

EQUIPMENT RENTAL AGREEMENT

Please note that the definitions in this Agreement are set out in clause 21.

1 Rental of Equipment

- 1.1 SPEE3D agrees to rent the Equipment to the Customer for the Rental Period and the Customer agrees to rent the Equipment from SPEE3D for the Rental Period and to pay the Rent in accordance with the payment terms set out in the Quote (**Payment Schedule**) for the duration of the Rental Period.
- 1.2 The parties agree that the Quote and the Licence are binding on the parties and form part of this Agreement.
- 1.3 If, at the End Date:
- (a) the Customer has not returned the Equipment to SPEE3D; or
 - (b) SPEE3D has not given the Customer a written notice requiring the Customer to return the Equipment to SPEE3D by the End Date,

this Agreement will automatically continue from the End Date on the terms and conditions of this Agreement (including the payment of the Rent), terminable by either party after the End Date on 7 days written notice to the other party.

- 1.4 The Customer is entitled to use the Equipment for the Rental Period, subject to the terms and conditions of this Agreement.
- 1.5 The Customer acknowledges that nothing in the Agreement imposes obligations on SPEE3D to develop, release or install for the Customer any updates, upgrades, patches, bug fixes, new releases or new versions in respect of all or any part of the Equipment Software (**Updates**), provided however that if SPEE3D does develop or release any Updates, it may require that all such Updates be used by the Customer.

2 Payment of Rent

- 2.1 The Rent and any other monies payable under the terms of this Agreement shall be paid by the Customer to SPEE3D within 14 days of the date of any tax invoice issued in accordance with the Payment Schedule.
- 2.2 In addition to the Rent, the Customer also agrees to pay SPEE3D:
- (a) any duties, fees, outgoings, penalties, fines, demands, charges or costs imposed by any authority on or in connection with this Agreement or the use or rental by the Customer of the Equipment;
 - (b) the cost of cleaning and repairing the Equipment if the Equipment is not returned to SPEE3D at the end of the Rental Period

in good working order and in a clean condition;

- (c) for any Consumables supplied to it by, or on behalf of, SPEE3D in accordance with the terms and conditions upon which SPEE3D agrees to supply the Consumables to the Customer;
- (d) costs, charges, expenses, fees and disbursements (including all reasonable legal costs on a solicitor and client basis) incurred by SPEE3D on a full indemnity basis in respect of any breach, default or repudiation by the Customer of this Agreement or the exercise or attempted exercise by SPEE3D of any right, power or remedy under or in relation to this Agreement, including repossession of the Equipment; and
- (e) interest at the Penalty Interest Rate fixed for the time being under section 2 of *Penalty Interest Rates Act 1983* (Victoria) for any amount of Rent or other amount that is due and payable but outstanding under the terms of this Agreement on a daily basis from and including the due date until the date of actual receipt of payment.

2.3 All amounts payable under this Agreement by the Customer to SPEE3D must be paid free of any abatement, reduction or set-off or any other deduction or withholding.

3 Delivery and Installation of Equipment

- 3.1 Subject to the Customer satisfying SPEE3D that it has suitable means of transporting the Equipment to the Site, and at the Customer's cost:
- (a) the Customer may, on the Commencement Date, use such approved means to transport the Equipment to the Site; and
 - (b) the Customer must transport the Equipment to the Site on or before the end of the Rental Period.
- 3.2 If the Customer does not have suitable means of transporting the Equipment as approved by SPEE3D or wishes SPEE3D to arrange for transport of the Equipment to or from the Site, SPEE3D may charge the Customer for such transportation as well as for loading and unloading of the Equipment.
- 3.3 Where the Customer is transporting the Equipment in accordance with Clause 4.1, the Customer may not load or unload the Equipment except with loading and unloading equipment suitable for that purpose and approved in writing

beforehand by SPEE3D and, where required by SPEE3D, under SPEE3D's supervision.

- 3.4 The Customer shall not load, unload, transport or use the Equipment without providing SPEE3D with proof of insurance cover arranged by it as required by Clause 14.
- 3.5 Where SPEE3D is required to deliver the Equipment to the Site, SPEE3D will use its reasonable endeavours to deliver the Equipment on any date specified or estimated by SPEE3D or set out in the Quote; however, such dates are estimates only and SPEE3D will not, in any circumstances or for any reason, be liable for late delivery of the Equipment and later delivery of the Equipment does not entitle the Customer to terminate this Agreement.
- 3.6 The Customer shall be responsible at its cost for the installation and set up of the Equipment.

4 Title

- 4.1 The Customer acknowledges that it has no right, title or interest in the Equipment before, after and throughout the Rental Period notwithstanding:
- (a) the delivery of the Equipment to the Customer;
 - (b) the possession and use of the Equipment by the Customer; and
 - (c) any attachment of the Equipment to any land or buildings.
- 4.2 The Customer does not have any right or option to purchase the Equipment and acknowledges that no representation has been made to that effect by or on behalf of SPEE3D to the Customer whether express or implied, written or oral.
- 4.3 SPEE3D may retake possession of the Equipment if the Customer breaches any provision of this Agreement.
- 4.4 The Customer must not agree, attempt, offer, allow or purport to sell, assign, sub-let, lend, pledge, encumber, mortgage, let on hire, grant a security interest over or otherwise part with all or any part of the Equipment.
- 4.5 The Customer must not remove, deface, change, distort, delete or cover up:
- (a) any of SPEE3D's name plate or mark on the Equipment which indicates that SPEE3D is the owner of the Equipment; or
 - (b) any patent, copyright or other proprietary notices which appear in writing on or in any part of the Equipment.
- 4.6 If the Customer loses possession of the Equipment for any reason, including by way of seizure, or a security interest is created over the Equipment (other than by SPEE3D) the

Customer must immediately notify SPEE3D of the loss of possession or creation of security interest (as applicable).

5 Risk

Risk transfers to the Customer when the Equipment is collected by the Customer or delivered to the Customer by SPEE3D at the Site, and from such date the Equipment shall be at the risk of loss of the Customer irrespective of whether the Rental Period has commenced or not and the Equipment shall remain at the risk of loss of the Customer until such time that the Equipment is delivered to SPEE3D by the Customer or SPEE3D collects the Equipment from the Customer and has left the Site.

6 Warranties

The Customer warrants and agrees that:

- 6.1 the Customer at all times during the Rental Period remains responsible for the planning, supervision and control of all operations that involve the Equipment;
- 6.2 in entering into this Agreement the Customer has not relied upon SPEE3D's skill or judgment or any representations made by or on behalf of SPEE3D;
- 6.3 the Customer agrees that the Equipment complies with its description;
- 6.4 the Equipment is of merchantable quality;
- 6.5 it has examined the Equipment and has satisfied itself as to the quality and fitness for purpose for which the Equipment is being rented;
- 6.6 it has received instructions on the safe operation of the Equipment; and
- 6.7 the Customer uses the Equipment at its own risk.

7 Customer's Use and Obligations

The Customer must, at its own cost and expense:

- 7.1 be responsible for all Operating Costs;
- 7.2 keep the Equipment in good working order and condition;
- 7.3 ensure that the Equipment is kept at all times in a safe and secure location and must take all reasonable precautions to safeguard the Equipment from theft, damage or loss while it is in the Customer's possession or under its control or direction;
- 7.4 not keep or store the Equipment at any location other than the Site and must at all times ensure that the Equipment is placed upon level, firm and stable terrain with adequate service access;
- 7.5 not move or re-locate the Equipment from the Site without the prior written consent of SPEE3D;
- 7.6 not attach the Equipment to any land or building without the prior written consent of SPEE3D;

- 7.7 only use the Equipment for any purpose and capacity for which it has been specifically designed and not use the Equipment for any other or illegal purpose;
- 7.8 ensure that the Equipment is used only by persons who:
- (a) unless otherwise agreed in writing by SPEE3D, have received the Training Services; and
 - (b) are otherwise suitably trained and qualified to use the Equipment,
- and the Customer must, upon demand from SPEE3D, provide SPEE3D with evidence to the satisfaction of SPEE3D as to the qualification, experience and competency of any person who is to operate the Equipment;
- 7.9 operate the Equipment in accordance with its intended use and in accordance with manuals, instructions and directions provided to the Customer by SPEE3D;
- 7.10 operate the Equipment in accordance with all applicable laws and regulations (including any health and safety laws) and in accordance with safety and operational information supplied with the Equipment (**Safety Information**);
- 7.11 ensure that any Safety Information is provided to any persons operating the Equipment on behalf of the Customer;
- 7.12 obtain any authorisations required by law or regulation to use the Equipment (including any registration or licence prior to usage of the Equipment and maintain such authorisations for the duration of the Rental Period);
- 7.13 promptly enter all usage, maintenance, servicing and other necessary information into the log books or other documentation supplied by SPEE3D with the Equipment;
- 7.14 not alter, adapt, modify, translate, make improvements to, reverse engineer, de-compile, disassemble, copy or tamper with any part of the hardware that accompanies or is part of the Equipment;
- 7.15 without limiting clause 8.14, not alter, adapt, modify, translate, make improvements to, create derivative works based upon, disassemble, decompile, reverse engineer, reduce to any human or machine perceivable form, or circumvent any technological measure that controls access to or permits derivation of the source code of, the Equipment Software or any part thereof;
- 7.16 not damage the Equipment;
- 7.17 report any damage to, or loss or theft of, the Equipment to SPEE3D immediately upon such occurrence;
- 7.18 not repair the Equipment without SPEE3D's prior consent;
- 7.19 not take or permit any other action which could impair SPEE3D's rights, or damage the image or reputation of quality inherent in the Equipment, SPEE3D's business, reputation, intellectual property rights or other assets or rights;
- 7.20 prior to the return of the Equipment to SPEE3D, clean the Equipment or those parts thereof as directed by SPEE3D, provided that the Customer shall not be required to clean those parts of the Equipment to which it does not have access or has been directed by SPEE3D not to access or clean; and
- 7.21 ensure that the Equipment is returned to SPEE3D at the end of the Rental Period in the same condition and state of cleanliness (except for normal wear and tear) as at the Commencement Date.
- ## 8 Safety and OH&S Laws
- Without limiting its obligations under clause 8, the Customer must ensure that:
- 8.1 any person who operates or comes into contact with the Equipment is provided with written procedures and instructions for safe systems of work and are given any necessary training to operate the Equipment;
 - 8.2 each person who operates the Equipment wears suitable clothing and any protective equipment required or recommended by SPEE3D or as required by law;
 - 8.3 SPEE3D is notified as soon as the Customer or any operator of the Equipment or any other person identifies any fault or potential fault with the Equipment that if left unattended could result in further damage to the Equipment or result in a safety hazard;
 - 8.4 if any fault or potential fault with the Equipment is identified:
 - (a) the Equipment is not operated by any person;
 - (b) the Equipment is withdrawn from use until the fault or potential fault has been assessed and controlled or repaired so that there is no longer a safety hazard with the Equipment; and
 - (c) all necessary steps are taken to prevent injury to any persons or damage to any property as a result of the fault or potential fault identified; and
 - 8.5 the Customer maintains and makes available on request by SPEE3D records of any safety hazards and safety incidents associated with the

Equipment and any maintenance, servicing or repair of the Equipment.

9 Inspection

9.1 The Customer will provide SPEE3D with access to the Equipment at all reasonable times at the Customer's premises (including the Site) to:

- (a) inspect, repair, maintain and/or observe the use of the Equipment, including as required to carry out any SPEE3D Maintenance Services;
- (b) do any act, matter or thing required to be done to give effect to the terms of this Agreement and/or to protect SPEE3D's rights in the Equipment; and
- (c) where provided for under the terms of the Agreement or otherwise at law, to re-possess the Equipment.

9.2 The Customer:

- (a) expressly authorises and grants to SPEE3D an express, irrevocable licence to enter the premises where the Equipment is located (including the Site) in order to enable SPEE3D to exercise its rights and comply with its obligations under this Agreement, including clauses 5.3, 8, 10, 12.1 and 19.3(b);
- (b) indemnifies SPEE3D for any Losses (including legal costs on a full indemnity basis) associated with SPEE3D exercising its rights and complying with its obligations under this Agreement, including clauses 5.3, 8, 10, 12.1 and 19.3(b); and
- (c) agrees that SPEE3D will not be liable for any damage caused to the Customer's property (including the Site) as a result of SPEE3D exercising its rights and complying with its obligations under this Agreement, including clauses 5.3, 8, 10, 12.1 and 19.3(b).

10 Breakdown, Damage, Loss, Theft

10.1 In the event that any part or all of the Equipment suffers a Breakdown, is lost or stolen, the Customer:

- (a) must immediately notify SPEE3D of the Breakdown, loss or theft; and
- (b) shall be liable for all costs of repair and/or replacement of the Equipment unless the Breakdown results from a defect in the Equipment (in which case SPEE3D will promptly repair the Equipment so that it is able to perform its intended function), and the Customer shall continue to incur and be liable for all Rent and all other monies payable under this Agreement

notwithstanding that the Customer may not have the use of the Equipment during any such period of Breakdown, loss or theft of the Equipment.

10.2 The Customer must monitor the operation of the Equipment to ensure that it is operating in accordance with the Customer's requirements and shall immediately notify SPEE3D if the Equipment requires any servicing or repairs.

10.3 If the Equipment suffers any Breakdown, the Customer must:

- (a) ensure that the Equipment is not operated by any person until the Breakdown has been repaired;
- (b) withdraw the Equipment from use until the Breakdown has been repaired; and
- (c) take all steps necessary to prevent injury to any persons or damage to any property as a result of the Breakdown.

11 SPEE3D Maintenance and Training Services

11.1 SPEE3D will, during the Rental Period, undertake and provide to the Customer the SPEE3D Maintenance Services in respect of the Equipment.

11.2 Any maintenance and servicing of the Equipment in addition to the SPEE3D Maintenance Services must be carried out only by SPEE3D or a person authorised by SPEE3D to carry out that maintenance and servicing.

11.3 The parties agree that the Customer's obligations under this Agreement to maintain and service the Equipment during the Rental Period apply only to the extent that SPEE3D is not required to undertake such maintenance and servicing in accordance with clause 12.1.

11.4 SPEE3D will provide the Training Services to the Customer as specified in the Quote.

11.5 SPEE3D may subcontract any of its obligations under this Agreement, including its obligations in respect of the SPEE3D Maintenance Services and the Training Services.

11.6 Except as specified in the Quote, the Customer will not be required to pay any amount in addition to the Rent for the provision of the SPEE3D Maintenance Services or the Training Services.

11.7 SPEE3D will use its reasonable endeavours to provide the SPEE3D Maintenance Services and Training Services on any date specified or estimated by SPEE3D or set out in the Quote; however, such dates are estimates only and SPEE3D will not, in any circumstances or for any reason, be liable for late provision of the SPEE3D Maintenance Services or Training Services and

later provision of the SPEE3D Maintenance Services or Training Services does not entitle the Customer to terminate this Agreement.

12 PPSA

- 12.1 Words and expressions used in this clause 13 which are not defined in this Agreement but are defined in the PPSA have the meaning given to them in the PPSA.
- 12.2 The Customer acknowledges that:
- (a) the agreement for the rental of Equipment under this Agreement creates a registrable security interest under the PPSA in the Equipment and the proceeds of the Equipment and that it has not agreed to postpone the time for attachment of that security;
 - (b) the security interest created under this Agreement attaches to the Equipment and the proceeds of the Equipment in accordance with the PPSA;
 - (c) value has been given for the creation of the security interest;
 - (d) where SPEE3D has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply.
- 12.3 SPEE3D is not obliged to act in any way to dispose of or to retain any Equipment which has been seized by SPEE3D or any person nominated by SPEE3D under its rights under the PPSA.
- 12.4 Without limiting anything else in this Agreement, the Customer consents to SPEE3D effecting a registration on the Personal Property Securities Register (**PPSR**) in relation to any security interest created by or arising in connection with, or contemplated by, this Agreement, including in relation to the Equipment. The Customer agrees to promptly do all things necessary to ensure that any security interest created under this Agreement is perfected and remains continuously perfected, SPEE3D's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 12.5 The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by SPEE3D for that purpose in relation to the Equipment).
- 12.6 The Customer must indemnify, and on demand reimburse, SPEE3D for all expenses incurred in the enforcement of any rights arising out of any of SPEE3D' security interests.

- 12.7 The Customer must not change its name, address or contact details without providing prior written notice to SPEE3D and must not register a financing change statement or a change demand covering the Equipment without SPEE3D' prior written consent.
- 12.8 The Customer must not without SPEE3D's prior written consent, sell, lease, sublicense, assign, dispose of, create a security interest in, mortgage or part with possession of the Equipment or any interest in it (or purport or attempt to purport to do any of those things) or permit any lien over the Equipment.
- 12.9 The Customer must notify SPEE3D as soon as it becomes aware if any personal property which does not form part of the Equipment becomes an accession to the Equipment or if any of the Equipment is situated outside Australia or, on request by SPEE3D, of the present location or situation of the Equipment.
- 12.10 The Customer must keep full and complete records of the Equipment.
- 12.11 The Customer must authorise SPEE3D to apply any money SPEE3D receives from the Customer towards debts, charges and expenses in any priority SPEE3D determines in its sole discretion for whatever reason, including in order to maintain the security interest created by this Agreement.
- 12.12 The Customer must immediately return the Equipment if requested to do so by SPEE3D following non payment of any amount owing by the purchaser to SPEE3D or following breach of any other obligation to SPEE3D.
- 12.13 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 12.14 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if SPEE3D has given prior written consent.

13 Insurance

- 13.1 From the Commencement Date until the later of:
- (a) the end of the Rental Period; and
 - (b) the date the Equipment is returned to SPEE3D's nominated site,

the Customer must, as a minimum, effect and/or maintain the Insurance Policies with a reputable insurer approved by SPEE3D in the name of SPEE3D and the Customer as named co-insureds for their respective rights and interests with each policy operating in the same manner as if it was a separate policy covering each insured.

13.2 The Insurance Policies must provide that the insurance is primary with respect to the interests of SPEE3D and any other insurance maintained by SPEE3D is excess to and not contributory with the Insurance Policies.

13.3 In the event of any claim under any of the Insurance Policies in respect of any Loss, any excess or deductible payable under such policies shall be paid by the Customer unless the Loss was caused by SPEE3D, its employees, servants or agents.

13.4 Within 5 Business Days of the signing of this Agreement, the Customer must provide to SPEE3D copies of certificates of insurance and such other proof of compliance with the provisions of this clause 14 as SPEE3D may reasonably require.

13.5 The Customer must comply with the terms of the Insurance Policies, and the Customer must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.

14 Intellectual Property

14.1 The parties acknowledge and agree that all Intellectual Property Rights in the Equipment (including in respect of the Equipment Software and any improvements in the Equipment) vests in and exclusively belongs to and are irrevocably assigned to SPEE3D and the Customer agrees that it must not infringe or use the Intellectual Property Rights other than as expressly provided for in this Agreement.

14.2 SPEE3D grants to the Customer a non-exclusive, royalty free licence during the Rental Period to use all Intellectual Property Rights in the Equipment solely for the purpose of enabling the Customer to use the Equipment in accordance with this Agreement.

14.3 SPEE3D warrants to the Customer that it is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use) the Intellectual Property Rights in the Equipment which is licensed to TSA under clause 15.2.

14.4 Unless otherwise expressly stated in this Agreement, the parties acknowledge and agree that all Intellectual Property Rights in any material created by the Customer using the Equipment during the Rental Period (including the design of

any good or product which is designed using the Equipment but not including any improvements in the Equipment) vests in and exclusively belongs to and are irrevocably assigned to the Customer.

14.5 The Customer grants SPEE3D a non-exclusive, irrevocable, royalty free licence to use all Intellectual Property Rights in any material created by the Customer using the Equipment solely for:

- (a) any purposes which SPEE3D considers are ancillary to its provision of the Equipment, the SPEE3D Maintenance Services, the Training Services or as are otherwise necessary for the proper compliance of SPEE3D of its obligations under this Agreement; and
- (b) the purpose of promoting and marketing SPEE3D and the Equipment.

14.6 If the Customer becomes aware of any:

- (a) infringement or suspected infringement of the Intellectual Property Rights in the Equipment; or
- (b) claim that use of the Equipment by the Customer infringes the Intellectual Property Rights of a third party,

then it must:

- (c) immediately notify SPEE3D in writing of the infringement, suspected infringement or claim;
- (d) if SPEE3D request, consent to SPEE3D commencing and prosecuting or defending (as relevant) court or other proceedings in respect of the infringement, suspected infringement or claim in its own name or the name of the Customer;
- (e) sign all deeds, court documents and other documents necessary for SPEE3D to be able to direct and control the commencement and prosecution or defence (as relevant) of the proceedings;
- (f) provide any other assistance reasonably requested by SPEE3D in respect of the proceedings; and
- (g) not, without the prior written consent of SPEE3D:
 - (i) make any admission of liability;
 - (ii) provide any witness statement, affidavit or other evidence;
 - (iii) enter into any agreement, settlement or compromise with any person; or
 - (iv) commence any legal, administrative or other proceedings,

in connection with the infringement, suspected infringement or claim.

15 Limitation of Liability

- 15.1 Nothing in this Agreement should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the Australian Consumer Law or the Customer's rights to make a claim in respect of any consumer guarantees or other provision of the Australian Consumer Law.
- 15.2 Subject to clauses 16.1 and 16.3, the Customer agrees:
- (a) to possess, use and operate the Equipment at its own risk;
 - (b) to the extent permitted by law, that SPEE3D excludes all liability for any Loss incurred by the Customer as a result of this Agreement including in respect of any Loss to any property of the Customer; and
 - (c) to the extent permitted by law, to forever releases and discharges SPEE3D and its agents and employees from all claims and demands upon SPEE3D and any Loss whatsoever caused to the Customer and/or its agents and employees whether by way of death or injury to any person or damage to property, delay, financial loss or otherwise arising directly or indirectly out of or in connection with this Agreement.
- 15.3 Notwithstanding clause 16.2, if the Customer is a Consumer and the goods or services provided under this Agreement are Non PDH Goods or Services, SPEE3D's liability to the Customer in respect of a breach of a consumer guarantee is limited at the Customer's option to:
- (a) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.; and
 - (b) in the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 15.4 Notwithstanding or limiting any other provisions under this Agreement and subject to the provisions of the Australian Consumer Law (or any other relevant law for which liability cannot be excluded or limited), the maximum aggregate liability of SPEE3D to the Customer arising out of or in connection with this Agreement will in no

event exceed an amount equal to the amount of the Rent paid by the Customer to SPEE3D.

- 15.5 Subject to clauses 16.1 and 16.3, SPEE3D and its representatives will not be liable to the Customer for any indirect, special, incidental, or Consequential Loss incurred by the Customer under or in connection with this Agreement or as a result of the Customer's use of the SPEE3D Software, even if SPEE3D and its representatives have been advised of the possibility of such Consequential Loss being incurred. For the purposes of this clause, '**Consequential Loss**' includes indirect loss, loss of revenues, loss of reputation, loss of profits, loss of data, additional expenses, loss of actual or anticipated savings, loss of bargain and loss of opportunity.

16 Indemnity

The Customer, to the extent permitted by law, agrees to indemnify (and keep indemnified after the Rental Period ends or this Agreement is terminated) SPEE3D (and all its related bodies corporate (as defined in the *Corporations Act 2001* (Cth)), and each of its officers, employees, subcontractors and agents) (**Indemnified Parties**) in respect of any Loss suffered or incurred by an Indemnified Party which arises from or in respect of:

- 16.1 the rental or use of the Equipment by the Customer;
- 16.2 any Breakdown;
- 16.3 any breach by the Customer of any of its obligations under this Agreement;
- 16.4 any claim by a third party that any material created by the Customer using the Equipment or Design Software during the Rental Period (including the design of any good or product which is designed using the Equipment or Design Software) infringes the Intellectual Property Rights of that third party or breaches any law or regulation;
- 16.5 loss of, or damage to, any real or personal property owned, leased, licensed or controlled by SPEE3D, or any real or personal property of any third party, caused by, arising out of, or in connection with this Agreement or any activity for which the Customer is directly or indirectly responsible;
- 16.6 personal injury (which includes illness) or death of any person caused by, arising out of, or in connection with this Agreement and for which the Customer is directly or indirectly responsible;
- 16.7 any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment; and
- 16.8 any negligent, or wilful acts or omission, theft, misconduct, dishonesty or fraud committed by

the Customer, its officers, directors, employees, agents, representatives, delegates or contractors.

17 Confidentiality

- (a) Subject to clause 18(b), the Customer must:
- (i) keep confidential, and not disclose, all Confidential Information;
 - (ii) not, without the prior written consent of SPEE3D or as expressly permitted in this Agreement, copy, write down or otherwise record any part of the Confidential Information;
 - (iii) take all precautions necessary to prevent unauthorised persons from obtaining access to the Confidential Information by any direct or indirect means;
 - (iv) use the Confidential Information solely for its own internal business purposes and not for any other purpose including (without limitation) use for its own advantage or use to the disadvantage of SPEE3D;
 - (v) be responsible and liable for the actions of its employees, contractors, agents or related bodies corporate who have access to the Confidential Information;
 - (vi) be responsible for the use of the Confidential Information by another where the Confidential Information was released by the Customer or released, improperly used or improperly obtained by any person which obtained the Confidential Information from the Customer; and
 - (vii) immediately upon request by SPEE3D, return to SPEE3D or destroy (at the election of SPEE3D) all documents and other material containing the Confidential Information which are in the possession or control of the Customer.
- (b) The Customer may disclose Confidential Information only to:
- (i) employees who:
 - (A) are aware and agree that the Confidential Information must be kept confidential; and
 - (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by SPEE3D;
 - (ii) as required by law or securities exchange regulation; or
 - (iii) with the prior written consent of SPEE3D.

17.2 The Customer must notify SPEE3D immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

17.3 The Customer agrees that, for the purposes of promoting and marketing SPEE3D and the Equipment, SPEE3D is entitled to notify others of SPEE3D's relationship with the Customer and the Customer's use of the Equipment.

18 Default and Termination

18.1 Each of the following events is an "Event of Default" under this Agreement:

- (a) the Customer fails to pay the Rent or any other amount payable to SPEE3D under this Agreement by the relevant due date and the default continues for more than three Business Days;
- (b) the Customer fails to observe or perform any of the terms and conditions under this Agreement (including the Licence) on its part to be observed or performed (other than its payment obligations) and, if capable of remedy, this failure or default continues for more than 5 Business Days after notice from SPEE3D to remedy the default;
- (c) the Licence is terminated or expires;
- (d) the Customer fails to take out and maintain the Insurance Policies;
- (e) the Customer has made any false, inaccurate or misleading statement (including any warranty or statement in this Agreement) having a material effect in relation to SPEE3D's decision to enter into this Agreement;
- (f) the Customer permits a security interest to be created over the Equipment (other than in favour of SPEE3D);
- (g) the Equipment is abandoned or condemned or is seized or appropriated by any lawful authority and not released within 5 Business Days or is attached, sequestered, impounded or restrained upon and not released within 5 Business Days; and
- (h) the Customer is subject to an Insolvency Event.

18.2 If an Event of Default occurs, SPEE3D at its option may do any one or more of the following:

- (a) enforce performance by the Customer of the applicable terms and provisions of this Agreement;

- (b) suspend the Customer's access to, or ability to use, the Equipment (including the Equipment Software);
 - (c) recover damages for the breach concerned; and
 - (d) immediately terminate this Agreement and the Customer's right to possession and use of the Equipment by notice in writing to the Customer.
- 18.3 Upon service of any notice in accordance with clause 19.2(d):
- (a) all rights of the Customer to use the Equipment will terminate;
 - (b) SPEE3D may, directly or by its agent, take possession of the Equipment at the Customer's cost wherever it may be; and
 - (c) the Customer must immediately pay to SPEE3D all Rent which has accrued but not yet been paid by the Customer as at the date of termination.
- 18.4 Acceptance of any payment of the Rent by SPEE3D after SPEE3D has become aware of an Event of Default will be without prejudice to the exercise by SPEE3D of the powers conferred upon SPEE3D by this Agreement and such acceptance will not operate as an election by SPEE3D either to exercise or not to exercise any of SPEE3D's rights, powers or privileges under this Agreement.
- 18.5 The termination or expiry of this Agreement does not operate to terminate any rights or obligations under this Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 2.2, 3, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20 and 21.
- 19 General**
- 19.1 No clause of this Agreement attempts to exclude or limit, or have the effect of excluding or limiting, the operation of sections 47B(3), 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth). Any clause of this Agreement which is inconsistent with these provisions will be read down or otherwise varied to the extent necessary to preserve the operation of the relevant clause.
- 19.2 The relationship of SPEE3D and Customer established by this Agreement is that of independent contractors.
- 19.3 The United Nations Convention on the International Sale of Goods (the Vienna Convention) will not apply to this Agreement or the subject matter hereof.
- 19.4 Any notice or demand will be deemed to be given or made in the case if it is in writing and left or sent by pre-paid post or email to the party at its address stated in the Quote or any other address which the party whose address it is notifies the other part of in writing. Any notice or demand:
- (a) delivered to the address of that party will be deemed to have been received upon actual delivery;
 - (b) sent by post will be deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered; and
 - (c) sent by email to the email address of that party will be deemed to have been received one hour after the email is sent (unless the sender knows that the email has failed to send).
- 19.5 The Customer may not assign, transfer or novate its rights or obligations under this Agreement without the prior written consent of SPEE3D.
- 19.6 Time is of the essence in relation to the Customer's obligations under this Agreement.
- 19.7 No failure or delay on the part of SPEE3D to exercise any right or power under this Agreement shall operate as a waiver of that right or power. SPEE3D shall only be taken to have waived a right or power if it has expressly done so in writing signed by a director and a waiver of one right or power shall not be deemed to be a waiver of other rights or powers.
- 19.8 None of the terms of this Agreement, nor any act, matter or thing done under or in connection with or by virtue of this Agreement will operate as a merger of any rights and remedies of SPEE3D under this Agreement or otherwise and all such rights and remedies shall continue in full force and effect.
- 19.9 If any provision of this Agreement is found to be void or unenforceable the remaining provisions shall remain in full force and effect. Any void or unenforceable provision shall be replaced by a provision that achieves as far as possible the economic effect of the void or unenforceable provision was intended to achieve.
- 19.10 This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same document.
- 19.11 This Agreement shall be construed in accordance with the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and the Federal Court of Australia.

20 Definitions and Interpretation

20.1 In this Agreement:

- (a) **Agreement** means this Equipment Rental Agreement, the Quote and the Licence.
- (b) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.
- (c) **Breakdown** means any breakdown of, or damage to, the Equipment or any occurrence which renders the Equipment unable to perform its intended function.
- (d) **Business Day** means any day except a Saturday, Sunday or public holiday in Victoria, Australia.
- (e) **Commencement Date** means the commencement date specified in the Quote.
- (f) **Confidential Information** means all information (regardless of form) and other content disclosed to or acquired by the Customer regarding:
 - (i) SPEE3D or SPEE3D's business affairs including information relating to SPEE3D's financial affairs, projections, forecasts, accounts, prospects, strategies, business processes and system functionality, business operations, assets, liabilities, suppliers, personnel, contracts, clients, products and stock and sales information;
 - (ii) the Equipment; or
 - (iii) the terms of this Agreement or any other agreements between the Customer and SPEE3D.but does not include any information that:
 - (iv) is public knowledge or becomes available to the Customer from a source other than SPEE3D (otherwise than as a result of a breach of confidentiality); or
 - (v) is rightfully known and became known to the Customer independently from any agreement with SPEE3D.
- (g) **Consumables** means any consumable which is used as part of, with, or in the Equipment, including any metal powder.
- (h) **Consumer** has the same meaning provided to it in section 3 of the Australian Consumer Law.
- (i) **CPI** means the Consumer Price Index - Melbourne (All Groups), as published by

the Australian Bureau of Statistics or the index officially substituted for it.

- (j) **Customer** means the customer specified in the Quote.
- (k) **Design Software** has the same meaning as 'SPEE3D Software' has under the Licence.
- (l) **End Date** means the end date specified in the Quote.
- (m) **Equipment** means the 3D printing machine as further described in the Quote and includes:
 - (i) the Equipment Software;
 - (ii) all accessories and other equipment; and
 - (iii) any log books, manuals, maintenance records of the equipment,provided by SPEE3D to the Customer as part of this Agreement.
- (n) **Equipment Software** means the software program which is incorporated into, and forms part of, the Equipment but does not include the Design Software.
- (o) **Event of Default** has the meaning given to it in clause 19.1.
- (p) **GST** has the same meaning as in the GST Act.
- (q) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (r) **Insolvency Event** means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.
- (s) **Insurance Policies** means the insurance policies set out in the Quote.
- (t) **Intellectual Property Rights** means all rights in relation to patents, copyright, registered designs, devices, registered and unregistered trade marks, trade secrets,

- know-how and confidential information, and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.
- (u) **Licence** means the licence for the Design Software set out in Annexure B.
 - (v) **Loss** includes any damage, loss, cost, expense or liability of any kind incurred by the person concerned, however it arises and whether it is direct or indirect, present or future, fixed or unascertained, actual or contingent including (without limitation) indirect or consequential loss.
 - (w) **Non PDH Goods or Services** means goods or services which, for the purposes of the Australian Consumer Law, are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
 - (x) **Operating Costs** means all costs or expenses necessary to operate the Equipment.
 - (y) **PPSA** means the *Personal Property Securities Act 2009* (Cth).
 - (z) **Quote** means the quote or proposal prepared by SPEE3D which is attached to this Agreement as Annexure A.
 - (aa) **Rent** means the rent and other fees payable by the Customer under this Agreement as set out in the Quote.
 - (bb) **Rental Period** means the period commencing on the Commencement Date and ending on the End Date and any extension beyond the End Date by operation of clause 1.3 or by written agreement of the parties, unless terminated earlier in accordance with this Agreement.
 - (cc) **Site** means the premises or address set out in the Quote.
 - (dd) **SPEE3D** means SPEE3D Pty Ltd (ACN 623 258 131).

Software Licence Agreement

1 Licence

- 1.1 End User Licence
 - (a) SPEE3D grants the Customer a personal, non-exclusive, non-transferable, not-for resale or sub license, restricted right to use the SPEE3D Software for the Permitted Purpose during the Licence Term by loading the SPEE3D Software into the temporary

- (ee) **SPEE3D Maintenance Services** means the maintenance and servicing of the Equipment to be undertaken during the Rental Period by SPEE3D as specified in the Quote.
- (ff) **Training Services** means the training services in respect of the use and operation of the Equipment to be provided by SPEE3D as specified in the Quote.

20.2 In this Agreement:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa and a gender includes the other gender;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (d) a reference to a law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to a party or a person includes the party's or the person's executors, legal personal representatives, successors, permitted transferees and assigns;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not), a government and a government authority or agency;
- (g) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and
- (h) all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollar

memory (such as RAM) or installing the SPEE3D Software on the permanent memory (such as a hard disk or other storage device) on the Permitted Seats.

- (b) The parties agree that the Quote is binding on the parties and forms part of this Agreement.

1.2 Installation

Unless SPEE3D agrees otherwise in writing, the Customer will be responsible for installing the SPEE3D

Software on the Permitted Seats and otherwise integrating the SPEE3D Software with the Customer's software and systems and SPEE3D will have no installation or integration obligations.

1.3 Documentation

The Customer must use only the most recent version of the Documentation provided or made available by SPEE3D, and must follow any directions in the Documentation regarding the use of the SPEE3D Software.

2 Restrictions on Licence

The licence granted to the Customer under this Agreement authorises the Customer to use the SPEE3D Software solely for the Permitted Purpose and the Customer must not use the SPEE3D Software for any other purpose. Without limiting the above, and subject to any rights which the Customer has under the *Copyright Act 1968* (Cth), the Customer must not:

- (a) make any copies of the SPEE3D Software (except as permitted under clause 1.1);
- (b) modify, alter, adapt, modify, translate, make improvements to, reverse engineer, de-compile, disassemble, reduce to any human or machine perceivable form, copy or tamper with all or any part of the SPEE3D Software;
- (c) attempt to circumvent or break the Licence Keys or any other encryption, decryption or other security device or technological protection measure contained in the SPEE3D Software;
- (d) distribute any part of the SPEE3D Software for commercial purposes or otherwise sublicense or resell the SPEE3D Software;
- (e) create derivative works from all or any part of the SPEE3D Software;
- (f) transfer, assign, rent, lease, lend, sell or otherwise dispose of all or any part of the SPEE3D Software; or
- (g) publish, communicate or otherwise make any part of the SPEE3D Software publically available.

3 Additional Permitted Seats

3.1 Customer may request

If the Customer wishes to be able to load or install the SPEE3D Software on more Seats than the Permitted Seats for the Permitted Purpose, the Customer may make a written request to SPEE3D to purchase such additional Permitted Seats.

3.2 SPEE3D's response

Upon receiving a request under clause 3.1, SPEE3D may notify the Customer of the additional Licence Fees and other amounts payable by the Customer for the purchase of the additional Permitted Seats.

3.3 Customer may accept

Within 10 Business Days of the date of the notice from SPEE3D under clause 3.2, the Customer may notify SPEE3D that it wishes to purchase the relevant additional Permitted Seats. Upon payment by the Customer of the additional Licence Fees or other amounts specified in the notice from SPEE3D under clause 3.2, the Permitted Seats will be increased by the number of additional Permitted Seats purchased by the Customer.

4 Ownership

4.1 Intellectual Property

SPEE3D owns all right, title and interest in and to the SPEE3D Software and any Documentation and the Customer acknowledges that it will not have any ownership of or other rights in respect of the Intellectual Property Rights in the SPEE3D Software, other than the licence granted under this Agreement.

4.2 Third Party Software

- (a) The Customer acknowledges that the SPEE3D Software may include third party software licensed to SPEE3D which is embedded in or provided with the SPEE3D Software.
- (b) SPEE3D makes no representation or warranties relating to any third party software and access to, and use of, any third party software is at the Customer's risk and SPEE3D will in no way be responsible for any Loss that may result from the Customer's access to, and use of, any third party software.

5 Fees and Payment

5.1 Licence Fee Payment

- (a) The Customer will pay SPEE3D the Licence Fees in accordance with the payment terms set out in the Quote (**Payment Schedule**) for the duration of the Licence Term.
- (b) The Licence Fees and any other monies payable under the terms of this Agreement shall be paid by the Customer to SPEE3D within 14 days of the date of any tax invoice issued in accordance with the Payment Schedule.
- (c) All amounts payable under this Agreement by the Customer to SPEE3D must be paid free of any abatement, reduction or set-off or any other deduction or withholding.

5.2 Licence Fee adjustment

On each yearly anniversary of the Commencement Date, the Licence Fees may be increased by the amount determined in accordance with the following formula:

Licence Fees		=	$A \times \frac{B}{C}$
Where:	A	=	the Licence Fees payable in the previous year (Previous Year)
	B	=	CPI for the Previous Year
	C	=	CPI for year ending immediately prior to the Previous Year

5.3 GST

- (a) Expressions used in this clause have the same meaning as those expressions in the GST Act.
- (b) All amounts payable by the Customer in connection with this Agreement do not include an amount for GST unless it is expressly stated in this Agreement to be inclusive of GST.
- (c) If a supply under this Agreement is subject to GST, the recipient must pay to the supplier, at the same time and in the same manner as the consideration is otherwise payable, an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.
- (d) Payment of any additional amount payable under this clause is subject to a valid tax invoice being delivered by the supplier to the recipient.

6 No support services

6.1 No support

The Customer acknowledges that, unless SPEE3D otherwise agrees in writing, SPEE3D will not have any obligations to provide any services to the Customer in respect of the SPEE3D Software including (without limitation) development or customisation services, technical support, training or maintenance services.

6.2 Updates and upgrades

- (a) The Customer acknowledges and agrees that nothing in the Agreement imposes obligations on SPEE3D to develop, release or install for the Customer any updates, upgrades, patches, bug fixes, new releases or new versions in respect of all or any part of the SPEE3D Software (**Updates**), provided however that if SPEE3D does develop or release any Updates, it may require that all such Updates be used by the Customer.
- (b) The Customer will not be required to pay any amount to SPEE3D in addition to the Licence Fees for any Updates which SPEE3D agrees to make available to the Customer.

7 Security

- (a) Prior to installing the SPEE3D Software on any of its Seats, the Customer must install, and will continue to be responsible for maintaining, adequate firewalls, data protection, virus screening and other security measures required to prevent unauthorised access to the SPEE3D Software or any data stored or generated by the SPEE3D Software.
- (b) The Customer acknowledges and agrees that SPEE3D will not be liable for any loss or damage suffered by the Customer which arises out of or in connection with:
 - (i) any computer viruses being transferred by or obtained as a result of the use of the SPEE3D Software;
 - (ii) any hacking into or other similar attacks on the hardware or servers used by the Customer; or
 - (iii) any other data security issues in respect of the use of the SPEE3D Software.

8 Licence Keys

The Customer acknowledges that the SPEE3D Software may contain Licence Keys and that SPEE3D may use the Licence Keys to disable or suspend the Customer's access to the SPEE3D Software:

- (a) following the termination of this Agreement or the expiry of the Licence Term; or
- (b) if the Customer breaches (or SPEE3D reasonably suspects the Customer has breached) any provision of this Agreement.

9 Back ups

The Customer acknowledges that SPEE3D does not provide back up or other similar services in respect of the information, designs, images, communications and other data generated or which comes into existence as a result of the Customer using the SPEE3D Software and the Customer is responsible for implementing its own back up and data retrieval procedures in respect of such data.

10 Confidentiality

10.1 Confidential Information

For the purposes of this clause 10, '**Confidential Information**' means all information (regardless of form) and other content disclosed to or acquired by the Customer regarding:

- (a) SPEE3D or SPEE3D's business affairs including information relating to SPEE3D's financial affairs, projections, forecasts, accounts, prospects, strategies, business processes and system functionality, business operations, assets, liabilities, suppliers, personnel, contracts, clients, products and stock and sales information;

- (b) the SPEE3D Software including (without limitation) information regarding the object code and other code for the SPEE3D Software; or
- (c) the terms of this Agreement or any other agreements between the Customer and SPEE3D,

but excludes information that:

- (d) is public knowledge or becomes available to the Customer from a source other than SPEE3D (otherwise than as a result of a breach of confidentiality); or
- (e) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of this Agreement.

10.2 Obligation of confidentiality

- (a) Subject to clause 18(b), the Customer must:
 - (i) keep confidential, and not disclose, all Confidential Information;
 - (ii) not, without the prior written consent of SPEE3D or as expressly permitted in this Agreement, copy, write down or otherwise record any part of the Confidential Information;
 - (iii) take all precautions necessary to prevent unauthorised persons from obtaining access to the Confidential Information by any direct or indirect means;
 - (iv) use the Confidential Information solely for the Permitted Purpose and not for any other purpose including (without limitation) use for its own advantage or use to the disadvantage of SPEE3D;
 - (v) be responsible and liable for the actions of its employees, contractors, agents or related bodies corporate who have access to the Confidential Information;
 - (vi) be responsible for the use of the Confidential Information by another where the Confidential Information was released by the Customer or released, improperly used or improperly obtained by any person which obtained the Confidential Information from the Customer; and
 - (vii) immediately upon request by SPEE3D, return to SPEE3D or destroy (at the election of SPEE3D) all documents and other material containing the Confidential Information which are in the possession or control of the Customer.

(b) The Customer may disclose Confidential Information only to:

- (i) employees who:

- (A) are aware and agree that the Confidential Information must be kept confidential; and
- (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by SPEE3D;

- (ii) as required by law or securities exchange regulation; or
- (iii) with the prior written consent of SPEE3D.

10.3 Notification of breach

The Customer must notify SPEE3D immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

10.4 Promotion

The Customer agrees that, for the purposes of promoting and marketing SPEE3D and the SPEE3D Software, SPEE3D is entitled to notify others of SPEE3D's relationship with the Customer and the Customer's use of the SPEE3D Software.

11 Liability

11.1 Exclusion of warranties

Nothing in this Agreement should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the Australian Consumer Law or the Customer's rights to make a claim in respect of any consumer guarantees or other provision of the Australian Consumer Law.

11.2 Liability

- (a) Subject to clauses 11.1 and 16.3, the Customer agrees, to the extent permitted by law:
 - (i) to possess, use and operate the SPEE3D Software at its own risk;
 - (ii) that SPEE3D excludes all liability for any Loss incurred by the Customer as a result of this Agreement including in respect of any Loss to any property of the Customer; and
 - (iii) to forever releases and discharges SPEE3D and its agents and employees from all claims and demands upon SPEE3D and any Loss whatsoever caused to the Customer and/or its agents and employees whether by way of death or injury to any person or damage to property, delay, financial loss or otherwise arising directly or indirectly out of or in connection with this Agreement.

- (b) Notwithstanding clause 16.2, if the Customer is a Consumer and the goods or services provided under this Agreement are Non PDH Goods or Services, SPEE3D's liability to the Customer in respect of a breach of a consumer guarantee is limited at the Customer's option to:
- (i) in the case of goods:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired.; and
 - (ii) in the case of services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (c) Notwithstanding or limiting any other provisions under this Agreement and subject to the provisions of the Australian Consumer Law (or any other relevant law for which liability cannot be excluded or limited), the maximum aggregate liability of SPEE3D to the Customer arising out of or in connection with this Agreement will in no event exceed an amount equal to the amount of the Licence Fees paid by the Customer to SPEE3D.

11.3 Consequential Loss

- (a) Subject to clauses 11.1 and 16.3, SPEE3D and its representatives will not be liable to the Customer for any indirect, special, incidental, or Consequential Loss incurred by the Customer under or in connection with this Agreement or as a result of the Customer's use of the SPEE3D Software, even if SPEE3D and its representatives have been advised of the possibility of such Consequential Loss being incurred.
- (b) For the purposes of this clause, '**Consequential Loss**' includes indirect loss, loss of revenues, loss of reputation, loss of profits, loss of data, additional expenses, loss of actual or anticipated savings, loss of bargain and loss of opportunity.

12 Indemnity

The Customer, to the extent permitted by law, agrees to indemnify (and keep indemnified after the Licence Term ends or this Agreement is terminated) SPEE3D (and all its related bodies corporate (as defined in the Corporations Act 2001 (Cth)), and each of its officers, employees, subcontractors

and agents) (**Indemnified Parties**) in respect of any Loss suffered or incurred by an Indemnified Party which arises from or in respect of:

- (a) any breach by the Customer of any of its obligations under this Agreement; or
- (b) any negligent, or wilful acts or omission, theft, misconduct, dishonesty or fraud committed by the Customer, its officers, directors, employees, agents, representatives, delegates or contractors.

2 Term and termination

2.1 Term

This Agreement is effective on the Commencement Date and will continue for the Licence Term, unless terminated earlier pursuant to this clause 13.

2.2 Termination for Cause

SPEE3D may:

- (a) terminate this Agreement and the licence under this Agreement; and / or
- (b) suspend the Customer's access to, or ability to use, the SPEE3D Software,

effective immediately upon providing written notice to the Customer if:

- (c) the Customer fails to pay the Licence Fees or any other amount payable to SPEE3D under this Agreement by the relevant due date and the default continues for more than three Business Days;
- (d) the Customer fails to observe or perform any of the terms and conditions under this Agreement on its part to be observed or performed (other than its payment obligations) and, if capable of remedy, this failure or default continues for more than 5 Business Days after notice from SPEE3D to remedy the default;
- (e) any agreement between SPEE3D and the Customer in respect of the rental of any 3D printing equipment to which this Agreement is annexed is terminated or expires; or
- (f) the Customer is subject to an Insolvency Event.

2.3 Post termination obligations

- (a) Within 2 Business Days of the termination of this Agreement or the expiry of the Licence Term, the Customer must:
 - (i) cease all use of the SPEE3D Software;
 - (ii) permanently delete all copies of the SPEE3D Software from its Seats;
 - (iii) permanently delete or destroy any other copies of the SPEE3D Software in the possession, custody or control of the Customer; and

- (iv) pay to SPEE3D all Licence Fees which have accrued but not yet been paid by the Customer as at the date of termination.
- (b) If requested by SPEE3D, the Customer must provide SPEE3D with a statutory declaration signed by a director or other public officer of the Customer confirming that the Customer has complied with its obligations under clause 13.3(a).

2.4 Survival of certain terms

The termination or expiry of this Agreement does not operate to terminate any rights or obligations under this Agreement that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 2, 4, 5.3, 10, 11, 12, 13.3, 13.4, 15 and 16.

3 Audit, control and inspection rights

3.1 Provision of audit log

Within 5 Business Days of a request by SPEE3D, the Customer must generate an accurate audit log file and send it to SPEE3D. The audit log file must contain all such information reasonably required by SPEE3D, including (without limitation) the number of Seats on which the SPEE3D Software is installed or run.

3.2 Inspection

Within 2 Business Days of SPEE3D making a request for access, the Customer must provide SPEE3D (or its nominee) with access to relevant copies of audit log files, system parameter files and all premises or computer systems of the Customer relevant to the use of the SPEE3D Software and must provide SPEE3D with all assistance reasonably required by SPEE3D in connection with SPEE3D (or its nominee) inspecting and/or auditing the Customer's compliance with its obligations under this Agreement.

3.3 Results of inspection or audit

- (a) If SPEE3D finds as a result of any inspection or audit under this clause 14 that the Customer has used or is using any SPEE3D Software other than for the Permitted Purpose or has exceeded the Permitted Seats, SPEE3D may (at its election and without prejudice to any other rights or remedies SPEE3D may have):
 - (i) require the Customer immediately acquire additional SPEE3D licences that correspond to the extent of the use of the SPEE3D Software by the Customer for purposes other than the Permitted Purpose or on Seats in excess of the Permitted Seats from SPEE3D for an additional fee, which is not to exceed the fee for such use that SPEE3D would

have charged under its then standard rates over the relevant period; or

- (ii) require the Customer immediately cease using the SPEE3D Software for the non Permitted Purpose or on the non Permitted Seats and provide evidence satisfactory to SPEE3D (acting reasonably) that the Customer has complied with its obligations under this clause 14.3(a)(ii).
- (b) In addition to its rights under clause 14.3(a) and without prejudice to any other rights or remedies SPEE3D may have, if SPEE3D finds as a result of any inspection or audit under this clause 14 that the Customer has exceeded the Permitted Seats, SPEE3D may by notice in writing to the Customer require that the Customer immediately pay to SPEE3D an amount equal to the additional fees (based on SPEE3D's standard rates over the relevant period) which the Customer would have had to pay to SPEE3D if the number of Permitted Seats had, from the Commencement Date, being increased to include the additional Seats.

4 General

- (a) No clause of this Agreement attempts to exclude or limit, or have the effect of excluding or limiting, the operation of sections 47B(3), 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth). Any clause of this Agreement which is inconsistent with these provisions will be read down or otherwise varied to the extent necessary to preserve the operation of the relevant clause.
- (b) The relationship of SPEE3D and Customer established by this Agreement is that of independent contractors.
- (c) The United Nations Convention on the International Sale of Goods (the Vienna Convention) will not apply to this Agreement or the subject matter hereof.
- (d) Any notice or demand will be deemed to be given or made in the case if it is in writing and left or sent by pre-paid post or email to the party at its address stated in the Quote or any other address which the party whose address it is notifies the other part of in writing. Any notice or demand:
 - (i) delivered to the address of that party will be deemed to have been received upon actual delivery;
 - (ii) sent by post will be deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered; and
 - (iii) sent by email to the email address of that party will be deemed to have been

received one hour after the email is sent (unless the sender knows that the email has failed to send).

- (e) The Customer may not assign, transfer or novate its rights or obligations under this Agreement without the prior written consent of SPEE3D.
- (f) Time is of the essence in relation to the Customer's obligations under this Agreement.
- (g) No failure or delay on the part of SPEE3D to exercise any right or power under this Agreement shall operate as a waiver of that right or power. SPEE3D shall only be taken to have waived a right or power if it has expressly done so in writing signed by a director and a waiver of one right or power shall not be deemed to be a waiver of other rights or powers.
- (h) None of the terms of this Agreement, nor any act, matter or thing done under or in connection with or by virtue of this Agreement will operate as a merger of any rights and remedies of SPEE3D under this Agreement or otherwise and all such rights and remedies shall continue in full force and effect.
- (i) If any provision of this Agreement is found to be void or unenforceable the remaining provisions shall remain in full force and effect. Any void or unenforceable provision shall be replaced by a provision that achieves as far as possible the economic effect of the void or unenforceable provision was intended to achieve.
- (j) This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same document.
- (k) This Agreement shall be construed in accordance with the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and the Federal Court of Australia.

5 Definitions and Interpretation

5.1 Definitions

- (a) **Agreement** means this Equipment Rental Agreement and the Quote.
- (b) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.
- (c) **Business Day** means any day except a Saturday, Sunday or public holiday in Victoria, Australia.

- (d) **Claim** means a claim, action, proceeding, judgment or demand made or brought by or against a party, however arising and whether present, unascertained, future or contingent.
- (e) **Consumer** has the same meaning provided to it in section 3 of the Australian Consumer Law.
- (f) **Customer** means the customer specified in the Quote.
- (g) **Commencement Date** means the commencement date specified in the Quote.
- (h) **CPI** means the Consumer Price Index - Melbourne (All Groups), as published by the Australian Bureau of Statistics or the index officially substituted for it.
- (i) **Documentation** means any user guides, manuals or other similar documentation for the SPEE3D Software provided to the Customer by SPEE3D from time to time.
- (j) **End Date** means the end date specified in the Quote.
- (k) **GST** has the same meaning as in the GST Act.
- (l) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (m) **Insolvency Event** means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.
- (n) **Intellectual Property Rights** means all rights in relation to patents, copyright, registered designs, devices, registered and unregistered trade marks, trade secrets, know-how and confidential information, and all other intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.
- (o) **Licence** means the licence granted to the Customer under clause 0 of this Agreement.
- (p) **Licensed Copies** means a copy of the SPEE3D Software loaded onto a Seat by or on behalf of the Customer in accordance with this Agreement.

- (q) **Licence Fees** means the fees specified in the Quote.
- (r) **Licence Keys** means any verification, access control or other similar programs or code included in the SPEE3D Software from time to time.
- (s) **Licence Term** means the period commencing on the Commencement Date and continuing until the End Date, unless terminated earlier pursuant to clause 13.
- (t) **Loss** includes any damage, loss, cost, expense or liability of any kind incurred by the person concerned, however it arises and whether it is direct or indirect, present or future, fixed or unascertained, actual or contingent including (without limitation) indirect or consequential loss.
- (u) **Non PDH Goods or Services** means goods or services which, for the purposes of the Australian Consumer Law, are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
- (v) **Permitted Seats** means the number of Seats on which the SPEE3D Software may be installed or loaded, as specified in the Quote or as increased by SPEE3D from time to time (whether pursuant to clause 3 or otherwise).
- (w) **Permitted Purpose** means the design and simulation of tool parts which are to be printed or manufactured using a 3D printing machine which is provided to the Customer by SPEE3D or is manufactured by SPEE3D.
- (x) **Quote** means the quote or proposal prepared by SPEE3D which is attached to this Agreement as Annexure A.
- (y) **Seat** means a single computer processor or workstation which may comprise multiple cores and on which the installation of the SPEE3D Software can be operated by only one person or user at a time.
- (z) **SPEE3D** means SPEE3D Pty Ltd (ACN 623 258 131).
- (aa) **SPEE3D Software** means the object code for the software specified in the Quote.
- (d) a reference to a law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) a reference to a party or a person includes the party's or the person's executors, legal personal representatives, successors, permitted transferees and assigns;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not), a government and a government authority or agency;
- (g) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and
- (h) all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollar.

5.2 Interpretation

In this Agreement:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa and a gender includes the other gender;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;

