
SPECTUR STANDARD RENTAL TERMS AND CONDITIONS
SPECTUR LIMITED (ACN 140 151 579)

1. APPLICATION OF TERMS

1.1 Application of Terms

- (a) These Standard Terms (**Terms**) apply to and govern the lease and rental of Products and the supply of Support Services as between Spectur and the Customer under a Lease.

1.2 Contract

- (a) The Rental Agreement or other instructions received by Spectur from the Customer to lease Products or for the supply of Support Services (**Request Form**), is only a document setting out the required information to enable Spectur to finalise the Rental Agreement.
- (b) Upon receipt of the Request Form, Spectur may decline to prepare a Rental Agreement if, in its opinion acting reasonably, Spectur will not be able to deliver the Products and/or Support Services due to technical, safety, logistical or other related matters.
- (c) In the event Spectur is able to provide the Products and/or Support Services to the Customer, Spectur will issue to the Customer an executed Rental Agreement.
- (d) Acceptance of the Rental Agreement is an acceptance of these Terms and an agreement is made which will comprise of the following documents:
- (i) The Rental Agreement; and
 - (ii) These Terms; and
 - (iii) The End User Licence Agreement.
- (e) Where there is more than one Customer, those Customers are jointly and severally liable for all money payable under the Contract.
- (f) The Customer may not cancel or alter, in whole or in part, any order, request or other instructions provided to Spectur without Spectur's prior written consent.
- (g) Except to the extent expressly provided in these Terms, the Contract may not be amended or varied except in writing signed by both parties.
- (h) The Customer accepts that these Terms are the sole basis of the rental of Products and supply of Support Services to the exclusion of any conditions of purchase appearing on any document of the Customer whether issued by the Customer before or after the date of the Rental Agreement (including but not limited to those printed on the Request Form). If the Customer provides terms and conditions in respect of the Products and/or Support Services, those terms and conditions will have not legal effect and will not comprise any part of the agreement between the Customer and Spectur in respect of the Products and/or Support Services.
- 1.3 Variation to Works Document by Customer**
- (a) Any changes by the Customer to the Rental Agreement (including rental of Products, and supply of Support Services, addresses, for installation) must be communicated to Spectur 30 days prior to the estimated date of installation or proposed delivery date.
- (b) Upon receipt of the Customer's request for changes, Spectur will issue an updated Rental Agreement to the Customer setting out any changes to the price, Products and/or Support Services as well as any changes to the estimated date of installation which Spectur is offering to provide the Customer. The Customer is deemed to have accepted the updated Rental Agreement unless the Customer rejects the updated Rental Agreement expressly in writing within 5 days of receipt.

1.4 Changes to Terms by Spectur

Spectur may modify, supplement, or replace these Terms at any time, effective prospectively upon posting on its website and notifying customers by email. When changes to these Terms are posted, Spectur will revise the "Last Updated" date at the bottom of these Terms. If the changes result in a material adverse effect on the Customer, the Customer may within 30 days of receipt of notice from Spectur of the change issue a 30 days notice to terminate the Contract and must immediately stop using Spectur Products or Support Services. The continued use of the Products and Support Services shall constitute an acceptance of and agreement to the revised Terms.

2. DESCRIPTION OF PRODUCTS AND SUPPORT SERVICES

- 2.1 The rental Products and Support Services (as applicable) are as described in the relevant Rental Agreement. Spectur may make such alterations to the specifications, design or construction of the Products or Support Services (as applicable) as it deems fit, provided that the alterations do not have any material adverse effect.
- 2.2 The Lease operates until the date specified for its end in the Rental Agreement (**Rental Period**), unless terminated earlier in accordance with its terms.
- 2.3 The Lease will continue to operate, and Rental Period will be extended, if the original Rental Period expires but the Customer continues to possess the Products and Spectur does not notify the Customer that the Products must be returned (**Holding Over**). Either party may terminate the Holding Over by giving the other party at least 30 days' notice to that effect.

3. DELIVERY OF LEASED PRODUCTS AND PERFORMANCE OF SUPPORT SERVICES

- 3.1 Unless the Rental Agreement states otherwise Spectur will deliver and install the Leased Products to the locations set out in the Rental Agreement in accordance with clause 6,
- (a) Spectur will deliver the Rental Products on a 'ex works' basis to the Customer or to a carrier or freight forwarder nominated by the Customer. The Customer must make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery.
 - (b) Delivery of the Rental Products to a carrier or freight forwarder nominated by the Customer is deemed to be delivery of the Products to the Customer.
 - (c) All Rental Products are deemed accepted by the Customer if the Customer does not notify Spectur to the contrary within 7 days of those Products being delivered.
 - (d) Spectur will use reasonable endeavours to deliver the Products by the relevant date specified in the Rental Agreement, or if a date is not specified, as soon as practicable. Failure of Spectur to deliver the Products and/or Support Services by a particular date in the Rental Agreement does not entitle the Customer or Spectur to treat the Contract as repudiated.
- (E)** All Support Services are deemed accepted by the Customer if the Customer does not notify Spectur to the contrary within 7 days of the performance of those Support Services being completed.

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4. RETENTION OF TITLE IN PRODUCTS

- 4.1 Spectur retains full title to the Products notwithstanding: the Products being made available for collection by the Customer; the possession and use of the Products by the Customer; and any temporary attachment of the Products to any land or buildings to facilitate use of the Products.
- 4.2 Clause 4.1 is subject only to the rights of the Customer as a mere bailee of the Products with a right only to use them in accordance with the Lease and is also subject to clause **Error! Reference source not found.**
- 4.3 The Customer must not without Spectur's prior written consent:
- (a) agree, attempt, offer or purport to sell, assign, sublet, lend, grant any security interest in respect of, or otherwise part with or attempt to part with the personal possession of, or otherwise deal with the Products; or
 - (b) remove, change, alter or deface any name, name plate, identification number, trademark or any other identifying mark or number on the Products, except so as to indicate any permitted replacement, alteration or addition to the same.

5. USE OF PRODUCTS

- 5.1 The Customer must only handle, store, use and operate (as applicable) the Products:
- (a) in accordance with all applicable laws;
 - (b) in accordance with instructions provided with the Products (if any) and otherwise recognised methods, industry guidelines and/or standards for goods of the same or substantially similar type (if any); and
 - (c) if applicable, only by competent and (where appropriate) properly qualified, trained and licensed personnel.
- 5.2 Without limiting clause 5.1, the Customer must comply in all respects with the instructions and recommendations of the manufacturer or other supplier relating to the Products and to their use, in particular where any failure in compliance would limit the obligations of that person to Spectur or the Customer under any statute, agreement or otherwise.

6. INSTALLATION

- 6.1 Spectur may agree in the Rental Agreement to install a Product (**Installation**) at the location specified in the Order (**Installation Location**).
- 6.2 The cost of performing an Installation will be specified in the Rental Agreement and may be in addition to the rental Fee.
- 6.3 The Customer is responsible for:
- (a) ensuring that the selected ground position at the Installation Location is free of any electrical cables, pipes, reticulation devices, other structures or any utility infrastructure; and
 - (b) ensuring that the Customer has all permits, licenses and authorisations necessary to conduct the Installation at the Installation Location, and
 - (c) ensuring that the Installation Location is freely accessible to Spectur personnel.
- 6.4 Additional charges will be levied to the Customer if their failure to provide adequate information results in additional costs / delays to Spectur.

- 6.5 The Customer is only entitled to use the Products at the Installation Location, unless Spectur agrees otherwise.

7. MAINTENANCE

- 7.1 The Products will be at the risk and expense of the Customer from the commencement of the Rental Period until the date that the Products are returned to the possession, custody and control of Spectur at the location for return specified in the Rental Agreement (**Collection Point**).
- 7.2 During the Rental Period, the Customer must:
- (a) keep the Products in proper and working order and condition, and in good and substantial repair (fair wear and tear excepted), having regard to the ordinary use of the Products and the age and condition of the Products as at their delivery to the Customer, in accordance with all maintenance instructions provided by Spectur (if any); and
 - (b) not alter, modify, replace, repair or make any addition to the Products.
- 7.3 Spectur may charge the Customer the cost of repairing any Product which is damaged during the Rental Period, other than due to fair wear and tear or as a result of any act or omission on the part of Spectur.

8. DEFECTS

- 8.1 The Customer must notify Spectur of any Products (other than materials used in Spectur's Products and other consumables) or Support Services that the Customer reasonably considers to be defective in any material respect, by giving written notice to Spectur to that effect (**Defect Notice**) as soon as practical following the identification of the defect. The Customer must afford Spectur an opportunity to inspect all alleged defective Products or Support Services as soon as practicable following the issue of a Defect Notice.
- 8.2 Subject to clause 8.3, if Spectur, acting reasonably, determines that Products or Support Services are defective in any material respect, Spectur's liability is limited to (at Spectur's discretion):
- (a) for Products – either replacing the Products or repairing the Products, provided that:
 - (i) the Customer has complied with clause 8.1 provided the Defect Notice to Spectur; and
 - (ii) the Products are returned to Spectur in the condition in which they were delivered; and
 - (b) for Support Services – re-perform or otherwise remedy the Support Services, provided that the Customer has complied with clause 8.1.
- 8.3 Spectur's obligation to take the actions in clause 8.2 is conditional upon the following:
- (a) Spectur is not liable to the extent that any damage or defect is caused, directly or indirectly, by any act or omission on the part of the Customer, nor in relation to Products which have not been transported, stored or used in in accordance with any instructions by Spectur and otherwise with reasonable care and skill;
 - (b) defects or damage which are caused or relate to any of the following are excluded:
 - (i) failure on the part of the Customer to properly maintain any Products or to follow any instructions or directions provided by Spectur;

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- (ii) use of Products other than in accordance with Spectur's instructions or directions, or their ordinary intended use;
 - (iii) continued use of Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (iv) fair wear and tear, an accident, or Force Majeure Event;
- (c) To the extent permitted by law, Spectur will not be liable if repairs or alterations to Products by an unauthorised third party without Spectur's consent.
- 8.4 For Products not manufactured or Support Services not performed by Spectur, to the extent permitted by law, the only warranty will be the current warranty provided by the manufacturer/supplier of those Products or Support Services (if any). Spectur is not under any liability whatsoever, except to the extent of any express conditions detailed and stipulated in the third party manufacturer's/supplier's warranty. The Customer may be liable for additional charges by Spectur in relation to repairs for such Products or Support Services.
- 9. RETURN OF PRODUCTS**
- 9.1 Unless otherwise agreed, the Customer must return the Products to the Collection Point by 4:00pm (WST) on the last day of the Rental Period.
- 9.2 The Customer may return the Products to Spectur on a Business Day prior to the expiry of the Rental Period, provided that:
- (a) the Customer must give Spectur at least 10 Business Days' written notice of the proposed date for return delivery of the Products; and
 - (b) the Customer remains obliged to pay the full amount of the Rental Fee notwithstanding the early return of the Products.
- 9.3 The Customer is obliged to return the Products at the end of the Rental Period in the same condition as when the Customer received the Products from Spectur, subject to fair wear and tear.
- 9.4 If the Products are not returned to Spectur as and when required under the Lease, Spectur may retake possession of the Products. For that purpose, Spectur and its representatives may, without notice, liability or legal process, enter upon or into any premises on which the Products are located and for which the Customer has a right of access, including breaking open any gate, door or fastening and detach or dismantle the Products from any part of that location to which the Products have been affixed.
- 10. SUPPORT SERVICES**
- 10.1 Provision of Support Services**
- (a) Spectur will provide the Customer with the **Support Services** on a month-to-month basis.
 - (b) The Customer acknowledges that:
 - (i) the Customer will require the Interface Licence to operate a Spectur Unit;
 - (ii) Data Plans are provided at a limit specified in the Rental Agreement.
 - (iii) Data Plans are provided by a third-party telecommunications provider and Spectur does not guarantee the network connectivity of any such telecommunication providers and will not be liable for any act or omission on the part of a telecommunication provider;
- (c) Customers exceeding their maximum monthly data limit may progressively receive "shaped" performance, including removal of the LiveView function.
- (d) Spectur may, but is not obliged to, store, hold or archive footage and data collected by Spectur in relation to the Spectur User Interface (**Data**) at its discretion. Spectur may permanently delete any archived Data at any time and at its sole discretion. Spectur does not guarantee that any Data will be stored, held or archived such that a Customer may access it. Spectur may charge the Customer a fee equal to Spectur's costs of retrieving or providing any Data to the Customer. The Customer may download and/or archive any data it retrieves.
- 10.2 Spectur User Interface**
- (a) For the purposes of the Support Services, Spectur grants to the Customer a non-exclusive and non-transferrable licence for the period during which the Support Services are provided to the Customer, to access and use the Spectur User Interface (**UI Licence**). The UI Licence is granted subject to the Lease and the Customer accepting and complying with End User Licence Agreement of the Spectur User Interface (being the version as at the date the Customer first accesses the Spectur User Interface) which is available to the Customer on request and otherwise on Spectur's website, www.spectur.com.au (**End User Licence Agreement**).
 - (b) By entering into this Contract or by otherwise accessing and using the Spectur User Interface, the Customer acknowledges and agrees that it has read and agrees to be bound by the terms of the End User Licence Agreement which apply to use of the UI Licence.
- 10.3 Termination of Lease**
- (a) In the event of an early termination of the Lease during the Rental Period, the Customer is liable to pay the remaining balance outstanding on the Lease, as determined by the original Lease.
 - (b) The Customer may cancel its request for the Lease during the Hold Over Period by giving Spectur a minimum of 30 days' written notice to that effect.
 - (c) Spectur may cease to provide the Support Services on 7 days' prior written notice if any of the events in clause 22.3 occurs, or otherwise without cause by giving the Customer 30 days' written notice to that effect.
- 11. WARRANTIES**
- (a) During the period of the Rental Agreement Spectur will provide a full Parts and Labour Warranty on the products Rented as in the Rental Agreement. Spectur commits to dealing with and defects within 3 working days and to remedy within 5 working days of being notified of the defect.
 - (b) The Customer must notify Spectur of any Products (other than materials used in Spectur's Products and other consumables) or Support Services that the Customer reasonably considers to be defective in any

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- material respect, by giving written notice to Spectur to that effect (**Defect Notice**). The Customer must afford Spectur an opportunity to inspect all alleged defective Products or Support Services as soon as practicable following the issue of a Defect Notice.
- 11.2 Spectur's obligation to take the actions in clause (b) above is conditional upon the following:
- (a) Spectur is not liable to the extent that any damage or defect is caused, directly or indirectly, by any act or omission on the part of the Customer, nor in relation to Products which have not been transported, stored or used in accordance with any instructions by Spectur and otherwise with reasonable care and skill;
 - (b) defects or damage which are caused or relate to any of the following are excluded:
 - (i) failure on the part of the Customer to properly maintain any Products or to follow any instructions or directions provided by Spectur;
 - (ii) If Products were installed by Customer, failure on the part of the Customer to install the Products in accordance with instructions provided by Spectur or which the Customer ought reasonably have known;
 - (iii) use of Products other than in accordance with Spectur's instructions or directions, or their ordinary intended use;
 - (iv) continued use of Products after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, an accident, or Force Majeure Event;
 - (c) To the extent permitted by law, Spectur will not be liable in respect of Product repairs or alterations by an unauthorised third party without Spectur's consent.
- 11.3 Spectur's obligations under clauses 8.1 and 8.2 are limited to the original Customer and will not extend to any subsequent purchaser or owner of Products or Support Services.
- 11.4 For Products not manufactured by Spectur, to the extent permitted by law, the only warranty will be the current warranty provided by the manufacturer/supplier of those Products or Support Services (if any). Spectur is not under any liability whatsoever, except to the extent of any express conditions detailed and stipulated in the third-party manufacturer's/supplier's warranty agreed to by Spectur. The Customer may be liable for additional charges by Spectur in relation to repairs for such Products or Support Services.
- 12. SECURITY DEPOSIT**
- 12.1 Spectur may require that the Customer pay a security deposit of up to 90 days' of Rental Fees to be paid during the Rental Period (**Security Deposit**) as security for the due performance by the Customer of its obligations under these Terms, including payment of the Rental Fee when due.
- 12.2 A Security Deposit must be paid within 5 Business Days of Spectur making a request for the same. Spectur is not under any obligation to make the Products available to the Customer unless a requested Security Deposit has been received.
- 12.3 Spectur does not hold the Security Deposit on trust for the Customer or any other person.
- 12.4 The Security Deposit (and any interest earned on it) may, at its sole discretion and without prejudice to any other rights or remedies that it may have, at any time during the Rental Period be applied by Spectur towards arrears of the Rental Fee, damages, loss or costs relating to any default or other failure of the Customer to perform its obligations under the Lease.
- 12.5 If any portion of the Security Deposit is applied by Spectur to an amount pursuant to clause 12.4, Spectur may require the Customer to replenish the applied amount of the Security Deposit within 5 Business Days.
- 12.6 Spectur must return the balance of the Security Deposit to the Customer within 14 days of the Products being returned to Spectur, provided that the Customer has all amounts due to Spectur and is otherwise not default of its obligations under the Lease.
- 13. INVOICING AND PAYMENT**
- 13.1 Fees**
- (a) The Rental Fee for Products or and the Support Fee for Support Services (each being a **Fee**) is Spectur's publicly advertised list price for those Products or Support Services at the date that they are delivered or otherwise supplied, unless indicated otherwise in the Rental Agreement for the Products or Support Services.
 - (b) Spectur may charge the Customer for any variation to scheduled works or specifications in relation to the Rental of Products or Support Services.
 - (c) Unless expressly stated in a Rental Agreement, the rental Fee excludes all transport/freight costs, storage costs, installation costs, security costs, insurance, customs and import duties and other out-of-pocket expenses. Spectur may charge the Customer an additional amount for any such items or expenses, if applicable.
 - (d) Spectur may adjust a Fee at the end of each anniversary of the Lease or on such other date for a review as specified in the Rental Agreement (**Review Date**). The adjusted Fee has effect as and from the relevant Review Date.
- 13.2 Payment**
- (a) Time is of the essence in relation to payment of the Fees and will be stated on the Rental Agreement. If a time is not stated, the Customer is required to pay the initial Rental Fee (subject to clause 12.1(b) to Spectur within 5 business days prior to the delivery of the Leased Products and, in relation to Support Services, the Support Services Fee is to be paid 5 business days in advance of the monthly Support Service being provided by Spectur to the Customer.
 - (b) Payment must be made from the Customer to Spectur by electronic funds transfer or, at Spectur's discretion, by credit card, direct debit or any other requested method of payment.
 - (c) In certain circumstances Customers may be extended credit terms. Customers seeking credit may apply via an application for credit provided to Spectur in the specified manner. If credit terms are extended to the Customer, they will be notified in writing and the Customer will be advised of the relevant payment terms for the Products and Support Services. Failure

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of the customer to adhere to the extended credit terms may result in them being withdrawn.

14. STATUTORY WARRANTIES AND DISCLAIMER

14.1 Any term, condition, guarantee or warranty which would otherwise be implied into the Lease is excluded to the maximum extent permitted by law. Nothing in the Lease is intended to, or will, have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or *Fair Trading Act 2010* (WA) (or equivalent legislation in any other applicable jurisdiction), except to the extent permitted by those Acts.

14.2 The liability of Spectur for any breach of any mandatory term, condition, guarantee or warranty implied into the Lease by statute is, to the extent permitted by law, limited at the option of Spectur, to any one or more of the following:

- (a) if the breach relates to the supply of goods: the replacement value of the goods or the supply of equivalent goods, or payment for the same; or the repair of such goods, or payment for the same; and
- (b) if the breach relates to the provision of Support Services, the value the customer paid for supplying of the services or their supply again.

15. DISCLAIMERS

15.1 The Customer acknowledges and agrees that:

- (a) the Products and Support Services are only intended to reduce the risk of loss of and damage to property and entry to persons in, on, or near the premises in which the Products are installed, to the extent that is reasonably practicable by use of such Products;
- (b) Spectur does not make any warranty, representation or other stipulation about the effectiveness or otherwise of the Products or Support Services and associated security systems in relation to the apprehension, identification or curtailment of illegal or unwanted activities by persons not permitted to be on any particular premises at the time an event or events are recorded;
- (c) Spectur will not be liable for any one of more of the following incurred or suffered by the Customer, whether arising under statute, common law or equity, from or related in any way to the Lease or its subject matter:
 - (i) any loss of profit, loss of revenue, loss of product, loss of expected savings, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity); and damage to reputation, whether actual, direct, indirect, anticipated or otherwise; and
 - (ii) any loss or damage to a property or person due to the failure of a Product to activate; and
 - (iii) any indirect or consequential loss which is not covered by clause 15.1(c)(i);

regardless of whether the loss was within the contemplation of the parties at the time of entering into the Rental Agreement (or Purchase Order) or not.

- (d) if an unauthorised access or other security breach event is detected by Spectur Systems, Spectur's UI will attempt to contact and send images to designated

representatives of the Customer, but Spectur cannot guarantee that those persons will be contacted or will ultimately receive the images; and

- (e) Spectur will not make any recommendation in relation to security personnel, repair personnel or associated business in the event that the Customer's premises are damaged as a result of illegal or other unlawful activity, unless specifically contracted to do so by the Customer, and in any event, Spectur will not be liable for any third party or its personnel.

15.2 Subject to any express provisions of the Lease and to the extent permitted by law, the Customer acknowledges that the Customer relies solely upon the Customer's own skill and judgment in ordering Products or Support Services, and that Spectur is not bound by nor responsible for any term, condition, representation or warranty other than those expressly stated in the Lease, each of which is personal to the Customer.

15.3 The Customer acknowledges that (except as provided by law) Spectur's suppliers are expressly excluded from all liability to the Customer in relation to any Products or Support Services provided by Spectur to the Customer, or any delay or any failure to provide the Services to the Customer.

16. SURVEILLANCE LAWS

16.1 The Customer acknowledges and agrees that the Products and Support Services, and their use, may be subject to surveillance device legislation and associated laws (**Surveillance Laws**), including the *Surveillance Devices Act 1998* (WA) or equivalent laws in other jurisdictions. The Customer is responsible for identifying applicable Surveillance Laws and procedures for its compliance with those laws, and Spectur does not provide any advice to the Customer in relation to the legal or regulatory requirements (including Surveillance Laws) applicable to any Products and Support Services or their use.

16.2 The Customer must comply at all times with applicable Surveillance Laws in relation to the Products and Support Services, and their use by the Customer (or any third party on behalf of the Customer). The Customer indemnifies Spectur from and against any claims or liability incurred by Spectur in relation to any failure by the Customer (or any of the Customer's officers, employees, agents or contractors) to do so.

17. PRIVACY

The Customer agrees that personal information (as that term is defined in the *Privacy Act 1988* (Cth)) provided may be used and retained by Spectur in accordance with Spectur's privacy policy set out at <https://spectur.com.au/privacy-policy/> and may be used for: provision of Support Services and Products; marketing of Support Services and Products by Spectur; analysing, verifying and checking the Customer's credit, payment and status in relation to provision of Support Services and Products; processing of any payment instructions, direct debit facilities or credit facilities requested by the Customer; or enabling the daily operation of the Customer's account and the collection of amounts outstanding in the Customer's account in relation to the Support Services and Products.

18. PROTECTION OF TECHNOLOGY

18.1 All Intellectual Property Rights of Spectur (or licensed to Spectur by a third party), including in relation to its Products or Support Services, remain vested in Spectur. All Intellectual Property Rights created, discovered, developed, derived or that otherwise come into existence in relation to

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- performance of a contract between the Customer and Spectur or otherwise in relation to the supply of the Products or Support Services, vest in Spectur upon creation.
- 18.2 The Customer must not use or exploit any Intellectual Property Rights of Spectur other than as expressly permitted by Spectur in writing. The Customer must not (nor permit, allow or cause any third party to) copy, reproduce, reverse engineer or duplicate any Products or other products of Spectur. The Customer indemnifies Spectur in relation to any breach of this clause 18.2 by the Customer.
- 18.3 In relation to this clause 18, Spectur acts in its own right and as agent for and on behalf of each of its Related Bodies Corporate, and it may enforce this clause 18 on behalf of and for the benefit of each of Spectur's Related Bodies Corporate.
- 18.4 This clause 18 survives the termination of any contract between the Customer and Spectur.
- 19. CONFIDENTIALITY**
- 19.1 Subject to clause 19.2, the Customer must at all times:
- (a) hold in strict confidence all Confidential Information and not disclose nor permit or cause the Confidential Information to be disclosed to any person, other than any of the Customer's employees who require that Confidential Information for the purposes of ordering, receiving and applying (for their ordinary use) the Products and Support Services (**Approved Purpose**);
 - (b) not make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from that Confidential Information) except and solely to the extent necessary for the Approved Purpose; and
 - (c) ensure that any permitted person to whom the Customer passes any of the Confidential Information (unless disclosed under 19.2(b)) acknowledges and complies with the confidentiality obligations under this clause 19 as if that person were the Customer.
- 19.2 The obligations in clause 19.1 do not apply to the Customer to the extent that:
- (a) Spectur has provided its prior written consent to the use or disclosure of the Confidential Information in a manner that would, but for the consent, be contrary to clause 19.1;
 - (b) disclosure of the relevant Confidential Information is required to comply with any law or order of a court, arbitrator or government body; and
 - (c) disclosure of the relevant Confidential Information made to any legal counsel, accountant, insurance advisor, bank or other professional adviser in relation to the Customer's affairs provided that the professional advisor is bound by an obligation or confidentiality regarding the information disclosed.
- 19.3 The Customer agrees that damages may not be an adequate remedy for breach of this clause 19 and that Spectur will be entitled to equitable relief, including temporary and permanent injunctive relief.
- 19.4 The obligations under this clause 19 survive the termination of any contract between the Customer and Spectur.
- 20. SECURITY INTERESTS**
- 20.1 Possession of Products is transferred to the Customer by Spectur on the basis that Spectur retains a purchase money security interest pursuant to the *Personal Property Securities Act 2009* (Cth) (**PPSA**) or any equivalent legislation in another applicable jurisdiction in the Products, proceeds of the Products and any other goods with which the Products are commingled.
- 20.2 The Customer:
- (a) must promptly do anything Spectur requires to ensure that any security interest arising under the Lease is a perfected security interest and has priority over all other security interests;
 - (b) undertakes not to register a financing change statement or make an amendment demand pursuant to section 178 of the PPSA in respect of such registration;
 - (c) agrees that the following provisions of the PPSA will not apply and the Customer will not have any rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142; and section 143;
 - (d) agrees to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPSA;
 - (e) waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
 - (f) agrees that Spectur is required to give a notice under the PPSA only if the notice is obligatory and the giving of the notice cannot be excluded under the PPSA, and the Customer waives any rights to receive any notices unless they are required to be given and cannot be excluded; and
 - (g) agrees to notify Spectur in writing of any change to the Customer's details within 5 days from the date of such change.
- 20.3 The parties agree that the Lease constitute a security agreement for the purposes of the PPSA and, without prejudice to Spectur's rights under the PPSA:
- (a) Spectur may, to the extent permitted by the Lease or otherwise by law, give notice in writing to the Customer to return the Products to Spectur. Upon that notice being given, the rights of the Customer to obtain ownership (including under clause 27) or any other interest in the Products will cease.
 - (b) If the Customer fails to return the Products to Spectur, then Spectur may exercise its rights under clause 9.4.
- 20.4 The Customer must not charge the Products in any way nor grant or otherwise give any interest (including a security interest) in the Products while they remain the property of Spectur.

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21. GST AND DUTIES

- 21.1 All amounts payable by the Customer to Spectur and all other references to monetary amounts under the Lease are exclusive of any goods and service tax, valued added tax, sales tax, excise tax, consumption tax or other tax calculated on or by reference to the value added to goods, services and materials, including the tax levied under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST**), unless expressly stated otherwise. The Customer must pay to Spectur an additional amount equal to the GST liability on a supply or transaction to which GST applies. Unless otherwise agreed in writing, the GST amount under this clause 21.1 must be paid within 5 Business Days of Spectur issuing to the Customer a tax invoice for the supply or transaction to which the GST liability applies.
- 21.2 The Customer is responsible for compliance with, and payment of the following applicable after the point at which Products are delivered:
- (a) all applicable taxes or tariffs imposed, claimed, levied or assessed by, or payable to, any applicable government bodies or agencies in relation to the import or export of goods and/or services or the production or manufacture of goods applicable to the supply under the Lease; and
 - (b) all other applicable import and export laws of any jurisdiction relating to the supply of the Products to the Customer.

22. DEFAULT & CONSEQUENCES OF DEFAULT

- 22.1 Without prejudice to any other remedies Spectur may have, Spectur may suspend the rental of Products or supply of Support Services to the Customer and any of its other obligations under the Lease, if the Customer is in breach of any obligation under the Lease (including those relating to payment). Spectur will not be liable to the Customer for any loss or damage the Customer suffers because Spectur exercised its rights under this clause 22.1.
- 22.2 Interest at the rate of 10% per annum (calculated daily) accrues, and must be paid by the Customer to Spectur, on overdue amounts owed by the Customer, from the date when payment becomes due until the earlier of payment or judgment.
- 22.3 Spectur may immediately upon notice to the Customer, cancel the rental of any Products or supply of any Support Services and terminate the Lease (or both) if either of the following occurs, in which case all amounts owing to Spectur will, whether or not due for payment, immediately become due and payable:
- (a) the Customer does not remedy any breach of the Lease (including the obligation to make any payment to Spectur when due and payable) within 7 days of receiving notice from Spectur to do so; or
 - (b) where permitted by the Corporations Act 2001 (Cth), the Customer becomes insolvent or a receiver, receiver and manager, liquidator (provisional or otherwise), administrator, bankruptcy trustee or similar person is appointed in relation to the Customer or any asset of the Customer.

23. CANCELLATION BY SPECTUR

- 23.1 The Customer may cancel the Lease at any time by giving Spectur at least 30 days' prior written notice to that effect without the need to furnish a reason. Spectur will not be liable for any loss or damage arising from any cancellation.

- 23.2 If the Customer cancels the Lease, the Customer must pay to Spectur an amount equal to the Rental Fees for the balance of the Rental Period as detailed in the Rental Agreement or Work Order Document; or if the Customer is in a roll over period, 30 day's Rental Fees.

24. LIMITATION OF LIABILITY

- 24.1 In any event, under no circumstance shall Spectur's liability exceed the amount paid for the rental Products and Support Services during the six months (6) prior to the time the cause of action giving rise to the liability arose and is subject to clause 23.2.
- 24.2 Any action must be commenced within 1 year after the cause of action has accrued.
- 24.3 To the maximum extent permitted by law, Spectur will not be responsible or liable under any circumstances for any loss, liability, expenses or damages incurred in connection with the rental of Products and supply of Support Services to the extent caused by:
- (a) The Customer's acts, defaults or omissions
 - (b) Violation by the Customers of any term, condition, representation or warranty contained in this Contract
 - (c) The Customer's failure to provide an accurate shipping address, Purchase Order Number or other information that they are requested to provide in connection with the rental of Products and Services
 - (d) Acts or omissions of third parties, including third parties contracted by Spectur; or
 - (e) Non-Delivery, mis-delivery or late delivery or products lost or damaged in shipment.

25. INDEMNIFICATION

The Customer agrees to indemnify, defend, and hold Spectur harmless from and against any and all claims, demands, damages, or other losses, including reasonable attorneys' fees, resulting from or arising out of their use of the Products or Support Services including, but not limited to, their negligent or intentional misuse of the Products, Support Services or UI Interface, or any breach or alleged breach by them of this Contract or of any applicable law.

26. FORCE MAJEURE

Spectur is not liable for failure to perform any obligations under the Lease during the time and to the extent that such performance is prevented, wholly or substantially, by a Force Majeure Event.

27. OPTION TO PURCHASE

- 27.1 The Customer may, by written notice to Spectur to be given within 30 days of the end of the Rental Period, purchase any Product the subject of the Lease at the end of the Rental Period for an amount equal to 3 months rental payments in the Rental Agreement (plus GST). Upon receipt of the notice, Spectur reserves the right to reject the offer to purchase if Spectur determines, at its sole and absolute discretion, that the Customer has not complied with the terms of any of the Rental Agreement or these Terms.
- 27.2 The sale of a Product under clause 27.1 is on an 'as is, where is' basis without any warranties being given by Spectur other than mandatory warranties or consumer guarantees required by law.
- 27.3 Title to the Product will only pass to the Customer upon full payment of the amount set out in clause 27.1. Risk in the Product is governed by clause 7.1.

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28. GUARANTEE AND INDEMNITY (APPLICABLE ONLY IF GUARANTOR SPECIFIED IN RENTAL AGREEMENT)

- 28.1 In consideration of Spectur renting the Product to the Customer, the Guarantors unconditionally and irrevocably guarantee to Spectur the due and punctual performance by the Customer of their obligations under these Terms, including the payment by the Customer of all monies at any time owed to Spectur by the Customer under the Terms (**Guaranteed Monies**).
- 28.2 Each Guarantor represents and warrants to Spectur that it is to the Guarantor's commercial benefit that it enters into this Guarantee and Indemnity.
- 28.3 If the Customer defaults in payment of the Guaranteed Monies, the Guarantors must pay those monies to Spectur on demand by Spectur.
- 28.4 The Guarantors indemnify Spectur against all loss it would suffer if the Customer does not pay it any monies Spectur are owed under the Terms including all legal and other costs of enforcing this Terms on a full indemnity basis.
- 28.5 The Guarantors' obligations are principal obligations and are continuing, and will not be affected by anything which might otherwise operate to relieve the Guarantors of their obligations, including without limitation:
- (a) any arrangement which increases the Guaranteed Monies or otherwise varies these Terms;
 - (b) any waiver, release or extension of time given by Spectur;
 - (c) the bankruptcy, administration, insolvency, winding up or liquidation of the Customer or any Guarantor;
 - (d) any failure by Spectur to give any notice, or any other omission, delay or error on its part.
- 28.6 Until such time as the Guaranteed Monies are paid in full, the Guarantor may not exercise any right of subrogation to Spectur or in competition with Spectur.
- 28.7 The Guarantors acknowledge that this Guarantee and Indemnity is:
- (a) given to Spectur jointly and severally by each Guarantor in consideration for Spectur agreeing to enter into these Terms with the Customer at the Guarantors' request;
 - (b) unconditional, irrevocable and continues until Spectur has received all amounts owing by the Customer to the Spectur in full;
 - (c) not affected by anything under the law relating to guarantees, by Spectur's delay in acting, by the Spectur allowing the Customer or a Guarantor extra time to pay, by any act or omission of any person, or by the amount of credit extended to the Customer varying from time to time;
 - (d) enforceable against a Guarantor even if it is not signed by another person intended to be a Guarantor, or if it is not enforceable against another Guarantor.
- 28.8 Spectur need not incur an expense nor have exercised or exhausted its legal rights against the Customer before making a demand of the Guarantors.
- 28.9 Each Customer or Guarantor who is a natural person hereby charges in Spectur's favour for payment of all money owing from time to time by the Customer or Guarantor to Spectur all interests in any land which any of them now owns or of which they may become the owner.

- 28.10 If any payment to Spectur is void or voidable as a result of an insolvency event or bankruptcy law, each Guarantor's liability extends to that payment as if the payment had not been made. Unless Spectur agrees otherwise, each Guarantor must not claim any amount in the insolvency of the Customer until Spectur is paid all money guaranteed or indemnified under this Guarantee and Indemnity.

29. GENERAL

- 29.1 The Lease is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.
- 29.2 If any provision of the Lease is invalid, void, illegal or unenforceable, then that provision is to be ignored in the interpretation of the Lease such that the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 29.3 The Customer does not have any right to set-off against the Rental Fees and Support Fees any amounts due or claimed to be due from Spectur.
- 29.4 The Customer authorises and consents to Spectur licensing or sub-contracting all or any part of its rights and obligations under the Lease.

30. INTERPRETATION

- 30.1 The following words have the meaning given to them below when used in these Terms:

Business Day means a day other than a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

Confidential Information means, other than to the extent that it constitutes Excluded Information, all records, documents or other information, in whatever form, which relate to the business, affairs or activities of Spectur (including a Related Entity of Spectur) or that is marked by or behalf of Spectur as being confidential or is of a confidential nature, including methods of operation, Intellectual Property Rights, customer lists, products, prices, fees, costs, technology, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialised information or proprietary matters.

Customer means a person who orders or otherwise requests Products or Support Services (or both) from Spectur and any other person acting on behalf of and with the authority of the first-mentioned person

Data Plan means a mobile/cellular telephone network data plan or other contract for connection to such network, for a Spectur System, provided through a third-party telecommunication provider.

End User Licence Agreement has the meaning set out in clause 10.2.

Excluded Information means any records, documents or other information to the extent that such information becomes publicly available (except if it is in the public domain by reason of the failure of a party to perform and observe its obligations under the Lease), or is acquired from a third party entitled to disclose it on a non-confidential basis.

Force Majeure Event means an event beyond Spectur's reasonable control which, by exercise of reasonable diligence and precautions, could not have been prevented or reasonably foreseen by Spectur, including any:

- (a) act of God, unusually severe weather (including a cyclone/hurricane), earthquake, fire, subsidence, land

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slide, mud slide, wash-out, explosion, radioactive contamination or natural disaster;

- (b) terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;
- (c) industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbances;
- (d) any failure, delay or suspension by any third party supplier of the supply in whole or in part of fuel, electricity, equipment, machinery, infrastructure (including telecommunications or internet infrastructure and systems) or materials to Spectur provided that Spectur has acted in a timely manner in endeavouring to secure the same (which does not require Spectur, to secure the same if the alternative supply is only available to Spectur at a materially increased or additional cost to it); or
- (e) adverse application of any law or enforcement actions of any court, regulatory body or governmental agency.

Guarantors means the guarantors whose details are set out in the Rental Agreement.

Rental Fee means the fee payable for the lease / hire of a Product, excluding GST.

Intellectual Property Rights means all rights and interests throughout the world vesting or otherwise in relation to industrial or intellectual property protectable under law (including in relation to trade marks, designs, patents, circuit layouts, copyright, confidential information, and all other intellectual property rights as defined in Article 2 of the convention establishing the World Intellectual Property Organisation of July 1967), whether registered, unregistered or registrable, and whether now existing or that come into existence in the future.

Interface Licence means a licence to access and use the Spectur User Interface.

Lease means the agreement for the lease of Products or supply of Support Services (or both) by Spectur to the Customer. Upon the issue of a Rental Agreement in response to a Request Form a new lease is formed comprising (to be interpreted in the following order of precedence) that Rental Agreement, these and these Terms.

Products means any goods, products or accessories (as applicable) leased, rented or otherwise supplied, or the subject of a Purchase Order, by Spectur to the Customer (and where the context permits includes any supply of any Support Services).

Rental Agreement means the document entitled 'Rental Agreement' between Spectur and the Customer for the lease of Products and for the supply of Support Services over a specified period.

Request Form has the meaning given to that term in clause 1.2(a).

Spectur means Spectur Pty Ltd (ACN 140 151 579) trading as 'Spectur' or 'Spectur HD Monitoring', and its successors and assigns.

Spectur System means on a security surveillance camera or similar product developed or supplied by Spectur.

Spectur User Interface means the user interface and associated software developed by or on behalf of Spectur (including web and mobile applications) which facilitates

remote access and operation of a Spectur Unit, including access to footage and data captured through the Spectur Unit.

Support Fee means the price payable for the Support Services, excluding GST.

Support Services means any one or more of the following services, as specified in a Rental Agreement or otherwise ordered by the Customer:

- (a) the grant of an Interface Licence; and
- (b) the procurement of a Data Plan.

30.2 In these Terms:

- (a) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes any gender;
- (d) the words "includes" and "including" are not words of limitation;
- (e) a reference to "deliver" or "delivery" in clause 3 includes making Products available for collection;
- (f) a reference to "supply" in relation to services includes performance of those services;
- (g) a reference to a statute includes its subordinate legislation, proclamations, ordinances and a modification, replacement or re-enactment of the same;
- (h) a reference to person, includes a reference to: an individual, a body corporate, a trust, a partnership, a joint venture an unincorporated body or other entity, whether or not it is a separate legal entity; and the person's personal representatives, successors and assigns;
- (i) a term, condition or warranty in the Lease in favour of or on the part of two or more people, benefits or binds them jointly and severally;
- (j) a reference to currency is to the Australian currency;
- (k) a reference to time is to Australian Western Standard Time in Perth, Western Australia;
- (l) if the date on which an act, matter or thing must be done or take place is not a Business Day, then that act, matter or thing must be done or take place on the next Business Day;
- (m) a provision in these Terms must not be construed adversely to a party solely on the ground that the party was responsible for the preparing these Terms or that provision;
- (n) the terms **Related Bodies Corporate** and **Related Entity** has the meaning given to those terms in the *Corporations Act 2001* (Cth).