



**ASTRIS PME PTY LTD - ACN 630 886 887**

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## **1. HIRE AGREEMENT BETWEEN YOU AND US (ASTRIS PME)**

These Terms of Hire, together with:

- (a) any Credit application,
- (b) Guarantee,
- (c) each Hire Schedule or Quote provided to You by Us, whether signed or not; and
- (d) any special terms specific to the type of Equipment You have hired attached to Your Hire Schedule, make up the hire agreement (the 'Hire Agreement') between You and Us. The provision or acceptance of a Hire Schedule will not form a separate agreement between You and Us but will constitute part of this Hire Agreement. It is important that you read and understand all the terms and conditions of the Hire Agreement before hiring from Us. If you have any questions, please ask Us.

## **2. DEFINITIONS**

To assist, when we refer to the following terms in this document:

"Agent" is a person acting on behalf of either party

"Collection Date" is the date that we collect the Equipment from You, and when successfully completed that the "Off Hire"

"Equipment" means any equipment supplied by Us from time to time, including any associated or attached tools, accessories, and parts available for hire.

"Expected Off Hire Date" means the date that You advised Us at the commencement of the hire that You would no longer require the Equipment. This date is specified in the Hire Schedule.

"Hire Period" means for Equipment specified in a Hire Schedule the period described in clause 4.

"Hire Schedule" means the document provided by Us to You that outlines important information, including but not limited to, the Equipment hired, the hire rates, any other applicable charges, the expected end Date and the address for delivery.

"Long Distance Location" is a location in excess of 50 km from our nearest branch.

"Off Hire" is the process of you returning the Equipment to Us, or we have collected the Equipment from You.

"Off Hire Date" has the meaning set out in clause 5.4.

"Off Hire Procedure" is the process we follow when you notify Us that you wish to terminate this agreement.

"PMP" Is Our preventative maintenance program operated by Us (or Our agent) for all Our Equipment. The PMP involves regular attendance on site by Our (or Our agent) service and inspection teams to conduct Equipment servicing, general maintenance, and inspections where we deem such to be appropriate.

"PPSA" means the Personal Property Securities Act 2008.

"Quote" is a written offer to hire, from us to you, listing the Equipment and pricing relevant to the hire.

## **3. OUR HIRE COMMITMENT TO YOU**

We agree to hire You the Equipment in accordance with the Hire Schedule.

#### 4. THE HIRE PERIOD

4.1 The Hire Period commences when, either:

- (a) You take possession of the Equipment; OR
- (b) We deliver the Equipment to you, whichever occurs first.

4.2 The Hire Period is for an indefinite term and ends when the Equipment is back in Our custody and possession.

4.3 The Hire Period includes weekends and public holidays.

4.4 The Hire Period can only be changed if You request a variation and We agree to that variation in writing

#### 5. HOW WE CALCULATE YOUR HIRE CHARGES

5.1 You will pay Us for the hire of the Equipment at the hire charge rates set out in the Hire Schedule.

5.2 We reserve the right to charge for a minimum period of hire for certain types of Equipment, but We will advise You of any minimum hire periods before You commence the hire.

5.3 Except in the circumstances set out in clause 5.2, You will be charged for the hire of Equipment for the full Hire Period. In general, the minimum hire period is a two-week timeframe. We charge in full weeks, regardless of what day of the week hire starts, therefore You will need to pay for that week and the second week. Future billings will typically be done Fortnightly or Monthly, in advance.

5.4 After 2 weeks, if you notify us of your desire to cancel hiring the Equipment during the currently charged period, any period from the end of the hire period to when we collect the Equipment will not be charged to you. This will typically be done within 48 hours from the end of your hire period.

5.5 For the avoidance of doubt, you will continue to incur hire and other charges until You have returned the Equipment to Us, or we have collected it from you.

5.6 A specific customised offer may be made to meet Your objectives, and in this instance the circumstances set out in clause 5.4 may be voided.

5.7 The hire charges will commence from the time the Equipment leaves our premises and will continue until the date that the Equipment is back in our control and custody, referenced in Item 4.2 as the "Off Hire Date".

5.7 When You notify Us that you no longer require the Equipment and that the Equipment is available for collection we will commence the Off Hire Procedure, including arranging collection from You in the timeliest manner practicable by us.

5.8 For the avoidance of doubt, the Expected Off Hire date set out in the Hire Schedule is not considered to be Your notice to Us that the Equipment is available for collection.

#### 6. OTHER CHARGES

In addition to hire charges, you acknowledge that You will be required to pay:

- (a) any workshop costs incurred in preparing the Equipment to suit your needs;
- (b) the cost of delivery, collection or installation, as detailed in the Hire Schedule;
- (c) the cost of collection, disinfection and cleaning, as detailed in the Hire Schedule;
- (d) costs for extra cleaning fees, if the Equipment is not returned in clean condition;
- (e) if the Equipment has any damage or missing parts, charges for the repair of the Equipment;
- (f) any stamp duty or GST arising out of Hire Agreement;
- (g) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
- (h) charges for payment made by credit card, as detailed in the Hire Schedule;
- (i) the cost of providing operational guidance or training as requested;
- (i) charges in connection with the administration of Your account with Us, as detailed in the Hire Schedule.

## 7. PAYMENT

You must pay all fees, charges and costs that become due and payable under this Hire Agreement prior to the Equipment being delivered, or if the Equipment has already been delivered to You, within 7 days of us issuing You the Invoice (or Pro Forma Invoice). If You do not pay the invoice in full by the payment due date, We reserve the right to charge, in addition to any other costs recoverable under this Hire Agreement:

- (a) interest, calculated at 1.5% per month, on the total outstanding balance from the due date until the date payment is received by Us,
- (b) a late payment administration charge of \$25.00 per overdue invoice and
- (c) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering Our Equipment and any unpaid amounts under this Hire Agreement.

## 8. YOUR OBLIGATIONS TO US

8.1 This Hire Agreement is personal to You and so You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.

8.2 You agree that before accepting the Equipment, You:

- (a) have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use if for;
  - (b) You are aware of the design and performance specifications of the Equipment prior to entering into the Agreement; and
  - (c) You have had the opportunity to inspect the Equipment prior to entering into the Agreement.
- Subject to clauses 14.2 and 14.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purposes.

8.3 To help You stay safe during the Hire Period, You and Your employees, agents and contractors must:

- (a) set up and operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
- (b) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment;
- (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer;
- (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol; and
- (e) display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators of the Equipment.

8.4 It is important to take care of the Equipment during the Hire Period. You must:

- (a) clean, maintain and keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at Your own cost;
- (b) not in any way alter, modify, remove parts from, tamper with, damage or repair the Equipment without Our prior written consent; and
- (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.

8.5 At all times during the Hire Period, You must:

- (a) store the Equipment safely and securely and protected from theft, seizure, loss or damage;
- (b) insure the Equipment against theft or loss.

8.6 You will allow Us to enter Your premises and inspect the Equipment from time to time during the Hire Period and carry out Our PMP as we deem necessary on the Equipment. You can also request to conduct a joint inspection with Us at the end of the Hire Period.

8.7 Whenever You are moving the Equipment, you must ensure the safe loading, securing, and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor you engage) must observe any safety directions advised by Us and/or the manufacturer

of the Equipment to ensure its safe loading and handling.

8.8 You must use best endeavours to ensure the Equipment is not contaminated with any hazardous substances (including asbestos). You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, you must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment has not been properly decontaminated or is not capable of being decontaminated, you will be charged for the new replacement cost of the Equipment.

8.9 Where required, you will be responsible for arranging the re-testing and re-tagging of any Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s).

## **9. REMEMBER WE OWN THE EQUIPMENT**

9.1 We always retain full title to the Equipment during the Hire Period. Your rights to use the Equipment are as a bailee (hirer) only.

9.2 You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.

9.3 Risk in the Equipment passes on delivery to You for the Hire Period.

## **10. PPSA**

10.1 You acknowledge that this Hire Agreement gives rise to a security interest in Our favour and you consent to us effecting and maintaining a registration on the PPS register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and You agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any such security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

10.2 You undertake to:

(a) do anything (in each case, including executing any new document or providing any information) that is required by Us (i) so that We acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds, (ii) to register a financing statement or financing change statement and (iii) to ensure that Our security position, and rights and obligations, are not adversely affected under the PPSA;

(b) not register a financial change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and

(c) not register, or permit to be registered, a financial statement or a financing change statement in relation to the Equipment in favour of a third party without Our prior written consent.

10.3 For the purpose of section 20(2) of the PPSA, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPSA.

10.4 We may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way We determine in Our absolute discretion.

10.5 You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

**11. RETURN OF EQUIPMENT**

11.1 You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If you do not properly clean the Equipment, We will charge You an extra cleaning fee in accordance with clause 6(d).

11.2 We will arrange with You to collect the Equipment. You must ensure that the Equipment is made available at the notified time of collection and ensure it is kept safe and secure until the time of collection.

11.3 You agree to provide safe and unobstructed passage to Us or our Agent when the Equipment is collected from your possession. Any failure to comply with this will result in further charges, including but not limited to extended hire charges, second-attempt collection charges, etc

**12. WHAT TO DO IF EQUIPMENT BREAKS DOWN**

12.1 In the event that the Equipment breaks down or become unsafe to use during the Hire Period You must:

- (a) immediately stop using the Equipment and notify us;
- (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- (c) take all steps necessary to prevent any further damage to the Equipment itself; and
- (d) not repair or attempt to repair the Equipment without Our written consent.

12.2 Upon receiving notice from You under clause 12.1(a), We will:

- (a) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
- (b) not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment, unless the damage or fault has been caused through misuse, neglect, other user error, or any other event or occurrence outside our control.

**13. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED**

13.1 If the Equipment has broken down or become unsafe to use as a result of Your negligence, improper use or use other than for its intended purpose, or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for:

- (a) any costs incurred by Us to recover and repair or replace the Equipment; and
- (b) the hire charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced,

13.2 Provided that You pay the costs and charges described in clause 13.1, We will return the Equipment to You once it has been repaired or replaced, and You will continue to pay the hire charges for the remainder of the Hire Period.

**14. INDEMNITIES AND EXCLUSION OF LIABILITY**

14.1 Subject to clause 14.3, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions warranties, undertakings, inducements or representations whether expressed or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.

14.2 Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation that cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.

14.3 To the extent permitted by law Our liability is limited (at Our election) to:

- (a) in the case of Goods, the repair or replacement of the Goods or the supply of substitute goods (or the cost of doing so); OR

(b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

14.4 Subject to Our obligations under law and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the fees paid by You under this Hire Agreement.

14.5 Subject to clauses 14.3 and 14.4, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort, (including without limitation negligence), in equity, under statute, under and indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

14.6 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement.

## **15. WHEN THIS AGREEMENT TERMINATES**

15.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:

(a) that other party breaches and term of the Hire Agreement and fails to remedy the breach within 14 days of written notification of the breach; or

(b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation or ceases to carry on business.

15.2 These rights of termination are in addition to any other rights either party has under the Hire Agreement and do not exclude any right or remedy under law or equity.

## **16. RECOVERY OF THE EQUIPMENT**

If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 15, We may take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so. Upon receiving written notice from Us, You expressly consent to Us entering Your premises for the purpose of recovering Our Equipment.

## **17. EQUIPMENT**

17.1 As security for Your obligations and liabilities under this Hire Agreement, You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property;

17.2 Without limiting the generality of the charge in this clause, You agree, on Our request, to execute any documents and do all things necessary required by Us to register a mortgage security or other instrument of security over any real property and against the event that You fail to do so within a reasonable time of being requested. You irrevocably and by way of security, appoint any credit manager or solicitor engaged by Us to be Your true and lawful attorney to execute and register such instruments;

17.3 You agree to indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such charge and mortgage documents; and

17.4 You also consent unconditionally to Us lodging a caveat noting Our interest in any of Your real property.

## **18. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND / OR DEFECTIVE CONDITION**

If You collect or receive the Equipment (whichever is applicable) and find that it is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If You do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.

## **19. LONG DISTANCE MAINTENANCE**

19.1 If You hire Equipment for use at a Long-Distance Location, this clause 19 applies to You.

19.2 The PMP of all Equipment operating in a Long-Distance Location will be subject to a per kilometre charge both to and from the premises nominated by You, as specified by Us. There will be no charge for the first 50 km either way.

19.3 Multiple items of Equipment You hire from Us at the Long Distance Location will only be charged as one call out.

19.4 For the avoidance of doubt, You remain responsible for daily maintenance and care of all Equipment in accordance with clause 8, including but not limited to, daily checking, general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

19.5 If the Equipment breaks down at a Long Distance Location, You will also pay Us the costs associated with any attendance to the Long Distance Location in addition to any other costs payable under this Hire Agreement.

## **20. PRIVACY**

20.1 We take Your privacy seriously. We will comply with the Australian Privacy Principles and Our Privacy Policy, available at [www.astris-pme.com.au](http://www.astris-pme.com.au) in all dealings with You.

20.2 We may need to collect personal information about You, including but not limited to, Your full name and address, driver's license, credit card details, date of birth, NDIS participant number, credit or business history and other personal information. You consent to Us using Your personal information in order to:

- (a) fulfill functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness, or taking steps in accordance with this contract;
- (b) provide services to You
- (c) prevent theft of Our Equipment;
- (d) enter into contracts with You or third parties, and
- (e) market to You and maintain a client relationship with You; and
- (f) for any other purpose specified in our Privacy Policy.

20.3 You also consent to Us disclosing Your personal information:

- (a) to any credit provider or credit reporting agency for the purpose of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
- (b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.

20.4 You have the right to access the personal information We hold about you.

## **21. GENERAL**

21.1 Subject to clause 21.2, neither party will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilization, civil, commotion, riots, embargos, orders of regulations of governments of any relevant jurisdiction, fires, floods, strikes, government demanded lockdowns, lockouts or other labour

difficulties, shortages of or inability to obtain shipping space or land transportation.

21.2 Nothing in clause 21.1 will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen, or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

21.3 If any part of this Hire Agreement become void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severances of any other parts.

21.4 The Hire Agreement is governed by the laws of the State or Territory of Australia where the Hire Agreement is entered into by the parties and each party submits to the non-exclusive jurisdiction of the courts of that State or Territory.

21.5 The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order) apply to the hire of the Equipment unless agreed in writing by the parties.

21.6 Subject to clause 14.1 and 14.3, You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

21.7 From time to time, We may vary this Hire Agreement upon 30 days written notice to you, if these changes are to apply before the Expected Off Hire Date. If We intend to do so, We will give You 30 days written notice and clearly set out Our proposed amendments. If you have reasonable grounds to believe the changes will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 30 days of receiving Our written notice. Our latest version of this Agreement shall be published on Our website, [www.astris-pme.com.au](http://www.astris-pme.com.au)

21.8 Subject to clause 18, no delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.

## **22. CREDIT**

22.1 If we withdraw credit you may terminate this Hire Agreement immediately by giving Us written notice, however, if You do so You must:

- (a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
- (b) still pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is back in Our custody or possession.

## **23. AUTHORITY**

23.1 You warrant that the person signing any documentation which forms part of the Hire Agreement for and on behalf of You has Your authority to enter into the Hire Agreement on Your behalf and to grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it.

23.2 You agree to indemnify Us from any loss arising out of the person signing this Hire Agreement not in fact having such power and/or authority to enter into this Hire Agreement on Your behalf.

## **24. DISPUTE RESOLUTION**

24.1 If a dispute arises in connection with this Agreement, a party to the dispute may give to the other party to the dispute notice specifying the dispute and requiring its resolution under this clause ("Notice of Dispute").

24.2 If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other party, each party to the dispute must nominate 1 representative from its senior management



("Representative") to resolve the dispute.

(a) If the dispute is not resolved within 7 days of the dispute being referred to the Representative (First Period), the dispute must be submitted to mediation by a mediator acceptable to the parties, or absent agreement, by a mediator nominated by the President of the Law Society of New South Wales from time to time.

24.3 While any such dispute remains unresolved the parties agree to continue the performance of the Agreement to the extent that such performance is possible given the nature of the dispute, in particular You agree to make payments under this Agreement as they fall due and payable.

24.4 This clause does not prevent any party from obtaining any injunctive, declaratory or other interlocutory relief from a court, which may be urgently required, but otherwise no proceedings until mediation process completed.

## **25. SUCCESSORS AND ASSIGNMENT**

25.1 This Agreement shall inure to the benefit of and bind any successor in interest to a party to this Agreement.

25.2 You must not assign or encumber this Agreement or Your rights under this Agreement or delegate its performance here-under by subcontract or other instrumentality, in whole or in part, without the prior written consent of Us.

25.3 We may assign Our right under this Agreement to any subsidiary, affiliate or successor in interest upon notice to You of such assignment, in which case, We shall be released from any and all obligations arising under this Agreement.

## **26. NOTICES**

Any notice given under this Agreement:

- (a) must be in writing addressed to the intended recipient at the address last notified by the intended recipient to the sender. For the purposes of this Agreement, 'in writing' for all notices including originating process includes email;
- (b) must be signed by a person duly authorised by the sender; and
- (c) will be taken to have been given when left at or sent by registered post or by email transmission to the relevant address specified in Particulars Schedule. If delivery or receipt occurs on a day when business is not generally carried on in the place to which the notice is sent, or is later than 5pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

## **27. VARIATION**

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

Questions or Feedback? Please do not hesitate to contact us.

**August 2021**