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 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 sub-licence 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:

$$\text{Licence Fees} = A \, X \, \frac{B}{C}$$

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 10.2(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 11.2(b), 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 11.2(a), 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 11.2(b), 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.

13. Term and termination

13.1 Term

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

13.2 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.

13.3 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).

13.4 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.

14. Audit, control and inspection rights

14.1 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.

14.2 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.

14.3 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.

15. 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.

16. Definitions and Interpretation

16.1 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 1 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.

16.2 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;

(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 dollars.

Signing Page

Date:

EXECUTED by **SPEE3D PTY LTD** in
accordance with the *Corporations Act 2001*
(Cth) by being signed by the following officers:

....

Signature of director

....

Name of director *(please print)*

....

Signature of director/company secretary

....

Name of director/company secretary
(please print)

EXECUTED by **CUSTOMER** in accordance
with the *Corporations Act 2001* (Cth) by being
signed by the following officers:

....

Signature of director

....

Name of director *(please print)*

....

Signature of director/company secretary

....

Name of director/company secretary
(please print)

Annexure A
Quote