performance by the Owner of the Hire Agreement.

14. Retention of Title

14.1 The Hirer acknowledges that all property in and title to the Equipment at all times remains with the Owner, the Hirer does not acquire any property in or title to the Equipment and the Hirer's interest in the Equipment is as bailee of the Owner only.

14.2 The Hirer is not entitled to offer, sell, assign, sublet, charge, mortgage, pledge or create any other form of security interest over or otherwise deal with the Equipment in any way.

14.3 In no circumstances will the Equipment be deemed to be a fixture.

15. PPSA

15.1 The Hirer acknowledges and agrees that the retention of title provided by clause 14 amounts to a security interest under the PPSA.

15.2 The Hirer consents to the Owner effecting and maintaining a registration on the register on the Personal Property Securities Register in terms of the PPSA (in any manner the Owner considers appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and the Hirer agrees to sign any documents and provide all assistance and information to the Owner as may be necessary or required to facilitate the registration and maintenance of any security interest.

15.3 The Owner may at any time register a financing statement or financing change statement in respect of a security interest (including any Purchase Money Security Interest as defined in section 14 of the PPSA).

15.4 The Hirer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment (section 157(3)(b) of the PPSA).

15.5 The Hirer undertakes to do anything (in each case, including executing any new document or providing any information) that is required by the Owner:

15.5.1 so that the Owner acquires and maintains one or more perfected security interest under the PPSA in respect of the Equipment and its proceeds;

15.5.2 to register a financing statement or financing change statement; and

15.5.3 to ensure that the Owner's security position and rights and obligations are not adversely

affected by the PPSA.

15.6 The Hirer undertakes to:

15.6.1 not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without the Owners prior written consent; and

15.6.2 not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the Owner's prior written consent.

15.7 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement the following provisions of the PPS Act will not apply and the Hirer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96: section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 130; section 132(4); section 135 and section 143 of the PPS Act.

15.8 Unless otherwise agreed and to the extent permitted by the PPSA the Hirer and the Owner agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Hirer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

15.9 For the purposes of section 20(2) of the PPS Act, the collateral is any Equipment which is described in the Agreement Details, any Tax Invoice and Hire Agreement provided by the Owner to the Hirer from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.

15.10 The Owner may apply amounts received in connection with this Hire Agreement or otherwise to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way it may in the Owner's absolute discretion determine.

15.11 The Hirer agrees to notify the Owner in writing of any change to its details set out in the Credit Application within 5 days from the date of such change.

16. Charge

16.1 The Hirer charges in favour of the Owner all its estate and interest in any land and in any other assets whether tangible or intangible in which the Hirer now has any legal or beneficial interest or in which the Hirer may later acquire any such interest with payment of all monies owed by the Hirers and agree upon request in writing, to execute a registrable instrument transferring to the Owner, the Hirer's estate and interest by way of security.

17. Owner Inspection of Equipment

17.1 The Hirer acknowledges that the Owner may inspect the Equipment at any time during the Hire Period, whether notice of such inspection is given to the Hirer or not, and the Hirer shall provide all assistance and co-operation necessary to facilitate such inspection of the Equipment.

17.2 The Hirer shall indemnify the Owner in relation to any action of trespass or any other action or claim against the Owner in the course of the Owner exercising its right to inspect the Equipment.

18. Loss of, Damage or Breakdown of Equipment

18.1 If the Equipment is lost, breaks down or is damaged, the Hirer must immediately notify the Owner of the details.

Notification shall not absolve the Hirer from its obligations under these Terms and Conditions.

- 18.2 If the Equipment breaks down or becomes unsafe to use during the Hire Period, the Hirer must:
- 18.2.1 immediately stop using the Equipment and notify the Owner;
 - 18.2.2 take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - 18.2.3 take all steps necessary to prevent any further damage to the Equipment; and
 - 18.2.4 not repair or attempt to repair the Equipment without the prior written consent of the Owner.
- 18.3 Upon receiving notice from the Hirer under clause 18.2.1, the Owner will:
- 18.3.1 take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably practicable after being notified by the Hirer;
 - 18.3.2 not charge the Hirer a Hire Fee for that portion of the Hire Period for which the Equipment was broken down or unsafe;
 - 18.3.3 not charge the Hirer any costs associated with any repair or replacement of the Equipment.
- 18.4 If the Equipment is lost or damages or breaks down or becomes unsafe to use as a result of Hirer's acts or omissions, (or the acts or omissions of the Hirer's employees, agents or contractors) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, the Hirer will be liable for:
- 18.4.1 any costs incurred by the Owner to recover and repair or replace the Equipment; and
 - 18.4.2 the Hire Fees for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced; and
 - 18.4.3 any other costs whatsoever incurred or loss suffered by the Owner as a result of loss, damage to or breakdown of the Equipment.

19. Damage Waiver

- 19.1 Please note this is separate and distinct from insurance (see clause 22).
- 19.2 The Hirer agrees to pay a damage waiver to the Owner to cover any costs associated with any accidental damage to a particular item of Equipment, provided that the replacement cost and/or the cost of repairs to any Equipment which was damaged does not exceed 15% of the Hire Fee for the particular item of Equipment.
- 19.3 If the damage exceeds 15% of the Hire Fee for the particular item of Equipment, then clause 19 shall apply. The damage waiver does not apply to or cover any other damage to or loss of Equipment including, without limitation:
- 19.3.1 damage resulting from misuse, abuse or improper servicing of Equipment;
 - 19.3.2 damage or loss due to disappearance of the Equipment;
 - 19.3.3 damage caused by the use or operation of Equipment in contravention of any of these Terms and Conditions; and
 - 19.3.4 damage to, or loss of, the Equipment from any unknown cause.

20. Promotional Material

- 20.1 The descriptions and illustrations contained in the Owner's catalogues, price lists and other advertising material are intended merely to present a general idea of the Equipment described therein and do not form part of the Hire Agreement.
- 20.2 The Owner accepts no responsibility for the accuracy of any such design drawings, specifications, illustrations, samples, instructions and submissions and these do not constitute any warranty guarantee, representation or opinion of the practicability or the efficacy, safety or otherwise of the Equipment and the Owner will not be liable for any consequential loss or damage caused by any defect or otherwise.
- 20.3 All drawings, catalogues, printed matter etc., accompanying the Hire Agreement or in the Hirer's possession before or after Hirer's entry into this Hire Agreement are informative only and weights, measurements, powers, capacities or other particulars of Equipment offered are stated in good faith and, subject to the terms hereof. Inaccuracies shall not void or violate this Hire Agreement nor be made the basis of any claim against the Owner or justify rejection of the Equipment.

21. Repossession

- 21.1 Where the Owner is entitled to retake possession of the Equipment, the Hirer hereby grants a licence to the Owner to enter any place where any of the Equipment may be for the purpose of removing same, provided the Owner uses reasonable endeavours to minimise any disturbance to the land and premises.
- 21.2 If Hirer is unable to grant the Owner any such licence under clause 21.1, the Hirer must, upon being requested by the Owner so to do, forthwith deliver to the Owner such of the Equipment as the Owner may demand at the nearest place accessible to the Owner and convenient to it for removing same.
- 21.3 The Hirer must reimburse the Owner for all reasonable obtaining costs, charges and expenses (including solicitor/client legal expenses) which the Owner may incur in obtaining possession of all or any of the Equipment without prejudice to the Owner's claim for extra charges for Equipment retained for a longer period than the Hire Period. If the Owner incurs any cost or liability for whatever reason as a result (whether direct or indirect) of taking possession as aforesaid, the Hirer hereby fully indemnifies the Owner against any such liability or cost, except to the extent that any losses or expenses are caused by the negligent acts or omissions of the Owner.

22. Insurance

- 22.1 The Hirer must maintain at the Hirer's sole cost and expense all appropriate policies of insurance:
- 22.1.1 for theft and damage to the Equipment hired in an amount not less than the full replacement cost of the Equipment; and
 - 22.1.2 for liability, property and casualty insurance coverage in amounts necessary to fully protect the Owner and the Owner's Equipment against all claims, loss or damage whatsoever.

23. Release and Indemnity

- 23.1 The Hirer hereby releases the Owner from, and agrees to fully indemnify and keep indemnified the Owner in respect of any third party claims, action, suits, demands, losses, costs and expenses arising in connection with:
- 23.1.1 damage or injury to person or property arising directly or indirectly out of the hire or use of the Equipment by the Hirer;

- 23.1.2 the Hirer's breach of any of these Terms and Conditions.
- 23.1.3 the death of, or injury to any person caused by the Hirer;
- 23.1.4 any wrongful or negligent act of omission of the Hirer;
- 23.1.5 any breach by the Hirer of the terms and obligations under this Hire Agreement,

except to the extent caused or contributed to by the Owner its subcontractors, employees or agents.

24. Termination

24.1 This Hire Agreement may be terminated:

- 24.1.1 by mutual agreement of the parties;
- 24.1.2 by the Owner on 7 days' notice in writing to the Hirer;
- 24.1.3 by the Owner without notice where:
 - 22.1.2.1 the Hirer becomes an externally administered body (within the meaning of the *Corporations Act 2001* (Cth)) or a controller (also within the meaning of that Act) is in possession or has control of any of the Hirer's property;
 - 22.1.2.2 the Hirer ceases to carry on the Hirer's business or becomes insolvent (within the meaning of the *Corporations Act 2001* (Cth)); or
 - 22.1.2.3 the Hirer engages in dishonesty as determined by the Owner in its absolute discretion.
- 24.1.4 by the Owner at any time on the earlier of:
 - 22.1.2.4 the expiration of the Hire Period set out in the Agreement Details or Tax Invoice, as the case may be; and
 - 22.1.2.5 the Hirer being in breach of these Terms and Conditions, in which case the Hirer shall have no claims against the Owner for such termination.
- 24.1.5 by the Hirer upon:
 - 22.1.2.6 returning the Equipment to the Owner during normal working hours to the location designated on the Agreement Details or Tax Invoice as the case may be; or
 - 22.1.2.7 if the Owner has agreed in writing to collect the Equipment on termination, notifying the Owner that the Equipment is ready for collection, provided that the Hirer keeps the Equipment safe until collection.

Agreement, termination under clause 24 does not affect any accrued rights or remedies of either party.

25.2 Upon expiration or termination for any reason, the Hirer must make payment to the Owner for all Hire Fees, Additional Charges and other amounts recoverable under this Hire Agreement.

25.3 Upon expiration or termination, the Owner is entitled to take possession of the Equipment immediately and for this purpose the Hirer irrevocably appoints the Owner as the Hirer's agent and authorises the Owner to:

- 25.3.1 enter upon any land or premises upon which the Equipment is situated or where the Owner has any reason to believe that the Equipment may be situated; and
- 25.3.2 remove the Equipment whether or not it is affixed to the land or premises, connected to property or Equipment not owned by the Owner, in use by the Hirer or any other person or containing property not owned by the Owner, in use by the Hirer or any other person or containing property not owned by the Owner.
- 25.3.3 if the Equipment is not finally returned or if the Owner has agreed beforehand to collect, ready for pick-up by the Owner at the expiration or termination of the hire period the Hirer shall pay an additional charge of 100% the daily rate for every additional day or part thereof that the Equipment is retained by the Hirer unless specified by the Owner.

26. Obligations after Expiry or Termination

26.1 The following clauses will survive expiry or termination (for whatever reason) of this Hire Agreement:

- 26.1.1 clause 7 (**Return of Equipment**);
- 26.1.2 clause 8 (**Hire Fees**);
- 26.1.3 clause 9 (**Additional Charges**);
- 26.1.4 clause 10 (**Payment of Hire fees and Additional Charges**);
- 26.1.5 clause 12 (**NDIS Participant Warranties**);
- 26.1.6 clause 13 (**Limitation of Liability**);
- 26.1.7 clause 14 (**Retention of Title**);
- 26.1.8 clause 15 (**PPSA**);
- 26.1.9 clause 19 (**Damage Waiver**);
- 26.1.10 clause 21 (**Repossession**);
- 26.1.11 clause 22 (**Insurance**);
- 26.1.12 clause 23 (**Release and Indemnity**);
- 26.1.13 clause 25 (**Accrued Rights and Consequences of Termination**); and
- 26.1.14 any other clauses that make provision for continued operation.

27. Disclosure

27.1 The Owner hereby notifies the Hirer that the Owner may:

- 27.1.1 receive a rebate, commission or benefit (financial or otherwise) from a third party;
- 27.1.2 provide a rebate, commission or benefit (financial or otherwise) to a third party

in connection with the Equipment and/or this Hire Agreement.

25. Accrued Rights and Consequences of Termination

25.1 Except to the extent specifically noted in this Hire

27.2 You acknowledge and accept:

- 27.2.1 a rebate, commission or benefit (financial or otherwise) is or may be payable to the Owner from a third party in respect of a dealing or referral and the nature of any rebate, commission or benefit (financial or otherwise); and
- 27.2.2 the Hirer may refuse any referral, and the Hirer hereby gives informed consent to any rebate, commission or benefit (financial or otherwise) received or which may be received by the Owner; and
- 27.2.3 the Hirer is hereby advised of any payments, rebate, commission or benefit (financial or otherwise) to the Owner from a third party.

27.3 You acknowledge and accept:

- 27.3.1 a rebate, commission or benefit (financial or otherwise) is or may be payable by the Owner to a third party in respect of a dealing or referral and the nature of any rebate, commission or benefit (financial or otherwise); and
- 27.3.2 the Hirer may refuse any referral, and the Hirer hereby gives informed consent to any rebate, commission or benefit (financial or otherwise) provided or which may be provided by the Owner to a third party; and
- 27.3.3 the Hirer is hereby advised of any payments, rebates, commissions or benefit (financial or otherwise) from the Owner to a third party.

27.4 The Hirer acknowledges and by agreeing to these Terms and Conditions hereby consents to, and waives, and releases any claims whatsoever for any conflict of interest in the provision of any Equipment to the Hirer at all times.

28. Credit Reporting

28.1 The Hirer authorises the Owner to:

- 28.1.1 obtain from a credit reporting agency a credit report containing personal information about the Hirer and the Hirer's guarantors pursuant to section 18K(1)(b) of the *Privacy Act 1988* (Cth);
- 28.1.2 obtain a report from a credit reporting agency and other information in relation to the Hirer's commercial credit activities;
- 28.1.3 in accordance with section 18N(1)(b) of the *Privacy Act 1988* (Cth), give to and obtain from any credit provider that may be named in a credit report issued by a credit reporting agency information about the Hirer's credit arrangements, which may include information about credit worthiness, credit standing, credit history or credit capacity; and
- 28.1.4 use any credit information for the purposes of this Hire Agreement (section 18L(4) of the *Privacy Act 1988* (Cth)) and in assisting the Hirer to avoid defaulting on its payment obligations, notifying credit providers of a default, and assessing credit worthiness.

29. Corporate Authority

- 29.1 Each party hereby represents and warrants to each other party that if it is a corporate entity:
 - 29.1.1 it is validly existing under the laws of its place of incorporation;
 - 29.1.2 the execution and delivery of this Hire Agreement has been properly authorised by all necessary corporate or other action required by it;
 - 29.1.3 it has full corporate power and lawful authority to

execute and deliver this Hire Agreement and to perform or cause to be performed its obligations under this Hire Agreement; and

- 29.1.4 this Hire Agreement does not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule, or regulation to which it is a party or is subject or by which it is bound.

30. Trust Authority

- 30.1 Each party hereby represents and warrants to each other party that if it has entered into this Hire Agreement as the trustee of a trust (**Trust**):
 - 30.1.1 the party is validly appointed as the trustee(s) of the Trust, is not in breach of its obligation as trustee and no circumstances exist pursuant to which it may be removed as trustee of the Trust;
 - 30.1.2 this Hire Agreement is duly executed in proper exercise of the powers of the party as trustee of the Trust and all formalities required by the trust deed of the Trust in connection with this Hire Agreement have been complied with; and
 - 30.1.3 the execution and performance of this Hire Agreement is for a proper purpose of and provides commercial benefit to the Trust.

31. Force Majeure

- 31.1 If the Owner is unable at any time to perform any of its obligations whether wholly or partly by reason of any cause beyond its control (including without limitation, acts of God, inclement weather, strikes, lockouts, fires, riots, government order, infectious disease outbreaks (including but not limited to COVID-19), civil commotion or unrest, interference by civil or military authorities or act of war) the Owner may give written notice to that effect to the Hirer, giving full particulars of such force majeure in which case the obligations of the Owner under these Terms and Conditions shall, to the extent that they are affected by the force majeure, be suspended during the term of the force majeure. The Owner shall not be liable for any loss or damage suffered by the Hirer as a result of any delays caused by such force majeure events.

32. Assignment and Sub-contracting

- 32.1 The Owner may, at any time, assign any of the rights under, or novate this Hire Agreement, in the Owner's absolute discretion. If the Owner novates this Hire Agreement, the Owner will have no liability in respect of this Hire Agreement, from the date of novation.
- 32.2 The Hirer must not assign any of its rights under this Hire Agreement without the prior written consent of the Owner, which may be withheld in the Owner's absolute discretion.
- 32.3 The Owner may sub-contract or delegate the performance of the hire of any part thereof and the Hirer irrevocably consents to any sub-contracting or delegation of the performance of the hire under this Hire Agreement to any one or more third party as determined by the Owner in Owner's absolute discretion from time to time.

33. Hire Then Buy Scheme - Offer to Buy Equipment

- 33.1 If the Hirer has represented to the Owner that the Hirer is desirous of purchasing the Equipment, subject to expiry of the Minimum Hire Period (if any), the Hirer may at any time make an offer to purchase the Equipment from the Owner (**Offer to Buy**).
- 33.2 The Offer to Buy must be in writing and specify the proposed Purchase Price which may be agreed at the time of Booking, or at any time during the Hire Period or after the expiry of the Hire Period.

- 33.3 The acceptance of the Purchase Price is at the sole discretion of the Owner.
- 33.4 Subject to payment by the Hirer to the Owner of an administration charge of \$250 (plus GST) and if the Purchase Price is accepted by the Owner, the Order and sale of the Equipment shall be governed by the Terms and Conditions - Sale of Used Equipment, which will be provided to the Hirer upon acceptance of the Offer to Buy by the Owner.
- 33.5 The Hirer acknowledges that any Equipment is sold on an "as is" basis, with no warranties or representations made as to its condition, except as expressly stated in the Terms and Conditions - Sale of Used Equipment.

34. General

- 34.1 If any part of this Hire Agreement becomes void or unenforceable, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect.
- 34.2 The parties agree to the application of the laws of the State of South Australia and the parties agree to submit to the jurisdiction of the Courts of that State.
- 34.3 The Hirer acknowledges that the Hirer has not entered into this Hire Agreement in reliance on any representations or inducements of the Owner, nor any person acting on the Owner's behalf, except for those representations contained in this Hire Agreement.
- 34.4 No delay or omission by a party to exercise any right, power or remedy available to that party under this Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.
- 34.5 Each party will bear its own legal and other costs and expenses incurred in connection with the negotiation, preparation and execution of this Hire Agreement.
- 34.6 To the extent that a variation is not detrimental to the Hirer, the Owner may vary this Hire Agreement by providing you with 7 days' written notice. If the Hirer has reasonable grounds to believe the change will be detrimental, the Hirer may terminate this Hire Agreement without penalty within 14 days of receiving the Owner's written notice. Any other variation of the Hire Agreement must be agreed in writing between You and Medimart.
- 34.7 If there are Additional Terms, those Additional Terms supersede and prevail over terms in these Terms and Conditions - Hire to the extent of any inconsistency.

35. Interpretation and Definitions

- 35.1 Headings are for ease of reference only and do not affect interpretation.
- 35.2 In this Hire Agreement, unless the context otherwise requires:
- 35.2.1 the singular includes the plural and vice versa, and a gender includes other genders;
 - 35.2.2 another grammatical form of a defined word or expression has a corresponding meaning;
 - 35.2.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes any schedule or annexure;
 - 35.2.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - 35.2.5 a reference to A\$, \$A, dollar or \$ is to Australian currency;

- 35.2.6 a reference to time is to the capital city of the State time;
- 35.2.7 a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 35.2.8 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 35.2.9 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 35.2.10 a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in the *Corporations Act 2001* (Cth);
- 35.2.11 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- 35.2.12 any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 35.2.13 any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 35.2.14 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- 35.2.15 if a day on or by which an obligation must be performed, or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

- 35.3 In this Hire Agreement, unless the context otherwise requires:

Additional Charges means the charges in addition to the Hirer Fee recoverable in association with the hire of the Equipment from the Hirer by the Owner.

Additional Terms means those terms set out as Additional Terms in the Agreement Details or Tax Invoice as the case may be.

Agreement means the Tax Invoice, the Agreement Details and these Terms and Conditions and the Terms and Conditions - Sale of Used Equipment together with any schedules and annexures.

Agreement Details means the cover page containing certain specific details which together with these Terms and Conditions, Tax Invoice and the Terms and Conditions - Sale of Used Equipment form this Agreement.

Australian Consumer Law means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Booking means the request made by the Hirer to the Owner to hire equipment as set out in the Agreement Details and Tax Invoice and includes the details of hire in connection with these Terms and Conditions.

Business Day means any day (except Saturday and Sunday) on which banks are open for general banking business in the capital city of the State.

Correspondence Nominee means a person who is appointed as the correspondence nominee of the Participant pursuant to section 87 of the NDIS Act.

Equipment means any of items of equipment including but not limited to medical, mobility and therapy products and any other associated accessories which are available for hire and are to be hired to the Hirer as set out in the Agreement Details and Tax Invoice as applicable.

Hire Agreement means the Tax Invoice, the Agreement Details and these Terms and Conditions and the Terms and Conditions - Sale of Used Equipment together with any schedules and annexures.

Hirer means the any person, partnership, corporation, trust or other entity as set out in the Agreement Details and Tax Invoice or that requests the Owner to hire Equipment to them.

Hire Fee means the hire fee payable by the Hirer to the Owner as set out in the Agreement Details and Tax Invoice as applicable from time to time.

Hire Period means the hire period of the Equipment which is detailed in the Agreement Details or the date which the Equipment is returned to the possession or control of Medimart, whichever is the later.

Hire Return Verification means document or other verification provided by the Owner to the Hirer upon return of the Equipment (as set out in the Agreement Details or Tax Invoice as the case may be) or at the expiry or termination of the Hire Period.

Hire Then Buy Scheme means the offer to buy Equipment by the Hirer made to the Owner and if accepted by the Owner the parties are governed under the Terms and Conditions - Sale of Used Equipment.

Minimum Hire Period means the minimum hire period or first hire period in respect of a particular item of Equipment and for which the Hirer must pay the respective Hire Fees, and any Additional Charges as set out on the Agreement Details or Tax Invoice as the case may be.

NDIA means the National Disability Insurance Agency.

NDIA Amount means an amount paid under the NDIS in respect of reasonable and necessary supports funded under a NDIS Plan from time to time.

NDIS means the National Disability Insurance Scheme defined under the NDIS Act.

NDIS Act means the *National Disability Insurance Scheme Act 2013* (Cth).

NDIS Plan means the plan for the Participant that is in effect pursuant to section 37 of the NDIS Act (and as varied by the Participant and the NDIA from time to time).

NDIS Register means the register of NDIS Registered providers of Supports maintained by the NDIA.

NDIS Registered Provider of Supports means a person approved under section 70 of the NDIS Act (and includes the Owner).

NDIS Rules means the rules mentioned in section 209 of the NDIS Act.

Nominee means the Correspondence Nominee or the Plan Nominee as the case may be.

Order means an offer made by the Hirer in response to an invitation to treat made by the Owner for the sale and purchase of Equipment as governed under the Terms and Conditions - Sale of Used Equipment.

Owner means Medimart Group Pty Ltd (ACN 615 970 646) and any Related Body Corporate.

Participant means an eligible participant under the NDIS Act.

Payment Provider means any one or more of the following as relevant in respect of payments of amounts under this Agreement in respect of a Participant for Supports as part of the hire of Equipment, being the:

- Participant;
- Plan Nominee;
- NDIA; or
- Registered Plan Management Provider.

Plan Nominee means a person who is appointed as the plan nominee of the Participant pursuant to section 86 of the NDIS Act

PPS Act means the *Personal Property Securities Act 2009* (Cth) (as amended) and any regulations made pursuant to it.

PPSR means the register established under the PPSA.

Purchase Price means the price agreed between the Owner and Hirer to sell and purchase the Equipment pursuant to clause 33 of these Terms and Conditions - Hire and under and in accordance with the Terms and Conditions - Sale of Used Equipment.

Registered Plan Management Provider means a Registered Provider of Supports who is approved in relation to managing the funding for Supports under the NDIS Plan under section 70(1)(a) of the NDIS Act.

Related Body Corporate has the meaning given to it under the *Corporations Act 2001* (Cth).

Return Date means the date of expected return date for the Equipment in respect of a Booking for the Hire Period as set out in the Agreement Details or Tax Invoice as the case may be.

Services means performance of any one or more of the Supports in connection with the NDIS Plan of the Participant as provided to the Participant.

State means the state and jurisdiction in which the hire of the Equipment takes place and as otherwise set out in the Agreement Details or Tax Invoice as the case may be.

Start Date means the date in which the hire of Equipment commences in respect of a Booking for the Hire Period as set out in the Agreement Details or Tax Invoice as the case may be.

Supports includes any services, items, equipment that are permitted to be funded under the NDIS Act as applicable for the Participant as Hirer.

Support Fees means the fees charged by the Owner under this Hire Agreement to the Hirer in respect of the relevant Support.

Terms and Conditions - Sale of Used Equipment means the terms and conditions for the sale of Equipment (hired under this Hire Agreement) available at www.medimart.com.au forming part of the Hire to Buy Scheme under clause 33 of this Hire Agreement.