



Australian Government

Department of Defence

Defence Support Group

Machinery hire contract

Commonwealth of Australia represented by the Department
of Defence (ABN 68 706 814 312) **(Defence)**

[Insert company name, company ACN] (Hirer)

Machinery hire contract

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Contract information

Date

Parties

Name The Commonwealth of Australia represented by
Department of Defence
ABN 68 706 814 312
Short form name **Defence**

Name [*insert name of Hirer*]
ACN [*insert ACN of Hirer*]
Short form name **Hirer**

Background

- A Defence owns the Machinery.
- B Defence has agreed to hire the Machinery to the Hirer.
- C The Hirer has agreed to hire the Machinery on the terms and conditions of this Contract.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Contract:

Business Day	means a day that is not a Saturday, Sunday, public holiday or bank holiday.
Collection Point	means the location of the Machinery as stated in Item 9 where the Machinery is available for collection.
Commencement Date	means the date stated in Item 6 on which the Machinery is provided by Defence at the Collection Point for pick-up by the Hirer.
Completion Date	means the date stated in Item 7 on which the Machinery is to be returned to Defence, subject to extension in accordance with this Contract, or the date of termination of this Contract.
Contract	means this document including any schedule or annexure to it.
Contract Date	has the meaning given in clause 2(a).
Financial Security	has the meaning given in clause 13.
Force Majeure Event	means any impediment beyond the reasonable control of the party including (but not limited to) any act of God, strike, lockout or other industrial disturbance, flood, storm, war, civil disturbance, order of any public authority, court or tribunal issued after the date hereof, or any federal, state or local government law or regulation.
Hire Costs	means the costs stated in clause 10 and more specifically in Item 16.
Hire Period	means the period commencing on the Commencement Date and expiring on the Completion Date.
Hirer	includes the officers, employees, agents, subcontractors of the Hirer (including the Operator).
Item	means an item in Schedule 1
Legislative Requirements	means: <ul style="list-style-type: none">(a) statutes, ordinances, regulations, by-laws, orders, awards, proclamations, of:<ul style="list-style-type: none">(i) the Commonwealth of Australia;(ii) the State; and(iii) authorities having a right to impose requirements or whose consent is required in respect of the Site, the Collection Point and Return Point, or with respect to the Machinery;(b) certificates, licences, consents, permits, approvals and requirements of authorities in relation to maintaining, operating, using, transporting, loading, unloading and storing the Machinery; and

	(c) any fees and charges payable in connection with the foregoing.
Liability	means any costs, losses, damages, expenses, claims, penalties and liabilities of any kind (including legal costs).
Machinery	means the pneumatic-tyred or solid-tyred heavy roller described in Item 11 and includes all related or necessary equipment, accessories and consumables as referred to in the Operating Manual.
Operator	means any subcontractor, employee or agent of the Hirer (as applicable) who operates, uses, maintains, transports, loads, unloads and stores the Machinery during the Hire Period.
Operating Manual	means the specifications, operating and maintenance instructions as amended or updated from time to time by Defence, and which is accessible at: http://www.defence.gov.au/im/policy/technical/aircraft_pavement/roller.htm
Related Agreement	means the agreement between the parties specified in Item 20.
Required Purpose	means the purpose for which the Machinery is to be used as stated in Item 8.
Return Point	means the return point or location for the Machinery to be delivered to upon the Completion Date as stated in Item 10.
Site	means the site or sites stated in Item 12 including any other place the Machinery is to be used.
State	means the State or Territory in which the Site is located as specified in Item 19.
Work Method Statement	means the work method statement that the Contractor is required to prepare in accordance with clause 5(a).

1.2 Interpretation

In this Contract, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to "maintenance" includes servicing, repair, upgrade or replacement of the Machinery or any component of the Machinery;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of or schedule or annexure to this Contract, and a reference to this Contract includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to dollar or \$ is to Australian currency;
- (g) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (i) 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;
- (j) the meaning of general words is not limited by specific examples introduced by including for example or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;
- (l) headings and any table of contents are for ease of reference only and do not affect interpretation; and
- (m) a reference to a notice given under this Contract means a notice in writing which must be delivered by the party giving the notice to the other party in accordance with the notice details specified in this Contract.

2. Hire contract

- (a) This Contract is formed on the Contract Date, which is the earlier of:
 - (i) execution of this Contract by Defence;
 - (ii) the Commencement Date; or
 - (iii) the date determined in accordance with the Related Agreement,and subject to this Contract, continues until the Completion Date.
- (b) The Hirer agrees to hire the Machinery from Defence on and subject to the terms of this Contract.
- (c) If the Hirer does not return the Machinery to Defence at the Return Point on the Completion Date the Hire Period will be deemed to continue to run until the Machinery is delivered to the Return Point.
- (d) During any extension of the Hire Period pursuant to clause 2(c), the Hirer must:
 - (i) continue to pay the Hire Costs; or
 - (ii) if the Hirer is not otherwise obliged to pay Hire Costs under this Contract because of the existence of a Related Agreement, pay those costs that would normally be charged by Defence in relation to the hire of the Machinery,unless Defence waives such costs by written notice to the Hirer.

3. Access

- (a) The Hirer must obtain permission from all relevant authorities and the registered proprietor of the Site, and arrange access, before entering any Site, Collection Point or Return Point. This includes the permission of, and arranging access with (where appropriate), Defence.
- (b) The Hirer must comply with and observe, and must ensure that any Operator complies with and observes, all Legislative Requirements, restrictions and limitations in relation to accessing the Site, the Collection Point or the Return Point.

4. Legislative Requirements

To the maximum extent permitted by law, the Hirer must comply with all Legislative Requirements applicable to maintaining, operating and using the Machinery and any reasonable directions and procedures of Defence relating to occupational health and safety and security.

5. Operating Manual

- (a) The Hirer acknowledges that:
 - (i) it has been provided with access to the Operating Manual;
 - (ii) it has read and understood the contents of the Operating Manual; and
 - (iii) it will develop a Work Method Statement, which adopts as a minimum standard the requirements set out in the Operating Manual for using, operating, maintaining, transporting, loading, unloading and storing the Machinery, to ensure that a safe system of work is established for the use of the Machinery pursuant to this Contract.
- (b) The Hirer must not use, operate, maintain, transport, load, unload or store the Machinery other than in accordance with the Hirer's Work Method Statement without the prior written consent of Defence.
- (c) Defence may:
 - (i) inspect the Machinery at any time during the Hire Period to ensure compliance by the Hirer with the requirements of this Contract and the Operating Manual;
 - (ii) subject to any reasonable condition of entry, enter the Site or the Hirer's premises (where applicable) to do so.
- (d) The Hirer must obtain for Defence any rights that are required to enter third party buildings or land in order that Defence or persons authorised by Defence may inspect the Machinery and exercise Defence's rights under this Contract.
- (e) The Operating Manual remains the property of Defence.
- (f) By giving its approval and consent (whether verbally or in writing) under clause 5, Defence does not make or give any warranty or representation as to any circumstances relating to the subject matter of the consent or approval.

6. Inspection and suitability

- (a) Without limiting any other provision of this Contract, the Hirer must at its own cost:
 - (i) arrange an inspection of the Machinery prior to the commencement of the Hire Period, at a time suitable to Defence, and satisfy itself as to the suitability and fitness of the Machinery for the Required Purpose;
 - (ii) carry out any maintenance prior to operating or using the Machinery to ensure the suitability and fitness of the Machinery for the Required Purpose, including any maintenance specified in Item 14; and
 - (iii) carry out any maintenance during and at the end of the Hire Period to ensure that the Machinery is in good working order and condition (fair wear and tear excepted), including any maintenance specified in Item 15.

- (b) Where the Operating Manual sets out requirements relating to the maintenance of the Machinery, the Hirer must comply with the requirements of the Operating Manual, at a minimum.
- (c) Notwithstanding clause 6(a), Defence may (without being obliged to do so) at its absolute discretion carry out, or arrange for a contractor selected by Defence to carry out any maintenance that is required to be carried out by the Hirer under clause 6(a).
- (d) The parties acknowledge the details in Item 13 relating to any specific condition of the Machinery existing prior to the Hire Period.

7. Transporting, loading, unloading and storing

- (a) Defence will make the Machinery available to the Hirer for pick-up at the Collection Point on the Commencement Date, unless agreed otherwise between the parties.
- (b) The Hirer is responsible for transporting, loading, unloading and storing the Machinery in accordance with its Work Method Statement and the Operating Manual and must ensure the same standards of diligence, skill and care normally exercised by suitably qualified and competent persons are applied by any Operator to the Machinery at all times.
- (c) The Hirer is responsible for all costs and expenses incurred under clause 7(b) from the Collection Point to the Site, and to the Return Point, unless agreed otherwise in writing with Defence.
- (d) The Hirer must ensure that on or before the Completion Date, the Machinery is delivered to Defence at the Return Point in good working order and condition (fair wear and tear excepted).
- (e) The Hirer is fully responsible for the conduct of any Operator transporting, loading, unloading and storing the Machinery during the Hire Period.

8. Operation, use and maintenance

- (a) The Hirer must ensure the Machinery is at all times operated, used and maintained:
 - (i) in accordance with its Work Method Statement;
 - (ii) by a suitably skilled and competent Operator; and
 - (iii) with the standards of diligence, skill and care normally exercised by a qualified and competent person in the operation, use and maintenance of the Machinery.
- (b) The Hirer must:
 - (i) keep the Machinery in good working order and condition (fair wear and tear excepted) in accordance with its Work Method Statement and the Operating Manual;
 - (ii) comply with any registration and licensing requirements that apply to operating, using and maintaining the Machinery;
 - (iii) comply with clauses 5(b), 6(a), 6(b) and 8(a) in relation to maintaining the Machinery; and
 - (iv) upon the return of the Machinery to the Return Point, provide Defence with a report in a format, and containing such information, as required by Defence in respect of the maintenance performed by the Hirer during the Hire Period.

- (c) The Hirer is fully responsible for the conduct of any Operator operating, using or maintaining the Machinery during the Hire Period.
- (d) The Hirer must:
 - (i) take appropriate steps to secure and safeguard the Machinery during the Hire Period;
 - (ii) protect the rights, title and interests of Defence in the Machinery; and
 - (iii) not do anything prejudicial to Defence's title to the Machinery.
- (e) If the Machinery has been provided to the Hirer by Defence for the purposes of assisting the Hirer perform work under a Related Agreement, the Hirer must only use the Machinery in connection with work being performed pursuant to the Related Agreement and must not use the Machinery for any other purpose without the prior written consent of Defence.

9. Exclusion and no reliance

- (a) To the maximum extent permitted by law, all conditions and warranties (express or implied) whether arising by virtue of statute or otherwise, as to the condition, suitability, quality, fitness or safety of the Machinery are expressly waived, negated and excluded, and Defence does not give any condition, warranty or undertaking in relation to the Machinery.
- (b) The Hirer expressly acknowledges and agrees that:
 - (i) Defence has not made any warranty or representation (express or implied) with respect to the suitability of the Machinery for the Required Purposes or in relation to the state of repair of the Machinery;
 - (ii) the Hirer has not relied in any way on Defence's skill or judgment in deciding to enter into this Contract; and
 - (iii) the Hirer has satisfied itself as to the condition and suitability, including safety and fitness for purpose of the Machinery (both before and after collection).

10. Hire Costs

- (a) The Hirer must pay Defence the applicable Hire Costs in accordance with this Contract.
- (b) The Hire Costs do not include, unless specifically provided for in Item 16, Defence's costs including overheads, materials, supplies and consumables required in connection with operating, using and maintaining the Machinery.
- (c) Defence may in its absolute discretion, waive or reduce Hire Costs payable during the Hire Period to take account of the costs of maintenance carried out and borne by the Hirer at any time before, during or after the Hire Period.
- (d) If the Hirer requests Defence to waive or reduce the Hire Costs it must, before undertaking the proposed maintenance, provide Defence with details of:
 - (i) the proposed maintenance; and
 - (ii) the price that will be payable by the Hirer for that maintenance.

If Defence approves the performance of the maintenance, the cost of the maintenance incurred by the Hirer will be deducted from the Hire Costs payable to Defence under this Contract. Defence is not liable for any costs incurred by the Hirer to maintain the Machinery to the extent that those costs exceed the Hire Costs payable by the Hirer under this Contract. This clause 10(d) does not apply where the Contractor and Defence have entered into this Contract pursuant to the Related Agreement.

- (e) Where the Hire Period is longer than one month, the Hire Costs are payable monthly in arrears on the final Business Day of each month, or in accordance with Defence's invoice as submitted and provided for in Item 16.
- (f) Where the Hire Period is less than one month, the Hire Costs are payable in accordance with Defence's tax invoice as submitted and provided for in Item 16.
- (g) Upon or following the Completion Date:
 - (i) the Hirer must return the Machinery to Defence at the Return Point in accordance with the Hirer's obligations under clause 7. If Defence is required to recover and transport the Machinery itself, it is entitled to charge and recover the costs of such recovery and/or transport from the Hirer as Hire Costs;
 - (ii) Defence may repossess the Machinery from the Hirer. The Hirer must not prevent Defence from repossessing the Machinery and the Hirer hereby grants access to the Hirer's premises to repossess the Machinery. If the Machinery is not on the Hirer's premises, the Hirer must arrange for Defence to be given access to the relevant Site to repossess the Machinery; and
 - (iii) Defence is entitled to set off from any amount due to the Hirer under this Contract or the Related Agreement (including any applicable Financial Security under clause 13) any amount due from the Hirer to Defence under this Contract, and to withhold any amount due to the Hirer in the event of any claim or dispute in respect of this Contract until such time as the claim or dispute is resolved.
- (h) The Hirer agrees to pay or reimburse Defence on demand for all taxes, levies, stamp duty, hiring duty, charges, penalties or fees in connection with this Contract.

11. Default in payment

- (a) The Hirer must make payment in accordance with Defence's invoices submitted under clause 10(e) or 10(f).
- (b) If an invoice is found to have been submitted incorrectly after payment, any underpayment or overpayment will be recoverable by or from Defence as the case may be, and without limiting recourse to other available means, may be offset against any amount subsequently due by the Hirer to Defence under this Contract.
- (c) If the Hirer is late in paying or fails to pay the Hire Costs, Defence may issue the Hirer with a written notice that the Hire Costs remain outstanding and may impose a timeframe and any other conditions upon the Hirer to effect payment of the outstanding Hire Costs, which are an amount recoverable by Defence.
- (d) If after a notice has been issued, the Hirer fails to pay the amount due, Defence may terminate this Contract in accordance with clause 17, or may exercise any or all of its rights in respect of any Financial Security provided in clause 13.
- (e) If Defence deducts any amount under clause 11(d) it must notify the Hirer that it has done so.

- (f) Defence's right to require payment under this Contract does not affect any other rights or remedies it may have relating to a failure to pay any amount due under this Contract.

12. Interest

If the Hirer fails to pay any amount due under this Contract on the due date, the Hirer must pay daily interest on the amount owing at the rate specified by the Reserve Bank of Australia cash rate target current at the date the payment was due for each day the payment is late. The applicable cash rate target is accessible at http://www.rba.gov.au/statistics/cashrate_target.html.

13. Financial Security

[Note – select paragraphs (a), (b), (c) and (d) below if this Contract is a stand-alone contract – i.e. not associated with a Head Contract, Medium Works Contract or Managing Contractor Contract]

- (a) The Hirer must provide Financial Security for the Hire Period if specified in Item 17.
- (b) The Financial Security must be unconditional, have no expiry date and must otherwise be in a form and from a bank or financial institution acceptable to Defence.. Subject to any enforcement by Defence, the Financial Security must be released by Defence upon termination or expiry of this Contract.
- (c) The Financial Security must be exercisable by Defence for either or both of the following:
 - (i) to obtain compensation for loss suffered in the event that the Hirer fails to perform, or breaches any of its obligations under this Contract; or
 - (ii) to recover any amount due to Defence under this Contract.
- (d) Nothing in this clause 13 affects the rights of Defence to recover from the Hirer the whole of any amount owed by the Hirer or any balance that remains after deduction.

[Note – select the following clause where Defence and the Hirer are also parties to a Related Agreement being a Head Contract, Medium Works Contract or Managing Contractor Contract. If this clause is selected delete (a), (b), (c) and (d) above]

Where the Hirer has provided Approved Security pursuant to the Related Agreement, the Hirer acknowledges and agrees that the security provided under the Related Agreement may be used by Defence to secure the obligations of the Hirer under this Contract. Defence will be entitled to have recourse against the security provided under the Related Agreement for either or both of the following:

- (a) to obtain compensation for loss suffered in the event that the Hirer fails to perform, or breaches any of its obligations under this Contract; or
- (b) to recover any amount due to Defence under this Contract.

14. GST

14.1 Interpretation

- (a) In this clause, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

- (b) For the purposes of this Contract, all amounts payable or other consideration to be provided for a supply under this Contract are inclusive of GST and the amount or consideration will not be increased for any GST payable on that supply.
- (c) If and to the extent that, for any reason, a supply made under this Contract is not subject to GST, the amount payable or other consideration to be provided for that supply will be reduced by 1/11th.
- (d) If a party must reimburse or indemnify another party for a loss, cost or expense under this Contract ('**Reimbursement Payment**'), the Reimbursement Payment will:
 - (i) first, be reduced by an input tax credit the other party is entitled to for the loss, cost or expense; and
 - (ii) then, if and to the extent that the Reimbursement Payment is consideration for a taxable supply, the amount will be increased by an additional amount equal to the GST payable on that supply provided that the reimbursed party issues a tax invoice for that supply.
- (e) If the rate of GST (as defined in section 9-70 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) changes, the relevant service charge will be reduced or increased accordingly to reflect the change in the rate of GST.
- (f) A party need not make payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

15. Risk and insurance

- (a) During the Hire Period the Machinery is at the sole risk of the Hirer.
- (b) The Hirer:
 - (i) is liable for any property loss or damage (to either Defence's or third parties' property) arising in any way from operating, using, maintaining, transporting, loading, unloading or storing the Machinery during the Hire Period;
 - (ii) must hold a policy of insurance to cover transporting the Machinery during the Hire Period;
 - (iii) must hold public and product liability insurance covering all claims, liabilities and losses in respect of any injury to or death of any person, or any loss, damage or destruction to property, howsoever caused to the minimum amount stated in Item 18 in respect of any one occurrence; and
 - (iv) must be fully insured or registered with the appropriate statutory authority against liability for death of or injury to persons employed by the Hirer, as required by law.
- (c) Defence may request the Hirer to produce evidence on demand, to the reasonable satisfaction of Defence, of the Hirer's insurances effected and maintained in accordance with this clause 15.
- (d) If the Machinery is involved in any incident resulting in injury to persons, or damage to property, the Hirer must immediately notify Defence by telephone and confirm the notice in writing within 7 days. In relation to any claim in respect of which the Hirer is bound to indemnify Defence, no admission, offer, promise of payment or indemnity is to be made by the Hirer without Defence's consent in writing.

- (e) The obligations of the Hirer under clause 15 are of a continuing nature and survive the termination or expiration of this Contract.

16. Indemnity

- (a) The Hirer indemnifies and releases Defence, its officers and employees against any Liability that Defence, its officers or employees may incur or sustain arising out of or in connection with:
 - (i) using, operating, maintaining, transporting, loading, unloading or storing the Machinery;
 - (ii) the performance by the Hirer of its obligations under this Contract;
 - (iii) any negligent or unlawful act or omission of the Hirer or the Hirer's officers, employees, agents, subcontractors or of any other person whose acts or omissions the Hirer is vicariously liable for;
 - (iv) death or injury to, or loss of or damage to any property of any person; or
 - (v) any breach of this Contract or breach of the Legislative Requirements by the Hirer.
- (b) The Hirer's liability to indemnify Defence under clause 16(a) is to be reduced proportionately to the extent that any negligent act or omission of Defence may have contributed to the Liability.

17. Termination

17.1 Termination following default notice

- (a) Without limiting any other rights or remedies Defence may have against the Hirer arising out of or in connection with this Contract, Defence may terminate this Contract effective immediately by giving notice to the Hirer if:
 - (i) the Hirer breaches a material provision of this Contract where that breach is not capable of remedy; or
 - (ii) the Hirer breaches any provision of this Contract and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so; or
 - (iii) an event specified in clause 17.1(b) happens to the Hirer.
- (b) Each of the following constitutes a breach of a material provision:
 - (i) breach of any warranty under this Contract;
 - (ii) breach of a Legislative Requirement;
 - (iii) failure to prepare the Work Method Statement in accordance with clause 5(a)
 - (iv) failure to comply with the Work Method Statement and Operating Manual;
 - (v) failure to comply with payment of Hire Costs or the provision of Financial Security;
 - (vi) failure to comply with insurance obligations under clause 15; and
 - (vii) a failure to comply with clause 17.1(c) or 17.1(d).
- (c) If Defence issues a notice under clause 17.1(a), the Hirer must:

- (i) comply with any directions given to the Hirer by Defence in relation to the return of the Machinery; and
 - (ii) mitigate all loss, costs (including costs of compliance with any directions) and expenses in connection with the termination.
- (d) The Hirer must, in any approved subcontract, secure the right of termination functionally equivalent to that of Defence under this clause 17.1.
- (e) The Hirer must notify Defence immediately if:
- (i) the Hirer being other than a listed corporation, there is any change in the direct or indirect beneficial ownership or control of the Hirer ('**Change of Control**');
 - (ii) the Hirer disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
 - (iii) the Hirer ceases to carry on business;
 - (iv) the Hirer ceases to be able to pay its debts as they become due;
 - (v) the Hirer being a company, enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
 - (vi) the Hirer being a natural person, is declared bankrupt or assigns his or her estate for the benefit of creditors; or
 - (vii) where the Hirer is a partnership, any step is taken to dissolve that partnership.
- (f) In this clause, a word or expression used in the *Corporations Act 2001* (Cth) has the same meaning given to it in that Act.

17.2 Termination for convenience

- (a) In addition to any other rights it has under this Contract, Defence may at any time terminate this Contract or reduce the scope of this Contract by notifying the Hirer in writing.
- (b) If Defence issues a notice under clause 17.2(a), the Hirer must:
 - (i) comply with any directions given to the Hirer by Defence including in relation to the return of the Machinery; and
 - (ii) mitigate all loss, costs (including the costs of its compliance with any directions) and expenses in connection with the termination.
- (c) Defence will only be liable for any reasonable costs incurred by the Hirer that are directly attributable to the termination if the Hirer substantiates these amounts to the satisfaction of Defence.
- (d) The Hirer must, in any approved subcontract, secure the right of termination functionally equivalent to that of Defence under clause 17.2.

17.3 Termination of Related Agreement

This Contract terminates with immediate effect if the Related Agreement is terminated.

18. Temporary suspension of Contract

- (a) In addition to any other rights it has under this Contract, Defence may at any time, by written notice to the Hirer, suspend this Contract. The rights and obligations of Defence and the Hirer, other than in respect of this clause 18, cease for the period of suspension.
- (b) The period of suspension of the Contract is the period notified to the Hirer by Defence. Defence may extend the period of suspension of the Contract by providing further written notice to the Hirer.
- (c) Defence will use reasonable endeavours to limit the loss and damage suffered by the Hirer as a consequence of the suspension. Where practicable Defence will liaise with the Hirer to determine the impact on the Hirer of suspending the Contract and any appropriate measures that can be adopted to limit the Hirer's potential loss and damage as a consequence of the suspension of the Contract.
- (d) Despite clause 18(c), where Defence suspends the Contract pursuant to clause 18(a), Defence will not be liable to the Hirer for any loss or damage suffered by the Hirer as a consequence of the suspension.
- (e) If Defence issues a notice under clause 18(a), the Hirer must comply with any directions given to the Hirer by Defence.
- (f) If the Contract is suspended pursuant to this clause 18, Defence will arrange for the Machinery to be collected from, and returned to, the Hirer.
- (g) The rights and obligations of the parties in respect of the Contract re-commence upon the return of the Machinery to the Hirer.

19. Contract Administrator

- (a) If there is a Related Agreement between Defence and the Hirer, the Contract Administrator may, as the agent of Defence, give directions and carry out the functions of Defence as specified in clauses 4, 5(c), 7(a) and 15(c).
- (b) The Contractor must comply with any direction given by the Contract Administrator in accordance with clause 19(a).
- (c) If the Contract Administrator is permitted to appoint a Contract Administrator's Representative pursuant to the Related Agreement, the appointed Contract Administrator's Representative may exercise the Contract Administrator's functions under this Contract.
- (d) For the purposes of this clause the terms 'Contract Administrator' and, where applicable, 'Contract Administrator's Representative' have the same meaning as given to those terms in the Related Agreement.

20. General

20.1 Entire agreement

This Contract represents the entire agreement between the parties in relation to the subject matter, and supersedes all prior representations, communications, agreements, statements and understandings (whether oral or in writing) between the parties.

20.2 Amendment

This Contract can only be amended, supplemented, replaced or novated by writing and signed by both parties.

20.3 Assignment and subcontracting

The Hirer must not assign or subcontract any of its rights and obligations under this Contract without the prior written consent of Defence. Any approval granted to the Hirer to assign or subcontract all or part of the hire of the Machinery does not discharge the Hirer from any Liability under this Contract, and the Hirer will remain subject to all duties and obligations provided for by this Contract in respect of the Hire Period. For the purposes of this clause, a Change of Control is an assignment.

20.4 Notices

A party notifying or giving notice under this Contract must give notice in writing, addressed to the other party's Representative specified, and at the address provided, in Item 5.

20.5 Waiver or variation

A provision of or a right created under this Contract may not be:

- (a) waived, except in writing signed by the party granting the waiver; or
- (b) varied, except in writing signed by the parties.

20.6 Counterparts

This Contract may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

20.7 Force Majeure

- (a) Neither party is liable to the other party for any failure or delay in the performance of any obligations under this Contract if that failure or delay is due to a Force Majeure Event and that party could not reasonably have avoided or overcome with all reasonable efforts the Force Majeure Event or its effects.
- (b) When the circumstances of a Force Majeure Event arise or are reasonably perceived by a party as an imminent possibility, that party ('**Affected Party**') must give notice of those circumstances to the other party as soon as possible, identifying the effect they will have on its performance. An Affected Party must make all reasonable efforts to minimise the effects of such circumstances on the performance of this Contract.
- (c) If non-performance or diminished performance by the Affected Party due to the circumstances under clause 20.7(b) continues for a period of more than 28 consecutive days or other reasonable period of time, the other party may terminate this Contract immediately by giving the Affected Party written notice.
- (d) If this Contract is terminated under clause 20.7(c), each party will bear its own costs and neither party will incur further liability to the other.
- (e) This clause 18.7 does not apply to any obligation to pay money.

20.8 Enforcement of indemnity

It is not necessary for Defence to incur expense or make payment before enforcing a right of indemnity conferred by this Contract.

20.9 Dispute Resolution

- (a) If there is a dispute between Defence and the Hirer concerning this Contract either party may give written notice of the dispute to the other and that notice must contain particulars of the dispute.
- (b) The notice will be referred to the personnel of each party that may have the ability to bring a resolution to bear and if not resolved between them within 7 days of service of the notice, or such other time as agreed in writing, the dispute will be referred to an alternative dispute resolution process to attempt to resolve the dispute.
- (c) If the dispute is not settled by alternative dispute resolution (including negotiation between senior management of the parties), the dispute will be referred to Arbitration by a single arbitrator appointed by the President of the Law Society of the applicable State for the time being on the request of either party, and that arbitration will be conducted in accordance with the relevant Commercial Arbitration Act except that the parties consent to an appeal to the Supreme Court of the applicable State on any question of law arising in the course of the arbitration or out of the arbitration award.
- (d) Nothing herein prejudices the right of a party to institute proceedings to enforce payment or to seek urgent injunctive or declaratory relief in respect of a dispute or any matter arising under this Contract.

20.10 Governing law

The law governing this Contract, its interpretation, any agreement to refer a dispute to dispute resolution and the conduct of any dispute is the law of the State identified in Item 19, and the parties hereby agree to submit to the non-exclusive jurisdiction of the courts of that State.

20.11 Representations and warranties

- (a) The Hirer represents and warrants that:
 - (i) it has power to enter into and observe its obligations under this Contract;
 - (ii) it has in full force and effect the authorisations, consents and approvals necessary to enter into this Contract, to observe its obligations under this Contract, and to allow any of them to be enforced;
 - (iii) it and any Operator engaged in maintaining, operating, using, transporting, loading, unloading or storing the Machinery, hold all required insurances, licences and qualifications to comply with and to perform with due diligence, skill and care the obligations imposed by clauses 4, 6, 7 and 8 of this Contract;
 - (iv) it does not enter into this Contract in the capacity of a trustee of any trust.
- (b) The representations and warranties in clause 20.11 survive the execution of this Contract remain in full force and effect so long as is necessary to give effect to them.

20.12 Severance

Any provision of this Contract that is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Contract nor affect validity or enforceability in another jurisdiction.

20.13 Survival

- (a) Termination of this Contract does not affect any accrued rights or remedies of a party.
- (b) Clauses 15, 16, 20.11 and any other provision which is intended to survive termination, survives the termination or expiry of this Contract.

Signing Page

Executed as an agreement

Executed for and on behalf of the Commonwealth of Australia represented by the **Department of Defence** by its duly authorised delegate in the presence of

Signature of witness

Name of witness (print)

← _____ ←
Signature of delegate

Name of delegate (print)

Position of delegate (print)

Executed by [**Name of Hirer company**] in accordance with Section 127 of the Corporations Act 2001

Signature of director

Name of director (print)

← _____ ←
Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)
(Please delete as applicable)

Schedule 1 – Contract details

Item number	Description	Clause Reference	Details
1.	Defence details	1.1	Department of Defence ABN: 68 706 814 312
2.	Hirer details	1.1	[insert name of Hirer] [insert street address] [insert ACN]
3.	Defence Representative	18.4	[Insert either – 'The Contract Administrator under the Related Agreement' or where Contract is a stand alone Contract insert 'Senior Civil Engineer (SCE) / Civil Engineer (CE)']
4.	Hirer Representative	18.4	[insert position and/or name of the Hirer's representative]
5.	Address for Notices	18.4	<p>Defence:</p> <p>[If the Contract is based on a Related Agreement insert Contract Administrator's name and address. If the Contract is a stand alone Contract insert the following including appropriate details:</p> <p>Senior Civil Engineer (SCE) / Civil Engineer (CE) Brindabella Park (BP3-2-B079), Department of Defence, CANBERRA ACT 2600 26 Brindabella Circuit, CANBERRA ACT 2600 Fax: Tel: Email:]</p> <p>Hirer:</p> <p>[insert name and/or position of person to receive notices] [insert postal address] [insert physical address] [insert facsimile number] [insert telephone number] [insert email address]</p>

Item number	Description	Clause Reference	Details
6.	Commencement Date	1.1	[insert date Hire Period is to commence eg. dd/mm/yy]
7.	Completion Date	1.1	[insert date Hire Period is to end eg. dd/mm/yy]
8.	Required Purpose	1.1	[insert the purpose for which the Machinery is to be used]
9.	Collection Point and contact details	1.1	[insert the location of the Machinery where the Hirer will pick-up the Machinery] [insert the contact details ie. telephone/mobile number of the person at the Collection Point]
10.	Return Point and contact details	1.1	[insert the location for the Machinery to be returned or delivered by the Hirer at the Completion Date] [insert the contact details ie. telephone/mobile number of the person at the Return Point]
11.	Machinery Details	1.1	[insert Heavy Roller type eg. pneumatic-tyred or solid-tyred; Roller identification; etc]
12.	Site	1.1	[insert the site/s or any other place where the Machinery is to be operated]
13.	Inspection	6	[insert any findings from the Hirer's inspection prior to the Hire Period and include/note any relevant condition report/s referred to and attached to the Operating Manual]
14.	Maintenance (initial)	1.1 6(a)(ii)	[insert details of any maintenance work (ie. servicing, repairing or replacing) to be carried out by the Hirer prior to operating or using the Machinery]
15.	Maintenance (ongoing)	1.1 6(a)(iii)	[insert details of any maintenance work (ie. servicing, repairing or replacing) - if known and agreed upon - to be carried out by the Hirer during and/or at the end of the Hire Period]
16.	Hire Costs and billing arrangements	10	[insert details of all the costs for which the Hirer will be responsible including the rates of hire for the term of the Hire Period.] [The applicable rates are as follows: The base hire rate / cost (including GST): <ul style="list-style-type: none"> • \$6,160 / 1 week (7 days or part) • \$12,320 2 weeks (14 days or part) • \$18,480 3 weeks (21 days or part) • \$26,400 / month Plus \$2,640/ month thereafter for each month (or part) beyond the first month of the hire]

Item number	Description	Clause Reference	Details
			[Note: Where the parties have entered into a Related Agreement and no Hire fees are payable this item should be completed 'Not applicable'.]
17.	Financial Security	13	[insert any financial security amount eg. \$50,000 sought under clause 13,. If not required, insert 'Does not apply']
18.	Insurance	15	Public and product liability insurance for an insured amount of [\$ insert amount] per occurrence and not less than [\$ insert amount] in aggregate. [Note: Defence to obtain advice from Defence Insurance Office regarding appropriate amounts in relation to each hire.]
19.	Governing Law	20.10	[specify in accordance with clause 20.10. Where there is a Related Agreement insert the same Governing law as specified in the Related Agreement. Where this is a stand alone Contract the Governing Law will usually be that of the Site at which the Machinery is to be used / operated for the Required Purpose.]
20.	Related Agreement	1.1	[insert details of Head Contract, Medium Works Contract or Managing Contractor Contract e.g. 'Head Contract [insert reference number] between the parties dated [insert]'. However, if this agreement is not entered into as a consequence of the requirements of a Head Contract, Medium Works Contract or Managing Contractor Contract insert 'Not applicable'].