



44 Levanswell Road, Moorabbin, 3189. PH: (03) 9555 6799. FAX: (03) 9555 6776

A-Safe, a division of A-Line Switchboards Australia Pty Ltd, of 44 Levanswell Road, Moorabbin, agrees to hire to the below stated hirer, the goods described below subject to the terms stated overleaf.

**SCHEDULE**

1.	<b>Owner:</b>	<b>Name:</b> A-Safe <b>Address:</b> 44 Levanswell Road, Moorabbin, 3189
2.	<b>Hirer:</b>	<b>Name:</b> <b>Address:</b>
3.	<b>Equipment:</b>	
4.	<b>Commencement Date:</b>	
5.	<b>Term:</b>	
6.	<b>Rent:</b>	Per month plus GST
7.	<b>Damage Waiver:</b>	\$

**HIRING AGREEMENT**

**BETWEEN**

The person or persons referred to in the Schedule as the Owner ("the Owner") of the one part - and - The person or persons referred to in the Schedule as the Hirer ("the Hirer") of the other part

**BACKGROUND**

The Owner owns and possesses all the proprietary interests in certain plant and equipment more particularly described in the Schedule hereto ("Equipment").

The Hirer requires the Equipment from time to time in the conduct of its business.

The Owner wishes to let and the Hirer wishes to hire the Equipment on the following terms and conditions:

**AGREED TERMS**

1. *DEFINITIONS*

"Commencement Date" means the date on and from which the Hirer has the right to use the Equipment being the date specified in the Schedule hereto;

"Rent" means the sum or sums of money payable by the Hirer to the Owner in respect of the Hirer's use of the Equipment being the amount specified in the Schedule hereto.

"Term" means the term of this Agreement specified in the Schedule hereto.

'Security' means any mortgage, pledge, lien, hypothecation, security interest or other encumbrance or charge now or in the future given by the Hirer in favour of the Owner to

secure the obligations of the Hirer under this Agreement.

## 2. *LETTING*

2.1 The Owner shall let and the Hirer shall hire the Equipment for the Term commencing on the Commencement Date until expiration of the Term or until earlier termination in accordance with the provisions of this Agreement.

2.2 Upon expiration of the Term in accordance with Clause 2.1, the Equipment must be back in the Possession of the Owner.

## 3. *RENT*

The Hirer shall pay the Rent to the Owner at its address shown in this Agreement or such other person or place nominated by the Owner. Payment of the Rent shall be made monthly in advance, the first payment to be made on the Commencement Date (or the next succeeding business day which is not a public holiday) and each subsequent payment shall be made on the first day of each succeeding month during the term of this Agreement. If the Rent is payable in respect of part of a month the Rent shall be calculated and paid on a pro-rata daily basis.

3.1 If the Hirer returns the Equipment prior to the Expiration of the Term, the Hirer will not be entitled to a discount or rebate.

3.2 The Owner may charge a fee for accepting payments made by credit card.

3.3 If the Hirer fails to pay Rent by the payment due date, a late payment fee of 2% per month, compounding monthly, may be charged. In addition, without limiting Clause 10.4, the Hirer will be liable to indemnify the Owner for all expenses incurred by the Owner in recovering any amounts which the Hirer did not pay by the payment due date.

3.4 If the Owner owes the Hirer credit, the Owner may set-off against that credit any amount owing by the Hirer to the Owner.

## 4. *VARIATION*

The Owner may at any time vary this Agreement by giving the Hirer 30 days

written notice of its intention to do so. Any other variation of these terms and conditions must be agreed in writing by the Owner and the Hirer.

## 5. *TAX AND GOVERNMENT CHARGES*

The Hirer will be liable for stamp/hire duty, GST and all other applicable taxes, duties, levies and any other government charges imposed on this Agreement. Where the Hirer claims exemption from duty or tax the Hirer must furnish appropriate exemption certificates to the Owner.

## 6. *MAINTENANCE AND RUNNING EXPENSES*

6.1 The Hirer shall properly keep and maintain the Equipment in good and serviceable condition.

6.2 The Hirer shall pay all expenses connected with the proper running of the Equipment as well as its housing, washing, and safe custody during the term of this Agreement.

## 7. *INSPECTIONS*

7.1 The Owner shall have the right from time to time during the term of this Agreement to inspect the Equipment at its absolute discretion without giving to the Hirer any reason for doing so.

## 8. *REPOSSESSION*

8.1 On breach or termination of this Agreement, the Owner shall have the right to repossess the Equipment at its absolute discretion. For such purpose the Hirer permits and authorises the Owner personally or by any of its employees, agents or independent contractors to enter at any time upon any building or premises where the Equipment may for the time being be stored or housed and to break open by force if necessary any such building or premises. The Hirer further agrees to indemnify the Owner or the Owner's employees, agents or independent contractors against any loss or damage suffered by them whilst exercising or attempting to exercise the rights conferred by this clause.

8.2 Upon repossession of the Equipment by the Owner or the Owner's employees, agents or independent contractors this Agreement shall be deemed to be terminated

8.3 Repossession of the Equipment shall not prejudice any claim or demand the Owner may have against the Hirer in respect of any matter or thing occurring prior to the date of such repossession.

9. *RESPONSIBILITY FOR DAMAGE*

The Hirer shall be responsible for damage to or loss of the Equipment by fire, accident or collision and for all damage to property, persons or animals caused by the Equipment.

10. *INDEMNITIES AND EXCLUSIONS OF LIABILITIES*

10.1 Subject to clause 10.2 and except as expressly provided to the contrary in this Agreement all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the Owner's obligations under this Agreement are excluded.

10.2 Where any Act of Parliament implies a term, condition or warranty in this Agreement and that Act prohibits provision in a contract excluding or modifying the application, exercise or liability under that term, conditions or warranty, such term, condition or warranty will be deemed to be included in this Agreement provided that the liability of the Owner for breach of the term, condition or warranty is limited to (at the Owner's election) the repair or replacement of the Equipment or the supply or substitute Equipment (or the cost of doing so) and in no event will any liability for damages be greater than the cost of the services being supplied under this Agreement.

10.3 Subject to clause 10.2, the Owner will not be under any liability to the Hirer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Agreement.

10.4 The Hirer is liable for and indemnifies the Owner against all liability, claims, loss, costs and expenses (including, without limitation, legal fees and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation,

assessment or similar process and whether incurred or awarded against the Owner and any environmental loss, cost, damage or expense) arising from or incurred in connection with the Hirer's hire and use of the Equipment or its breach of this Agreement.

10.5 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement. The Hirer must pay on demand any amount it must pay under an indemnity in this Agreement.

10.6 Subject to Clause 10.2, the Hirer agrees, prior to hiring the Equipment that it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment. The Owner gives no warranty that the Equipment is fit or appropriate for the Hirer's purpose.

11. *ACCIDENT OR BREAKDOWN*

The Hirer shall not be entitled to recover from the Owner any sum for any delay, inconvenience or loss of any kind due to any accident, breakdown or defect in the Equipment.

12. *RECOVERY ON DEFAULT OR NEGLIGENCE OF HIRER*

The Hirer agrees to pay to the Owner the full amount of any judgements recovered against the Owner and the full amount of any loss howsoever sustained by the Owner arising out of or resulting from the default or wilful neglect of the Hirer.

13. *FAILURE TO RETURN EQUIPMENT*

13.1 If the Hirer fails to return the Equipment at the expiration of the Term, the Term shall be automatically extended and Rent shall continue to be payable until the Equipment is back in the Possession of the Owner.

13.2 In addition to Clause 13.1, if the Equipment shall not be returned to the Owner on the date of expiration or earlier termination of this Agreement, the Owner shall, without prejudice to any other rights and remedies the Owner may have at law or in equity,

- be at liberty to forthwith notify the police of the circumstances and generally to take such action or proceeding as he may deem necessary for the recovery of possession of the Equipment.
14. *NOTIFICATION OF DAMAGE OR ACCIDENT*
- If any damage occurs to the Equipment or mechanical difficulty manifests itself in the Equipment, or any accident occurs in which the Equipment is involved, the Hirer agrees to forthwith notify the Owner by telephone and in writing giving full details in respect thereof and furnish such further information in relation thereto as the Owner may reasonably require. The Hirer shall obey such reasonable instructions of the Owner in respect of the repair, removal or disposal of the Equipment as the Owner may communicate to it. The Hirer shall not be deemed to have any authority to pledge the Owner's credit for any repairs to the Equipment or to create any lien in respect thereof.
15. *DUTIES OF HIRER*
- The Hirer warrants, covenants and undertakes that it will:
- a) not authorise, permit or suffer the Equipment to be used or operated by any other person than licensed, civil and trustworthy operator during the term of this Agreement;
  - b) not part with possession of the Equipment;
  - c) not remove or permit or suffer the Equipment to be taken outside of the State of Victoria without the prior written consent of the Owner;
  - d) comply with all relevant provisions of any statutes (and all rules or regulations made thereunder) in force in relation to the use or operation of the Equipment;
  - e) not sell, offer for sale, assign, mortgage, pledge, under-let or otherwise deal with the Equipment; and
  - f) display on the Equipment in a prominent and visible place the fact that the Equipment is owned by the Owner, the particulars of
- the Owner and the contact details of the Owner.
- g) Return the Equipment to the location which the Equipment was collected by the Hirer.
16. *REMOTE AREA HIRE CONDITIONS*
- 16.1 Definitions:
- 16.1.1 "Remote Area" is a location in excess of 50km from nearest Owner's branch
- 16.2 The repairs and maintenance for all Equipment operating in a remote area will be subject to a per kilometre charge, calculated by the Owner, both to and from the site nominated by the Hirer. No charge will apply for time on site and there will be no charge for the first 50km either way.
- 16.3 Multiple items of Equipment hired by the same Hirer on the one site will only be charged as one call out.
- 16.4 The Hirer otherwise remains responsible for daily maintenance and care of all Equipment in their possession.
- 16.5 If the Equipment breaks down in a Remote Area the Hirer will also pay the Owner the costs associated with any attendance to the site.
17. *DAMAGE WAIVER*
- 17.1 Subject to the Exclusions in clause 17.2, where Damage Waiver has been charged to the Hirer, the Owner agrees, upon prompt submission of a written Police Report from the Hirer and any other written or photographic evidence requested by the Owner, to waive its right to claim for loss of damage to the Equipment caused by fire, storm, collision, accident, theft or burglary. Such waiving of rights is subject to payment by the Hirer of an excess for either the loss of the Equipment or damage to the Equipment, being the greater of \$500.00 per item or 15% of the cost of repairs or the new replacement costs of the Equipment (as the case may be).
- 17.2 Expressly excluded from the above Damage Waiver is loss or damage as defined below:

- a) Damage due to misuse, abuse or overloading of the Equipment or any components thereof;
  - b) Wrongful conversion of the Equipment or any components thereof;
  - c) Loss or damage in contravention of the Conditions of this Agreement;
  - d) Loss or damage from use in violation of any statutory laws and regulations;
  - e) Glass breakage or graffiti;
  - f) Damage caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid and the like;
  - g) Theft of the Equipment unless reasonably locked and secured;
  - h) Loss or damage to Equipment during transport, except where transported by the Owner;
  - i) Loss or damage to items where the Hirer has elected not to pay a Damage Waiver premium and thereby has accepted liability for the Equipment; and
  - j) Loss or damage caused by the negligence of the Hirer.
- 17.3 Where the Owner determines in its discretion that one of the exclusions in clause 17.2 applies, Damage Waiver will not apply unless the Hirer is able to establish to the reasonable satisfaction of the Owner that the exclusion does not apply. The Hirer will provide the Owner with all the information requested by the Owner for the purpose of establishing whether one of the exclusions in clause 17.2 applies.
18. *TERMINATION*
- 18.1 This Agreement may be terminated by the Owner on the giving of seven (7) days written notice to the Hirer if any of the following shall occur:
- a) any breach or default by a party of any of the provisions of this Agreement;
  - b) any act of dishonesty or fraud by a party in the conduct of any of its businesses or in relation to any matter pertaining to this Agreement;
  - c) a party fails to fully comply with and observe all relevant governmental or judicial requirements pertaining to or governing the operation of its businesses or becomes no longer authorised or empowered to carry on the business activities contemplated by this Agreement; or
  - d) the bankruptcy, insolvency or liquidation of either party;
- 18.2 The Owner may terminate the Hire Agreement for any other reason by 24 hours notice.
- 18.3 The termination of this Agreement shall not affect or limit any rights or remedies of a party that accrued prior to the termination of this Agreement.
19. *MEDIATION*
- Any dispute or difference whatsoever arising in connection with this Agreement shall be submitted to mediation. The parties must first refer the Dispute to mediation by a Law Society approved mediator agreed by the parties or failing agreement appointed by the President or equivalent officer of the Law Society on the terms of the standard mediation agreement approved by the Law Society.
20. *WAIVER*
- Any failure by either party to enforce any provisions of this Agreement, or any forbearance, delay or indulgence granted by one party to the other party shall not be construed as a waiver of that party's rights under this Agreement, unless such waiver shall be by notice in writing signed by that party.
21. *OWNERSHIP OF EQUIPMENT*
- 21.1 The Hirer shall not assign, sub-licence or sub-contract this Agreement or any right, power or obligation under this Agreement without the prior written consent of the Owner.
- 21.2 The Hirer understands and accepts that in all circumstances the Owner shall retain title to the Equipment and

in no circumstances will it be deemed to be a fixture. The rights of the Hirer to use the Equipment are as bailee only.

22. *FURTHER ASSURANCES*

22.1 The parties to this Agreement shall execute all such documents and do all actions, matters or things that may be necessary or desirable to give effect to the provisions of this Agreement.

22.2 The person who signs this Agreement for and on behalf of the Hirer covenants with the Owner that they are authorised by the Hirer to enter into the Agreement on the Hirer's behalf and bind the Hirer to the Agreement.

22.3 The person who signs the Agreement in accordance with Clause 22.2 indemnifies the Owner against all losses, costs and claims incurred by the Owner arising out of the person so signing the Agreement not in fact having such power and or authority.

23. *SECURITY*

The Hirer charges, as Security for the obligations and liabilities of the Hirer under this Agreement, all of the Hirer's legal and equitable interest (both present and future) of whatsoever nature held in any and all real property, for the due and punctual payment and performance of those obligations and liabilities. If the Hirer defaults under this Agreement, the Hirer consents to the Owner taking such Security as it deems appropriate over the real property, until the default is remedied and all amounts outstanding under the Agreement are paid in full.

24. *CREDIT ACCOMMODATION*

If the Owner has provided the Hirer with credit accommodation, the Owner may review and withdraw the credit accommodation, without notice and at any time, upon breach of this Agreement. If the Owner withdraws the credit accommodation, the Owner will provide the Hirer with a statement requiring payment within 7 days, of any amount due and owing.

25. *TIME*

Time shall be of the essence.

26. *RIGHT OF REFUSAL TO HIRE*

The Owner may refuse to Hire Equipment to a Hirer at its absolute discretion.

27. *NOTICES*

Any notice may be given by either party by prepaid registered post addressed to the other party at its last-known address, or in the case of a company at its registered office, and any such notice shall be deemed to have been received two (2) days after the day on which it was posted. Proof that such notice was properly addressed, prepaid and posted shall be sufficient evidence of service.

28. *ENTIRE AGREEMENT*

This Agreement constitutes the entire Agreement between the parties and any prior arrangements, agreements, representations or undertakings are hereby superseded.

29. *SEVERABILITY*

If any provision of this Agreement is held by a court of law having jurisdiction in the matter to be invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provision, which shall be deemed to be deleted.

30. *INTERPRETATION*

In the interpretation of this Agreement wherever a party comprises two (2) or more persons the obligations and benefits contained in this Agreement shall be joint and several. References to the singular shall include the plural and vice versa. References to one gender shall include all other genders. Headings in this Agreement are for convenience only and have no legal significance.

31. *GOVERNING LAW*

This Agreement shall be governed by and construed according to the laws in force for the time being in the State of Victoria and the parties hereby submit to the jurisdiction of the courts in the State of Victoria.



Executed as an Agreement on the \_\_\_\_\_ day of \_\_\_\_\_ 2010

SIGNED by the authorised representative of the HIRER:

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SIGNED for and on behalf of the OWNER:

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