

IM-FOR-0703-013 Equipment Hire-In Agreement

Publish Date	July 2014 - HT
General	<p>This Contract is to be used in all circumstances where Daracon hires equipment (other than trucks) from subcontractors.</p> <p>The Contract comprises:</p> <ul style="list-style-type: none"> A. Equipment Hire Agreement Schedule B. Standard Terms and Conditions C. Equipment and Pricing D. Special Conditions E. Further Documents F. Relevant forms
Details	Details relating to the Equipment should be set out clearly in Part A.
Contract and PO's	The Contract will continue for the "Term", during which time, work will be instructed by way of Purchase Order.
Daracon Entity	The Daracon entity will always be Daromin Engineering Pty Limited. Daromin has a cross-hire agreement with each of its subsidiary entities for sub-hires – see clause 4.2.
Wet / Dry	This agreement provides for both wet and dry hires. Make sure you indicate which applies in Part A.
Maintenance	This agreement provides for maintenance to be provided by the subcontractor, by Daracon or by both parties. Where maintenance is shared, you must complete Schedule 2 in Part E and clearly assign responsibilities. If Daracon only has limited responsibilities, set them out clearly and state "all other maintenance" in the subcontractors box.
Insurance	Equipment hire is on the basis that the operators are subcontractors and accordingly, each sub-contractor is required to have their own insurances – Daracon's policies do not cover them.
Standard Terms	<p>The standard terms and conditions are not to be varied in any way.</p> <p>Where the subcontractor has a quote or other document they want included, it should be clearly described in Part E.</p>
Industrial Relations	<p>The industrial relations schedule (at the end of the document) reflects the current legal requirements and only apply to wet hires.</p> <p>If the Subcontractor has any questions in relation to this schedule, please direct them to the Contracts Manager.</p>
Undertaking as to payments	<p>The former "Statutory Declaration" has been removed as a requirement to lodgement of claims.</p> <p>You must, prior to issuing the contract to the subcontractor, review the Undertaking and finalise the appropriate Daracon entity.</p>
Signature Authority	You must, prior to issuing the contract, select the appropriate signature provision based on the subcontractor's structure.
Final	Ensure the signed agreement is processed at Wallsend to the central file system. A copy will be returned to you.

Date

Name

Company

Address

Address

Subject

Dear *Name*

As we have discussed, I would like to formalise our business arrangements with Daracon's standard Equipment Hire In Agreement (two copies attached).

Please read the details then:

- sign and date the front page of the agreement; and
- initial all other pages, schedules and appendices.

Once signed, please return both copies to me for execution by Daracon and I will send one fully signed document back to you for your records. If Daracon requests you to provide any of the equipment referred to in the agreement and you provide that equipment before returning the fully signed document to us, we will treat your agreement to supply the equipment as acceptance of the Agreement.

If you need any matters explained with respect to the Agreement, you can telephone myself or Hugh Thomson on 4903 7000.

Looking forward to a successful business relationship.

Plant Manager

Daracon Group

Date

EQUIPMENT HIRE AGREEMENT

Date

Parties

Daracon	Daromin Engineering Pty Limited (t/a Daracon Plant Hire) ACN 001 236 255 17 James Street, Wallsend NSW 2287
Subcontractor or You	

Background

- A. Daracon wishes to engage You to provide the equipment (and related services) in accordance with this Contract.
- B. You must provide the equipment (and related services) on the terms of this Contract.

Agreed terms

1. Entire Contract

- (a) The Contract Documents constitute the entire agreement between the parties in respect of the services and the Contract supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the Contract.
- (b) The Contract may be varied only by written instrument executed by both parties.
- (c) The Contract Documents are:

Part	Contract
A	Agreement Schedule
B	Standard Terms and Conditions
C	Equipment and Pricing
D	Special Conditions
E	Further Documents
F	Relevant Forms

2. Warranties

Each party represents and warrants to the other party that:

- (a) it has full power and authority to enter the Contract and to perform its obligations;
- (b) the Contract has been duly executed by it; and
- (c) the obligations set out in the Contract are enforceable against it.

DARACON	SUBCONTRACTOR
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Witness: _____	Witness: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

PART A – AGREEMENT SCHEDULE

ITEM																
1	Equipment Type:	(if blank, see Part C)														
2	Term Commencement Date:															
3	Term Expiry Date:															
4	Operating Instructions and Parts Books required	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>														
5	Recipient Created Tax Invoice (RCTI) applies (please tick)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>														
6	Time for payment	45 days from end of month of invoice														
7	Wet or Dry	WET <input type="checkbox"/> DRY <input type="checkbox"/>														
8	Maintenance	DARACON <input type="checkbox"/> YOU <input type="checkbox"/> SHARED <input checked="" type="checkbox"/> (see Schedule 2)														
9	Insurances Required (state "NIL" if not required)	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%; text-align: center; padding: 5px;">Insurance Type</th> <th style="text-align: center; padding: 5px;">Minimum Cover</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/> Public Liability</td> <td style="padding: 5px;">\$ _____ (\$20M if not stated)</td> </tr> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/> Workers Compensation</td> <td style="padding: 5px;">\$ _____</td> </tr> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/> Fleet (Motor Vehicle & Plant / Equipment)</td> <td style="padding: 5px;">\$ _____ (\$20M if not stated)</td> </tr> <tr> <td style="padding: 5px;"><input type="checkbox"/> Carriers Liability Policy</td> <td style="padding: 5px;">\$ _____</td> </tr> <tr> <td style="padding: 5px;"><input type="checkbox"/> Marine Transit Policy</td> <td style="padding: 5px;">\$ _____</td> </tr> <tr> <td style="padding: 5px;"><input type="checkbox"/> Other (specify)</td> <td style="padding: 5px;">\$ _____</td> </tr> </tbody> </table>	Insurance Type	Minimum Cover	<input checked="" type="checkbox"/> Public Liability	\$ _____ (\$20M if not stated)	<input checked="" type="checkbox"/> Workers Compensation	\$ _____	<input checked="" type="checkbox"/> Fleet (Motor Vehicle & Plant / Equipment)	\$ _____ (\$20M if not stated)	<input type="checkbox"/> Carriers Liability Policy	\$ _____	<input type="checkbox"/> Marine Transit Policy	\$ _____	<input type="checkbox"/> Other (specify)	\$ _____
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11	Does the Federal Building Code apply?(clause 23)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>														
12	Does the State Building Code apply? (clause 24)	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>														

PART B – STANDARD TERMS AND CONDITIONS

1 DEFINITIONS

In these terms, except where the context otherwise requires:

Alcohol and Other Drug Policy and Procedure means the alcohol and other drug policy released by Daracon from time to time.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether direct or indirect, consequential, present or future, fixed or ascertained, actual or contingent and whether at law, in equity, under statute or otherwise.

Classified Dangerous Goods means any goods or materials classified as dangerous by any government or semi-governmental agency from time to time.

Commissioning means the process of demonstrating the readiness of the Equipment to perform the Services required by Daracon and making that Equipment available to Daracon as referred to in clause 11 and this Contract generally.

Confidential Information means all confidential information, non-public or proprietary information exchanged between the parties or known to a party before, on or after the date of this Contract relating to Daracon or its client or principal but excludes information:

- (a) which is in or becomes part of the public domain other than through breach of this agreement or an obligation of confidence owed to the disclosing party; or
- (b) which is acquired from a third party entitled to disclose it.

Consumables means all materials or other items which are consumed in the normal operation of the Equipment.

Contract means the Equipment Hire Agreement and all of the documents referred to in Item 10 of Part A.

Daracon means Daromin Engineering Pty Ltd and all of its Subsidiaries or assigns.

Dispute means a dispute arising out of or relating to this Contract including a dispute as to breach or termination of this Contract or as to any claim in tort, in equity or pursuant to any statute.

Equipment means the equipment in Part C and any parts related to it.

Force Majeure has the meaning given to it in clause 19.1.

GST means a tax imposed under the GST Law.

GST Law has the meaning given to it in section 195-1 of the *A New Tax System (Goods and Services Tax) Act (Cth) 1999*.

Hazardous Substances means any substance which is classified as hazardous or presents a risk of harm and is not otherwise exempted by Law.

Hire Period means the period between the Term Commencement Date and Term Expiry Date and

includes any period after the Term Expiry Date if agreed in writing.

Hire Rate means the rate set out in Part C, or where Part C is silent, the Purchase Order.

Insurance Policies means those policies referred to in Item 9 of Part A.

Invoice Amount means the amount stated in the invoice issued in accordance with clause 7.4 or clause 7.6 (as the case may be).

Law means all acts, ordinances, regulations, bylaws, orders, industry standards, codes of practice, awards and proclamations, whether by the Commonwealth or any State or Territory and further includes any publication from a recognised industry body.

Personnel includes any personnel, employee, consultant, supplier, subcontractor or any other person appointed by that party.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Purchase Order means a purchase order issued in accordance with clause 6.3.

Services means the provision of the Equipment and any services required by Daracon from time to time set out in a Purchase Order and accepted by You under clause 5.1(a).

Subsidiary has the same meaning given to it in the *Corporations Act (Cth) 2001*.

SDS means a safety data sheet prepared in accordance with the National Code of Practice for the Preparation of SDS (NOHSC 2011:2003).

Term Commencement Date means the date stated in Item 2 of Part A.

Term Expiry Date means the date stated in Item 3 of Part A

Work Docket means a docket issued by You in accordance with clause 7.2.

WHS means work health and safety.

2 INTERPRETATION

In these terms, unless the context indicates a contrary intention:

(documents) a reference to these terms or another document includes any document which varies, supplements, replaces, assigns or novates these terms or that other document.

(headings) clause headings and the table of contents are inserted for convenience only and do not affect interpretation of these terms.

(person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity.

(corporation) a reference to a corporation includes its successors and permitted assigns.

(including) including and **includes** are not words of limitation.

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning.

(singular) the singular includes the plural and vice-versa.

(rules of construction) neither these terms nor any part of them is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.

(time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Newcastle, Australia even if the obligation is to be performed elsewhere.

(writing) a reference to a notice, consent, request, approval or other communication under these terms or an agreement between the parties means a written notice, request, consent, approval or agreement.

(replacement bodies) a reference to a body (including an institute, association or government authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

(Australian currency) a reference to **dollars** or **\$** is to Australian currency.

(day) any reference to the word days is a reference to calendar days and is not limited to working days.

(month) a reference to a month is a reference to a calendar month.

(year) a reference to a year is a reference to twelve consecutive calendar months.

(priority) in the event any Contract Document is inconsistent with another Contract Document, the Contract Document ranking highest in priority (with (1) being the highest and (5) being the lowest), prevails to the extent of that inconsistency.

Part	Contract Document	Priority Ranking
A	Agreement Schedule	1
B	Standard Terms & Conditions	4
C	Equipment and Pricing	2
D	Special Conditions	3
E	Further Documents	5
F	Relevant Forms	6

3 SCOPE OF CONTRACT

3.1 This Contract commences on the Term Commencement Date and expires on the Term Expiry Date unless:

- (a) extended in writing by mutual agreement of the parties; or
- (b) terminated earlier in accordance with this Contract.

3.2 This Contract sets out the terms by which all Purchase Orders issued by Daracon and accepted by You will be governed. This Contract continues to apply to Purchase Orders issued during the term which continue after the Term Expiry Date.

4 WARRANTIES

4.1 You warrant to Daracon:

- (a) You have read these terms (and the Contract generally) and fully understand and comprehend the Contract;
- (b) You have had opportunity to obtain independent legal advice on these terms (and the Contract generally); and
- (c) You have full power and authority to enter into this Contract.

4.2 You warrant to Daracon:

- (a) You are aware Daracon (being Daromin Engineering Pty Limited) has a number of subsidiaries and related entities;
- (b) You may be required to provide the Services to any one of the Daracon subsidiaries and related entities as directed by Daracon from time to time; and
- (c) where required to do so, You must follow the directions provided by any of the Daracon subsidiaries or related entities.

5 SUBCONTRACTOR OBLIGATIONS

5.1 You must:

- (a) where Daracon issues You with a Purchase Order, accept or reject that Purchase Order within a timeframe acceptable to Daracon, which may be done either verbally or in writing;
- (b) arrange Commissioning of the Equipment in accordance with clause 11.3, at Your cost (unless otherwise specified in this Contract), in good working order on or before the Term Commencement Date;
- (c) provide the Services to Daracon during the Hire Period to Daracon's satisfaction and in accordance with the provisions of this Contract;
- (d) promptly give written notice to Daracon if and to the extent that You become aware that any document or other information provided to You is ambiguous or inaccurate or is otherwise insufficient to enable You to provide the Services;
- (e) make reasonable enquiries to ascertain Daracon's requirements regarding the Services and the Equipment and its intended use;
- (f) regularly consult with Daracon regarding the Services and the Equipment;
- (g) comply with all Laws in providing the Services and the Equipment;
- (h) after reasonable prior written notice by Daracon, permit Daracon to inspect and discuss the work, relevant records, documents and material produced by You in providing the Equipment and the Services;
- (i) do all things necessary and necessarily incidental to the proper performance of Your obligations under the Contract; and

- (j) obtain all permits and pay all fees and induction costs required in connection with the Services and the Equipment unless expressly agreed otherwise by Daracon.
- 5.2 You must provide to Daracon:
- (a) if required to do so under Item 4 of Part A, any manuals or other devices necessary to operate the Equipment safely and efficiently; and
 - (b) any other document or thing required to be provided under this Contract.
- 5.3 You agree, where Item 7 of Part A states “Wet”, You must:
- (a) subject to clauses 9.5(a), 9.5(b) and 9.5(c), provide Personnel capable of operating the Equipment with a standard of care and skill to be expected of a diligent and prudent subcontractor and who possesses the knowledge, skill and expertise of a subcontractor qualified and experienced to act in that capacity;
 - (b) ensure all Your Personnel have all necessary qualifications, competencies and experience to provide the Services and generally operate the Equipment in the manner required by Daracon;
 - (c) with due expedition and without delay, and in accordance with any program supplied, provide all professional skill and advice relating to the Services and the use of the Equipment;
 - (d) ensure Your Personnel comply with all directions provided by Daracon, whether in writing or otherwise; and
 - (e) remain fully responsible for Your Personnel and the provision of the Services and the operation of the Equipment despite any review or acceptance by Daracon of the work undertaken by them.
- 5.4 Where Item 8 of Part A states:
- (a) “You”, You must provide the Equipment and ensure it is maintained in a safe and proper working condition and otherwise ensure the Equipment is maintained in accordance with clause 12.
 - (b) “Shared”, You must ensure You maintain that part of the Equipment for which You accept responsibility (as set out in Schedule 2 of Part E) and otherwise ensure the Equipment is maintained in accordance with clause 12.
- 5.5 You must comply with the obligations imposed on You under this Contract.
- 5.6 On expiry of the Hire Period, You must, at Your cost, remove the Equipment and any waste, debris or other machinery brought onto any site occupied by Daracon or its principals by You or Your Personnel.
- 5.7 You must not, without the prior written approval of Daracon, appoint any subcontractor to perform any part of the services referred to in this Contract.
- 5.8 If Daracon consents to the appointment of a subcontractor, You are not relieved of Your responsibilities under this Contract and at all times

remain responsible for the acts and omissions of any subcontractor appointed by You.

6 DARACON’S OBLIGATIONS

6.1 Daracon will:

- (a) notify You of any known or suspected hazards which it is aware of on any site which You are directed to attend; and
- (b) nominate a representative with authority to give directions to You regarding the Services and the Equipment.

6.2 Where Item 8 of Part A states “Daracon” or “Shared”, Daracon will maintain the Equipment (or, in the case of “Shared”, that part of the Equipment for which Daracon is responsible as indicated in Schedule 2 of Part E).

6.3 Daracon will issue You with a purchase order from time to time which will be on the terms set out in this Contract setting out the goods or services (or both) Daracon requires You to provide (**Purchase Order**).

7 INVOICING AND PAYMENT

7.1 For the avoidance of doubt, in accordance with clause 4.2, You agree where a Daracon subsidiary requires You to perform work, where You are required to do so, You must invoice that Daracon subsidiary.

7.2 Where Item 7 of Part A states “Wet”, You must:

- (a) keep daily hire dockets relating to the Services performed and each piece of Equipment including full particulars of the works undertaken by that Equipment and details of the operator (**Work Docket**);
- (b) have those Work Dockets approved by an authorised Daracon representative, such approval must not be unreasonably withheld; and
- (c) provide that signed Work Docket to the authorised Daracon representative, a copy of which should be retained by You.

You acknowledge that if You are required to comply with this clause 7.2 but fail to do so, Daracon is under no obligation to make any payment to You.

7.3 Where Item 7 of Part A states “Dry”, Daracon agrees to pay the Hire Rate in accordance with the terms set out in this Contract, except where the Equipment is stood down or unusable for any reason (in Daracon’s opinion, acting reasonably).

7.4 Where Item 5 of Part A indicates “Yes”, the parties agree:

- (a) within 14 days following expiry of each calendar month during the Hire Period, Daracon will issue a Recipient Created Tax Invoices (**RCTI**) and adjustment notes in respect of all supplies under or in connection with the Contract and the relevant Purchase Order, and where clause 7.2 applies, a duly approved Work Docket is provided;
- (b) You warrant that You are registered for GST when You enter into this Contract and that You will continue to be

- registered for the duration of the Hire Period; and
- (c) Daracon will indemnify You for any liability for GST and subsequent penalties which may arise from an understatement of the GST payable in an RCTI.
- 7.5 On issuing an RCTI, Daracon agrees that it will pay the Invoice Amount:
- (a) within the time for payment set out in Item 7 of Part A; and
- (b) by way of cash, cheque or electronic funds transfer to an account nominated by You, or such other method as agreed by the parties from time to time.
- 7.6 Where Item 5 of Part A indicates “No”, the parties agree:
- (a) on, or at any time prior to expiry of each calendar month during the Hire Period, You must issue a GST compliant invoice and adjustment notes in respect of all supplies under or in connection with the Contract clearly stating the Purchase Order reference under which the supply was made, and where clause 7.2 applies, a duly approved Work Docket is provided; and
- (b) You warrant that You are registered for GST when You enter into this Contract and that You will continue to be registered for the duration of the Hire Period.
- 7.7 On receipt of an invoice issued under clause 7.6, Daracon agrees that it will pay the Invoice Amount:
- (a) within the time for payment set out in Item 7 of Part A; and
- (b) by way of cash, cheque or electronic funds transfer to an account nominated by You, or such other method as agreed by the parties from time to time.
- 7.8 Any payments made to You will not be evidence of the value of work carried out or an admission of liability or evidence that the work has been executed satisfactorily but will be on account pending final reconciliation by Daracon of money payable to You for the Services hire of the Equipment.
- 7.9 Daracon may set off any amount which You owe to Daracon under this Contract as a debt due against any payment.
- 8 TAXES**
- All prices quoted are exclusive of GST and any other Government charges and taxes that may be levied now or in the future unless specifically stated otherwise. Any such charges or taxes will be at Your expense.
- 9 WHS&E COMPLIANCE**
- 9.1 This clause 9 applies only where Item 7 of Part A states “Wet” or where any of Your Personnel are required to provide services relating to the Equipment.
- 9.2 You and all Your Personnel must comply with all relevant Laws including obtaining any necessary certificates, licenses, consent, permits and approvals of any organisation having jurisdiction required for the provision of the Services and the use of the Equipment.
- 9.3 In addition to its obligations under clause 9.2, You must comply with the obligations set out in the *Work Health and Safety Act 2011 (and any of its regulations)* and *The Protection of the Environment Operations Act (NSW) 1997*.
- 9.4 Before commencing the any work, You must:
- (a) provide a Safe Work Method Statement (**SWMS**) or Risk Assessment for the work to be carried out on industry acceptable terms and otherwise in a form reasonably acceptable to Daracon and implement and train all Your Personnel in the execution of that SWMS;
- (b) provide evidence of:
- (1) each of Your Personnel and any of Your subcontractor’s Personnel having completed the WorkCover Accredited General Induction for Construction Work; and
- (2) a Work Activity Induction (as per the WorkCover Code of Practice for WHS Induction Training in the Construction Industry) prior to completing a Daracon site specific induction.
- 9.5 During the Hire Period, You must:
- (a) ensure any operator, Personnel and any other person providing the Services or using or maintaining the Equipment (**Support Personnel**) are competent and suitably skilled and trained for the assigned task and have been properly inducted for working on the site where the Equipment is situated or where the Services are being performed;
- (b) ensure Support Personnel carry in their possession any relevant licence, ticket, training records and any other document required by Daracon from time to time (including Certificates of Competency where required) and present those documents to Daracon on request;
- (c) ensure You and Your Support Personnel immediately report to Daracon any changes to the work conditions, the work method, condition of equipment that impact upon risk (including current SWMS);
- (d) identify, control and monitor the environmental aspects of its work including erosion and sedimentation, waste, dust, noise, habitat and heritage issues and where requested to do so by Daracon, present control measures to Daracon and ensure the compatibility of those control measures with other facilities planned for the site;
- (e) report all incidents, including damage, near misses, injuries, illnesses, plant and equipment failure and defects to Daracon and the project manager immediately during the Hire Period. All documentation created as a result of the incident, near miss, injury, illness,

- equipment failure and/or defects is to be provided to Daracon as soon as reasonably practicable following its creation;
- (f) at all times, comply with Daracon's WHS policies, procedures, rules, guides, standards or other type of instruction as released by Daracon from time to time including those set out in Part E (copies of which Daracon must make available to You on request);
- (g) comply with any direction provided by Daracon or any of its superintendents, customers or principals;
- (h) if working on or about a mine site, comply with all requirements of the *Coal Mine Health and Safety Act (NSW) 2002* and related regulations;
- (i) where relevant, comply with the requirements of Part 6 of the *Road Transport (General) Regulation (NSW) 2005*; and
- (j) report any ambiguities or inconsistencies contained in any Daracon policy relating to the services being performed.
- 9.6 All communication for the purpose of this clause 9 must be:
- (a) immediately communicated verbally by the You to Daracon; and
- (b) confirmed in writing by You to Daracon within 12 hours of the occurrence of the event giving rise to the notice obligation.
- 9.7 You must, on request by Daracon, conduct a weekly toolbox talk and provide opportunity for Your Personnel to raise any WHS issues and allow Your Personnel to raise and resolve WHS related matters. You may, as agreed, seek to combine WHS consultation processes by holding joint toolbox talks with Daracon.
- You must participate in Daracon's WHS consultation arrangements when required to do so by Daracon. You are required to demonstrate daily communication (on the work and any safety directions) with work teams (referred to by Daracon as Daily Pre-start Meetings) to ensure that communication and consultation takes place regularly.
- 9.8 You must establish and maintain a hazardous substances register in a form acceptable to Daracon setting out the full name, chemical name, estimated quantities held, purpose (and such other information as requested by Daracon from time to time) of any Hazardous Substances or Classified Dangerous Goods bought onto the site on which the Equipment is being used.
- A risk assessment/SWMS must be completed on the safe use of the relevant substance(s), together with training of Your Personnel in a SDS being not more than 5 years from publication.
- 9.9 All Hazardous Substances and Classified Dangerous Goods bought onto any site by You as part of the work being performed by You must be stored safely and securely and in accordance with the relevant Australian Standard and, if no standard exists, in a manner acceptable to Daracon.
- 9.10 You agree Daracon may (at Daracon's cost) monitor and inspect Your compliance with WHS
- and environmental Laws from time to time which may include carrying out an audit on Your relevant work practices. You must use Your reasonable endeavours to comply with any request for information by an auditor.
- 9.11 You acknowledge You have read, understand and accept the terms of the Daracon Alcohol and Other Drug Policy and Procedure and agrees it and its Personnel must:
- (a) comply with the terms of that policy, including the right for Daracon to conduct random and "show cause" testing from time to time; and
- (b) be "fit for work" at all times when performing when performing its obligations under this Contract.
- 9.12 If You are in breach of Your obligations under clause 9.11, Daracon may require You to take such remedial or corrective action as We considers reasonably necessary and You must do so at Your expense. Failure by You to comply with Your obligations under this clause will entitle Daracon to terminate this Contract in accordance with clause 16.
- 10 INSURANCES**
- 10.1 Prior to the Term Commencement Date, You must obtain and, for the duration of the Hire Period, You must maintain the Insurance Policies:
- (a) where the Insurance Policy is on a claims incurred basis, for the Hire Period;
- (b) where the Insurance Policy is on a claims made basis, for the Hire Period and for an additional period of 5 years after the Hire Period; and
- (c) otherwise on terms acceptable to Daracon, including where required by Daracon, rights of subrogation.
- 10.2 Daracon and its principal must be a nominated as an interested party in each Insurance Policy relevant to the agreement (excluding Workers Compensation and CTP insurance).
- 10.3 You must produce evidence of the currency of each Insurance Policy to Daracon immediately prior to the Term Commencement Date and within 7 days of any subsequent request by Daracon.
- 10.4 If You do not comply with Your obligations under this clause, You agree Daracon may obtain the Insurance Policies on Your behalf and treat any costs associated with such Insurance Policies as a debt due by You to Daracon and exercise its rights of set off.
- 10.5 Where Schedule 2 of Part E requires Daracon to obtain insurances, Daracon will do so and, where reasonably required by You, provide certificates of currency evidencing the policies.
- 11 COMMISSIONING AND PRE-HIRE INSPECTION**
- 11.1 Prior to delivery of the Equipment, You must ensure the Equipment is ready for Commissioning including:
- (a) assisting Daracon in the completion of a Subcontractor pre-qualification OHS-F-22.1 or a pre-work assessment OHS-F-22.2 and such other pre-qualification

- assessments as required by Daracon from time to time;
- (b) ensuring the Equipment is fully registered for its intended use and properly licensed to carry out the work intended by Daracon; and
- (c) if applicable, ensuring any of Your Personnel operating the Equipment hold a valid license and are competent in operating the Equipment in a safe, efficient and skilled manner.
- 11.2 Prior to Commissioning, Daracon may, at its election, conduct a pre-hire inspection of the Equipment, assess the Equipment and identify any modifications, repairs or additions to the Equipment that may be required for the performance by Daracon. Any costs relating to any modifications, repairs or addition will be at Your expense (unless otherwise agreed by Daracon in writing).
- 11.3 You must arrange delivery of the Equipment and all other documents, information or equipment related to the Equipment to Daracon and otherwise in accordance with clause 5.1(a).
- 11.4 You agree acceptance of the Equipment by Daracon is not an acceptance by Daracon of the suitability or fitness for purpose of the Equipment and Daracon accepts no liability in that regard.
- 11.5 If Item 4 of Part A indicates “Yes”, on or before the Term Commencement Date, You must provide to Daracon one set of parts books and operating manuals relating to the Equipment (which must be returned by Daracon to You on expiry of the Hire Period).
- 12 AVAILABILITY, MAINTENANCE & BREAKDOWN**
- 12.1 Where Item 8 of Part A states “Daracon” (or as specifically provided for in Schedule 2 of Part E), Daracon will arrange for the maintenance of the Equipment at its costs and in accordance with the manufacturers guidelines or, where no guidelines exist, in accordance with best practice principles.
- 12.2 The remainder of this clause 12 (that is other than clause 12.1) applies where Item 8 of Part A states either “You” or “Shared” (to the extent that any shared works are your responsibility, as set out in Schedule 2 of Part E).
- 12.3 You must ensure that the Equipment is readily available to Daracon and capable of operating in a manner acceptable to Daracon (acting reasonably) at all times throughout the Hire Period.
- 12.4 You must, if requested to do so by Daracon, meet with Daracon to discuss and review the condition, performance and operation of the Equipment with a view to achieving the following objectives:
- (a) notifying each other of any change in circumstances, particularly any proposed change to the Hire Period;
- (b) improving the performance and reliability of the Equipment;
- (c) reducing the number and duration of any breakdowns of the Equipment; and
- (d) addressing any other issues arising out of the Agreement.
- 12.5 Where Daracon becomes aware of any defect or fault which may prevent the Equipment from operating in a safe or efficient manner, Daracon will notify You as soon as reasonably practicable with details of that defect or fault (**Fault Notice**).
- 12.6 You must, as soon as possible after receiving the Fault Notice, make all reasonable efforts to rectify the defect or fault and render the Equipment suitable for use within 24 hours of receiving such Fault Notice (**Repair Period**).
- 12.7 During the Hire Period, You must, whether on receipt of a Fault Notice or otherwise, at Your expense, undertake any maintenance on the Equipment to ensure its continued safe and efficient operation.
- 12.8 If, on expiry of the Repair Period:
- (a) the Equipment has not been repaired to a standard acceptable to Daracon; and
- (b) You have not provided substitute equipment of substantially similar specifications to the Equipment,
- then Daracon may obtain a substitute item of the same or similar specifications to the Equipment from another source until such time as the Equipment is able to operate in a manner acceptable to Daracon (acting reasonably).
- 12.9 You:
- (a) indemnify Daracon from and against any cost, loss or damage incurred by Daracon as a result of the Equipment being unavailable at any time during the Hire Period, and for the avoidance of doubt any costs of obtaining a suitable substitute in accordance with clause 12.8 (including transport costs); and
- (b) agree Daracon may set-off any costs incurred by it against any money which would otherwise payable by Daracon to You under this Contract.
- 13 TITLE AND RISK**
- 13.1 The parties agree, You retain title to and risk of the Equipment at all times.
- 13.2 Daracon must not sell, offer for sale, assign, mortgage, pledge, sublet, lend, part possession or otherwise deal with the Equipment or any part thereof without the Your prior written consent.
- 13.3 If:
- (a) this Contract is terminated pursuant to clause 16; or
- (b) Daracon is otherwise entitled to terminate this Contract; then
- except where the Law or any WHS reason prevents recovery, Daracon grants to You a licence to enter any site controlled by Daracon in order to recover the Equipment subject to:
- (1) 7 days written notice to Daracon;
- (2) payment of any amounts due to Daracon under this or any other agreement; and
- (3) any such recovery being at Your expense and conditional on You agreeing to indemnify Daracon in respect of any cost, loss or expense arising out of

Your inability to recover the Equipment whether due to the operation of this clause 13.3 or otherwise

enter into, any arrangement or composition with its creditors; or

(g) there is a Force Majeure event, subject to the provisions of clause 19.

14 APPLICATION OF PPSA

14.1 To the extent that Chapter 4 of the PPSA would otherwise apply to the enforcement by You of a security interest in the Equipment, You and Daracon agree that, subject to the terms of this Contract, the following provisions of the PPSA do not apply to this Contract:

- (a) section 96;
- (b) section 117;
- (c) section 123;
- (d) section 126;
- (e) section 128;
- (f) section 129; and
- (g) section 134(1).

15 RETURN OF EQUIPMENT

15.1 On expiry of the Hire Period, Daracon will carry out a post hire inspection of the Equipment and supply You with a post hire inspection report.

15.2 Unless otherwise agreed in writing by Daracon, on expiry of the Hire Period, You must collect the Equipment at Your expense from the site nominated by Daracon.

16 TERMINATION

16.1 If, on reaching the Term Expiry Date, Daracon wishes to continue to hire the Equipment, and no new contract has been executed, then this Contract will continue without the need for further notice, except that, in addition to the termination rights granted under clause 16, You may terminate the Contract by providing seven days' notice in writing to Daracon.

16.2 A party may immediately terminate this Contract if:

- (a) the other party defaults in the performance of a term of this Contract and that default is capable of remedy and the default is not remedied within 14 days after written notice specifying the default and the acts required to rectify the default has been given to the other party;
- (b) the other party defaults in the performance of a term of this Contract and that default is not capable of remedy;
- (c) an order is made or a resolution passed for the winding up of the other party other than for the purpose of solvent reconstruction;
- (d) the other party ceases or threatens to cease to carry on its business;
- (e) the other party is unable to pay its debts as and when they fall due;
- (f) the other party has a receiver and/or manager or official manager or provisional liquidator appointed or a secured creditor takes possession of the whole or a substantial part of its assets or undertaking; or convenes a meeting for the purpose of, or enters or proposes to

16.3 Daracon may terminate this Contract for convenience in its absolute discretion at any time. Upon termination under this clause 16.3, You will be entitled to payment only for use of the Equipment by Daracon prior to termination.

17 INDEMNITY AND RISK

17.1 You indemnify Daracon to the fullest extent permitted by Law from and against all Claims suffered or incurred by Daracon (including third party claims) arising directly or indirectly from any damage, injury or loss caused by or resulting from any:

- (a) breach of Your obligations under this Contract;
- (b) injury, total and permanent disability or death caused by You or Your Personnel; and
- (c) loss or damage to property (including the Equipment and property belonging to third parties);
- (d) negligent act or omission by You or Your Personnel.

17.2 Daracon agrees that where it contributes to any loss or damage being suffered, Your liability under clause 17.1 may be reduced proportionately to the extent that the act or omission of Daracon or its Personnel (excluding You and Your Personnel), have contributed to the loss or damage.

17.3 With respect to You only, the operation of Part 4 of the *Civil Liability Act (NSW) 2002 (the Act)* is excluded in relation to all and any rights, obligations and liabilities under this Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.

17.4 You specifically agree and undertake that in the event of any proceedings to which the Act are applicable, You will not seek to rely on the provisions of the Act, other than as directly against any such concurrent wrongdoer in its own capacity.

17.5 You agree, under no circumstances will Daracon be liable for consequential losses including loss of profit, or any other indirect loss.

18 CONFIDENTIALITY

18.1 You acknowledge that You and Your Personnel may be given access to Confidential Information in the course of performing Your obligations under this Contract.

18.2 Except as otherwise required by Law, You must, and You must ensure Your Personnel:

- (a) keep strictly secret and confidential the Confidential Information; and
- (b) not copy, publish, divulge or disclose in any manner whatsoever the Confidential Information to any person other than to those of its employees, contractors and agents directly involved in the performance of this Contract and only to

the extent that such disclosure is required for the performance of this Contract.

- 18.3 On demand by Daracon, You must immediately return to Daracon all Confidential Information and other information to Daracon.
- 18.4 You and Daracon agree that the terms and conditions of this Contract, including any information of the kind specified in section 275(1) of the PPSA, and any other related document are Confidential Information. You and Daracon agree that the content of these documents will not be disclosed except to the extent and for the purposes such disclosure is expressly permitted by this Contract or required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

19 FORCE MAJEURE

- 19.1 Force Majeure means an act, event or cause which is beyond the reasonable control of Daracon or You, including:
- (a) acts of God, lightning, earthquakes, floods, storms, explosions, fires and any natural disaster;
 - (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
 - (c) strikes and labour disputes, to the extent they exceed 14 days.
- 19.2 If a party (the **affected party**) becomes:
- (a) unable by Force Majeure to carry out an obligation under this Contract strictly in accordance with this Contract; or
 - (b) unable by Force Majeure to provide the Services or utilise the Equipment as intended,
 - (1) the affected party must give to the other party prompt written notice and reasonable particulars of the Force Majeure and, so far as is known, the probable extent to which the affected party will be able to perform or be delayed in performing its obligation;
 - (2) the other party may give notice to the affected party of the extent to which the other party's ability to comply with its obligations will be affected by the affected party's inability to comply with its obligations;
 - (3) the relevant obligations of the affected party and the other party, so far as they are affected by the Force Majeure, will be suspended during, but no longer than, the continuance of the Force Majeure; and
 - (4) the affected party must use all possible diligence to overcome or remove the Force Majeure as quickly as possible but the affected party will not have to settle any labour or other dispute creating the Force

Majeure on terms contrary to its wishes.

- 19.3 In the event of either party giving a Force Majeure notice, the parties must meet promptly and each use their reasonable endeavours to reach a mutually acceptable solution to alleviate any hardship or unfairness caused to either party as a result of the circumstances constituting Force Majeure.
- 19.4 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 14 days, the other party may immediately terminate this Contract by notice in writing to the affected party.
- 19.5 Nothing in this clause 19 prevents Daracon during the continuation of any Force Majeure from taking any reasonable measure, including engaging third parties to perform Your obligations for the purpose of mitigating any loss that it may incur as a result of any such Force Majeure, the costs of which will be treated as a debt due by You to Daracon.

20 DISPUTE RESOLUTION

- 20.1 A party may not commence any court or arbitration proceedings relating to a Dispute unless it complies with this clause 20 except where the party seeks urgent interlocutory relief.
- 20.2 A party claiming that a Dispute has arisen under or in relation to this agreement must give written notice to the other party to this contract specifying the nature of the Dispute.
- 20.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.
- 20.4 If the parties do not agree within 7 days of receipt of the notice (or any further period agreed in writing by them) as to:
- (a) the dispute resolution technique and procedures to be adopted;
 - (b) the timetable for all steps in those procedures; and
 - (c) the selection and compensation of the independent person required for such technique,
- the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.
- 20.5 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 20 is to attempt to settle the Dispute concerned. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 20 for any purpose other than in an attempt to settle the Dispute concerned.
- 20.6 Unless otherwise agreed by the parties, the parties must continue to perform their obligations under this Contract despite the existence of a Dispute.

- 21 ENERGY EMISSION AND DATA**
- 21.1 If requested by Daracon, You must ensure that You establish and maintain all necessary information (to the extent and in a manner required) to enable Daracon (and any of its principals) to comply with:
- (a) the National Greenhouse and Energy Reporting Act 2007 (Cth) (**NGERS**) and all associated regulations and guidelines;
 - (b) the Energy Efficiency Opportunities Act 2006 (Cth) (**EEOS**) and all associated regulations and guidelines;
 - (c) any other requirements of the Government's proposed carbon pollution reduction scheme (**CPRS**) or any similar scheme pursuant to which the emission of greenhouse gases incurs a liability to acquire and surrender permits whatever data, information, records and/or reports of a type that a registered corporation or any other person may be required or entitled to provide under NGERS, EEOS or CPRS (**Greenhouse Data**)
- 21.2 You acknowledge and agree:
- (a) Daracon may provide or otherwise disclose the Greenhouse Data to any of its related entities, the Principal and any applicable authority;
 - (b) Your promises and obligations in this clause 21 are:
 - (1) given and assumed by You in favour of Daracon and separately in favour of each of its related entities; and
 - (2) enforceable by Daracon and any of its related entities jointly and severally.
- 21.3 Nothing in this clause 21 is to be taken as meaning that Daracon (or any of its related entities) has agreed to perform on Your behalf, any obligation that You may have under any statutory requirement regarding the provision of Greenhouse Data to any authority.
- 22 INDUSTRIAL REQUIREMENTS**
- 22.1 This clause 22 applies only where Item 7 of Part A states "Yes".
- 22.2 Prior to commencing any work on the site, You must make yourself aware of all requirements relating to the use of the Equipment, including any site specific requirements relating to:
- (a) working hours;
 - (b) industrial Matters;
 - (c) occupational health and safety Matters; and
 - (d) environmental Matters,
- which may apply to services provided under this Contract.
- 22.3 You must ensure that You and all of Your Personnel comply with all Laws relating to industrial matters (including all relevant legislation, awards, enterprise agreements, industrial instruments codes of practice and implementation guidelines) during the execution of Your obligations under this Contract.
- 22.4 You must comply with Schedule 1 of Part E unless otherwise agreed in writing with Daracon.
- 22.5 You agree this clause is a material term of this Contract and any failure by You to comply with Your obligations under this clause is a material breach of this Contract.
- 22.6 For the purposes of clause 22.1, **Matters** means all relevant legislation, awards, enterprise agreements, industrial instruments, codes of practice and implementation guidelines and any other standard which could reasonably be applied to the matter.
- 23 FEDERAL CODE 2013**
- 23.1 This clause applies where Item 11 in Part A indicates "Yes" or You are otherwise required to comply with the Building Code 2013 (**Code**).
- 23.2 You must comply with the Code and the Guidelines. Copies of the Code are available at www.deewr.gov.au/BuildingCode.
- 23.3 Compliance with the Code shall not relieve You from responsibility to perform the Contract, or from liability for any defect in the works arising from compliance with the Code.
- 23.4 Where a change in the Contract is proposed and that change would affect compliance with the Code, You must submit a report to the Commonwealth specifying the extent to which the Contractor's compliance with the Code will be affected.
- 23.5 You must maintain adequate records of the compliance with the Code by:
- (a) You;
 - (b) Your Subcontractors;
 - (c) consultants; and
 - (d) its Related Entities.
- 23.6 If You do not comply with the requirements of the Code in the performance of this Contract such that a sanction is applied by the Minister for Employment and Workplace Relations, the Code Monitoring Group or the Commonwealth, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by You or a related entity in respect of work funded by the Commonwealth or its agencies.
- 23.7 While acknowledging that value for money is the core principle underpinning decisions on Government procurement, when assessing tenders, You may give preference to subcontractors and consultants that have a demonstrated commitment to:
- (a) adding and/or retaining trainees and apprentices;
 - (b) increasing the participation of women in all aspects of the industry; or
 - (c) promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist.
- 23.8 You must not appoint a subcontractor or consultant in relation to the Project where:
- (a) the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations; or

- (b) the subcontractor or consultant has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and the tenderer has not fully complied, or is not fully complying, with the order.
- 23.9 You agree to require that You and Your subcontractors or consultants and its related entities provide the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, with access to:
- (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) inspect and copy any record relevant to the Project the subject of this Contract; and
 - (c) interview any person as is necessary to demonstrate its compliance with the Code.
- 23.10 Additionally, You agrees that You and Your related entities will agree to a request from the Commonwealth or any person authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.
- 23.11 You must ensure that all subcontracts impose obligations on sub contractors equivalent to the obligations under these Contract clauses.

24 NSW STATE CODE

- 24.1 This clause applies where Item 12 in Part A indicates "Yes" or You are otherwise required to comply with the Building Code 2013 (**Code**).
- 24.2 In addition to terms defined in this document, terms used in this clause 24 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

Primary Obligation

- 24.3 You must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and NSW Guidelines.
- 24.4 You must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- 24.5 Where You engage a subcontractor or consultant, You must ensure that that contract imposes on the subcontractor or consultant equivalent obligations to those in this section 2 (under the heading NSW Code and NSW Guidelines), including that You must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

- 24.6 You must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

Access and information

- 24.7 You must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its subcontractors, consultants and related entities.
- 24.8 You must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- (a) enter and have access to sites and premises controlled by the contractor, including but not limited to the project site;
 - (b) inspect any work, material, machinery, appliance, article or facility;
 - (c) access information and documents;
 - (d) inspect and copy any record relevant to the project;
 - (e) have access to personnel; and
 - (f) interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by You and Your subcontractors, consultants, and related entities.
- 24.9 You, and your related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

Sanctions

- 24.10 You warrant that at the time of entering into this contract, neither You, nor any of Your related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded You from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- 24.11 If You does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against You in connection with the NSW Code or NSW Guidelines.
- 24.12 Where a sanction is imposed:
- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (b) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (1) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (2) take them into account in the evaluation of future procurement processes and responses that may be submitted by You, or Your related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

Compliance

24.13 You bear the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. You are not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.

25 ASSIGNMENT

25.1 You must not, without Daracon's prior written approval, assign this Contract or any payment or any other right, benefit or interest thereunder. Such consent may be withheld in Daracon's absolute discretion.

25.2 Any permission to assign or sublet any part of this Contract will not discharge You from any liability under this Contract.

25.3 Daracon may in its absolute discretion assign this Contract or any benefit or right conferred under it.

26 RELATIONSHIP BETWEEN THE PARTIES

26.1 Nothing in this Contract:

- (a) constitutes a partnership between the parties; or
- (b) except as expressly provided, makes a party an agent of another party for any purpose.

26.2 A party cannot in any way or for any purpose:

- (a) bind another party; or
- (b) contract in the name of another party.

26.3 If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

27 GENERAL

27.1 Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Contract.

27.2 A provision of this Contract can only be varied by a later written document executed by all parties.

27.3 This Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

27.4 Each party must pay its own legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Contract.

27.5 The contents of this Contract constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Contract, whether orally or in writing.

27.6 A word or provision must be read down if:

- (a) this Contract is void, voidable, or unenforceable if it is not read down;
- (b) this Contract will not be void, voidable or unenforceable if it is read down; and
- (c) the provision is capable of being read down.

27.7 A word or provision must be severed if:

- (a) the provision is void, voidable or unenforceable if it is not severed; and
- (b) the contract will be void, voidable or unenforceable if it is not severed.

27.8 The remainder of this Contract has full effect even if clause 27.7(a) or 27.7(b) applies.

27.9 A right or remedy created by this Contract cannot be waived except in writing signed by the party entitled to that right.

27.10 Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

27.11 Clauses 4, 9, 10, 17, 18, 20 and any clause which by its nature is intended to survive termination of this Contract, continue to apply after expiration or termination of this Contract.

27.12 The Laws applicable in New South Wales govern this Contract.

27.13 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

PART C – EQUIPMENT AND PRICES

EQUIPMENT/SERVICES	UNIT OF MEASURE (UOM)	HIRE RATE (PER UOM)	COMMENTS

It is agreed the rates set out in any Purchase Order prevail over those set out in this Part C.

PART D – SPECIAL CONDITIONS

1. Each party will be responsible for the tasks (or costs associated with tasks) as allocated below:

Task	Daracon	You
Accommodation & Meals (where applicable)		
Travel / Site Allowance (where applicable)		
Cost of smoko and other (non-lunch) breaks		
Cost of lunch breaks		

- 2.

PART E – FURTHER DOCUMENTS

The further documents forming part of the Equipment Hire Agreement are:

- 1 Schedule 1 – Shared Maintenance – Responsibility Allocation

Schedule 1 – Shared Maintenance – Responsibility Allocation

Where Item 8 of Part A states “Shared” then:

Task	Daracon	You
Mobilisation/Demobilisation/Assembly/Disassembly Costs		
Cranage/Tyre Handler (If applicable)		
Fuel		
Replacement Ground Engaging Tools		
Machine Inspection (at commencement of rental)		
Tyre/Track Inspection (at commencement of rental)		
Operator (fully qualified with applicable competencies)		
Operator Pre-Start Inspection (complete before each shift)		
Compliance With Processing Operator Pre-Start Checklist		
Use of workshop Facilities for Repairs & Servicing (includes power & water)		
Daily Service (includes labour, top up oils, grease & coolants)		
PM 250 Hr Service (includes parts, labour, oils & SOS)		
Major OEM Service (includes 500 / 1000 hr, parts, labour, SOS)		
Minor Repairs (parts, labour & testing to \$1500 in any month)		
Modifications for Site Conformance (outside standard OEM machine specification)		
Major Repairs (not attributed to abuse or negligence)		
Track/Tyre Wear (fair wear & tear excepted)		
Track/Tyre Damage, Repair & Replacement		
Body/Blade/Bucket/Ripper Damage		
Panel/Glass Damage & Replacement		
Cleaning (to “as supplied” condition)		
Machine Inspection (at completion of rental)		
Tyre/Track Inspection (at completion of rental)		

PART G– RELEVANT FORMS

1. Undertaking as to Payment Obligations
2. Subcontractor's Statement regarding Workers Compensation, Pay-Roll Tax and Remuneration

DECLARATION OF SUBCONTRACTOR

I, _____
(Please Print Name – Note: where the subcontractor is a company, the signing person must be a director)

of _____
(Address)

undertake and warrant to and in favour of **Daromin Engineering] Pty Limited (Daracon)** that:

1. I am the _____ (*insert position*) of _____ (*insert subcontractor name*) (**Subcontractor**) and that I am duly authorised and nominated to make this undertaking on behalf of the Subcontractor.
2. This undertaking relates to works performed under subcontract to Daracon for _____ (*insert name of project*).
3. The Subcontractor has:
 - a. * paid all money due and payable to workers who have at been engaged by the Subcontractor under the following award or agreement in respect of their employment:
_____ (*name of award / agreement*)
 - b. * paid all money due and payable to suppliers of materials to the Subcontractor; and
 - c. * paid all subcontractors appointed by the Subcontractor with the exception of _____ (*insert details if any*),

* *delete whichever is not applicable by ruling a line through that subparagraph*
4. I am aware the statements made in this undertaking are being relied upon by Daracon and that if this undertaking contains any error, Daracon may suffer loss for which the Subcontractor will be liable.
5. Where the project is federally funded, the Subcontractor declares it is compliant with its obligations set out in the Building Code.

Signature: _____

Print Name: _____

Witness: _____

Print Name: _____

Date: _____



SUBCONTRACTOR'S STATEMENT **REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND** **REMUNERATION (Note1 – see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: _____ ABN: _____
(Business name)

of _____
(Address of subcontractor)

has entered into a contract with _____ ABN: _____
(Business name of principal contractor) **(Note 2)**

Contract number/identifier _____ **(Note 3)**

This Statement applies for work between: ____ / ____ / ____ And ____ / ____ / ____ inclusive **(Note 4)**

subject of the payment claim dated: ____ / ____ / ____ **(Note 5)**

I, _____ ~~a Director of~~ a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete **(f)** and **(g)** below. You must tick one box. **(Note 6)**

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ____/____/____ **(Note 7)**

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature _____ Full name _____

(g) Position/Title _____ Date ____/____/____.

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* defines remuneration *'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'*

Section 127(11) of the *Industrial Relations Act 1996* states *'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'*

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au.

Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.