



IT EASY TERMS OF AGREEMENT

This document specifies the Terms of Agreement that shall apply to all services and equipment rentals including those set out in any Work Order, Services Schedule or any other document.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply unless the context requires otherwise:

Agreement means any Schedules and accompanying Work Breakdown Structure referred to by the Schedule, and these Terms of Agreement.

Business Days means any day (Monday to Friday) on which trading banks are open for business in Sydney, excluding public holidays.

Business Hours are 08:30 – 17:30 Australian Eastern Standard Time on Business Days.

Client Equipment means any computer equipment or software owned, licensed, rented or leased by the Client, supported as part of this agreement or required to facilitate the provision of Services.

Commencement Date means the date for commencement of Services specified in the Services Schedule.

Commercial Product means any commercial product approved in writing by IT Easy and used by the Client.

Confidential Information means any information, oral or written or contained in any media including but not limited to information relating to:

- (a) all persons, services, strategies and plans (including but not limited to all research, technical information, knowledge and expertise, products and inventions, financial information and customer data) involved in the business of each party;
- (b) the Intellectual Property of each party;
- (c) the information of any third party whose information either party is bound to protect.

CPI means the All Groups Consumer Price Index applicable to Sydney kept by the Australian Bureau of Statistics and in the event of that index being discontinued or abolished, then such price index as the Australian Bureau of Statistics substitutes for it.

Extended Business Hours are 08:00 – 08:30 Australian Eastern Standard Time on Business Days, and 17:30 – 20:00 Australian Eastern Standard Time on Business Days.

Fees means the fees payable to IT Easy by the Client in accordance with The Services Schedule as agreed between the parties in writing from time to time, or otherwise payable by the Client to IT Easy, and may include one off fees, such as establishment or set up fees, and ongoing fees.

Facilities mean the computer (including hardware and software) and other facilities of IT Easy or Other Suppliers located at the Premises.

GST means goods and services tax under a New Tax System (Goods and Services) Act 1999 and any further amendments or variations thereto.

Informal Training means any impromptu training of not more than 10 minutes, performed in the process of performing Services.

Initial Term means the term as defined in Clause 2.

Intellectual Property includes all copyrights (including, without limitation) the right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works, trademarks, registered designs, inventions, patents, trade names, service marks, design rights, database rights, circuit layout rights, know-how, trade secrets, moral rights, goodwill and all registrations or applications to register any of the said items including all renewals and extensions of such rights regardless of where such rights arise in the world and all derivatives of any of the foregoing.

Managed Devices means the list of Servers, Personal Computers, Laptops, Switches, Routers, Hubs, Firewalls, Printers and other devices identified and listed in the Schedule or accompanying Work Breakdown Structure and their replacement devices.

Month means calendar month of each year.

Monthly Fee means the amount specified as Monthly Fee in the Fee Schedule of the Services Schedule.

Non-Business Hours means 08:30 – 17:30 Australian Eastern Standard Time on days other than Business Days.

Other Suppliers means any third party which provides services to the Client at the request of IT Easy.

Period is the time defined by start and end dates, between which services will be provided.

Premises means the premises of IT Easy or Other Suppliers referred to in the Schedule or in writing by IT Easy to the Client from time to time.

Quarter means each period of three months commencing on the 1 January, 1 April, 1 July, 1 October.

Rented Equipment means the devices listed in the section of the Schedule(s) identified as Rental.

Service Levels means the service levels specified in the Service Schedule, if any, relating to the Agreement.

Schedule means any schedule in relation to the provision of hosting, rental and other services entered into from time to time by the parties.

Services means services provided by IT Easy to the Client as specified and defined in the Schedule.

Severity Level 1 (described as "Critical Impact") means a problem with a high visibility to the client, having a major impact on the client's business operations, with no workaround available.

Severity Level 2 (described as "Major Impact") means a problem with a high visibility to the client,

having a major impact on the client's business operations, but there is a workaround available.

Severity Level 3 (described as "Moderate Impact") means a problem with a moderate visibility to the client, having a low impact on the delivery of services or to the client's business operations.

Severity Level 4 (described as "Minor Impact") means a problem with a low visibility to the client, have a low impact on the delivery of services or to the client's business operations.

Severity Level 5 (described as "No Impact / Information Only") means an alert or information for future action has been issued. There is no impact to the client.

Taxes mean all taxes, duties and charges imposed or levied in Australia.

Term means the Initial Term and any extension thereof in accordance with Clause 2 of this Agreement.

WBS means the Work Breakdown Structure document, if any, referred to in the Services Schedule, including the WBS Parameters Registry, WBS and WBS Definitions.

1.2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

Headings are for convenience only and do not affect interpretation.

The **singular** includes the plural and conversely.

A **gender** includes all genders.

Where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning. A reference to a **person** includes a body corporate, an unincorporated body or other entity and conversely.

A reference to a **clause** or **paragraph** is to a clause or paragraph in this **Agreement**.

A reference to any **party** to this **Agreement** or any other agreement or document includes that party's successors and permitted assigns.

A reference to any **agreement** or **document** is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this **Agreement**.

Mentioning anything after **include, includes or including** does not limit what else might be included.

A reference to any **legislation** or to any provision of any legislation includes any modification or re-enactment of it, any substitution for it and all regulations and statutory instruments issued under it.

2. TERM

2.1 The Initial Term of this Agreement will commence on the Commencement Date. Unless otherwise stated in a Schedule the Initial Term will be twelve (12) months from the Commencement Date. After the Initial Term this Agreement shall continue in force for successive periods of six (6) months unless either party shall have given not less

than forty-five (45) days' notice in writing to the other that the Agreement is to be terminated at the expiry of the Term.

2.2 In the case of the Schedule specifying a Trial Period, the client may terminate this Agreement at the end of the Trial Period by providing notice in writing of not less than 7 days. If no such notice is received before 7 days prior to the expiry of the Trial Period, this Agreement will continue in force for the remainder of the Initial Term and successive Terms as per clause 2.1.

3. SERVICE LEVELS

3.1 The Service Levels specified in the Services Schedule relating to this Agreement will apply to this Agreement. Services specific to a WBS item are defined in the "Pertinent Services" column of the Services Schedule.

3.2 Service Levels may be varied from time to time by agreement between the parties in writing, subject to the terms of this Agreement.

3.3 IT Easy will provide Services at IT Easy's discretion and under IT Easy's management within Business Hours.

3.3 IT Easy will provide technical and managerial services as per the pertinent Work Breakdown Structure within the parameters defined in the Work Breakdown Structure document, with the definitions of those items and parameters as per this Services Agreement.

3.4 Should a parameter value in the Services Schedule be different to the accompanying parameter value in the Work Breakdown Structure differ, the parameter value will be defined as the value in the Work Breakdown Structure.

Parameter Reviews

3.5 Should the Schedule itemise a review of a Parameter, the client may vary the Parameter Value up or down as specified in the Schedule at the frequency specified in the Schedule, with effect as specified in the Schedule.

(a) Should the Schedule be silent on the direction in which a Parameter value may be varied then the Parameter may only be increased, at the discretion of the client;

(b) Should the Schedule be silent on the frequency at which a Parameter value may be varied, then the Parameter may only be varied on a financial-quarterly basis with a minimum of 14 days notice;

(c) Should the Schedule be silent on the period of effect in which a Parameter value variation is to apply, then the Parameter variation will come into effect in the financial quarter immediately following the notice of variation providing that the notice of variation is sent a minimum of 14 days before the commencement of the next immediate financial quarter. In the event that the notice of variation is less than 14 days before the commencement of the next immediate financial quarter then the variation will come into effect in the month after the commencement of the next financial quarter.



- 3.6 IT Easy may provide additional Services (not provided for in the Schedule) within Business Hours upon request.
- 3.7 IT Easy will provide additional Services (not provided for in the Schedule) within Extended Business Hours and Non-Business Hours as agreed by both parties from time to time.
- 3.8 IT Easy has no liability for failure to achieve the Service Levels or generally for any failure which results from matters outside its control including but not limited to matters related to
- (a) equipment or cabling owned or leased or otherwise in the control of the Client affecting the provision of the Internet, networking and/or other services
 - (b) the provision of the services not controlled by IT Easy;
 - (c) operational and environmental conditions under which the services are used by the Client; or
 - (d) failure by the Client to provide due care of the equipment or cabling.
- 3.9 IT Easy reserves the right to make a reasonable charge to the Client if IT Easy or Other Suppliers respond to a request made by or on behalf of the Client where Service Levels are not being achieved and demonstrate that the failure to achieve the Service Levels was not due to a matter for which IT Easy is responsible.
- 3.10 Compensation for any failure to meet Service Levels is limited in accordance with Clause 17.
- 3.11 IT Easy will use best endeavours to respond to client events pertaining to the Services depending on the severity of the event.
- (a) IT Easy will use best endeavours to respond within 4 business hours for Severity 1 events;
 - (b) IT Easy will use best endeavours to respond within 8 business hours (one business day) for Severity 2 events;
 - (c) IT Easy will use best endeavours to respond within 16 business hours (2 business days) for Severity 3 events;
 - (d) IT Easy will use best endeavours to respond within 24 business hours (3 business days) for Severity 4 events;
 - (e) IT Easy will use best endeavours to respond within 5 business days (1 business week) for Severity 5 events.

4. SUBCONTRACTING

4.1 IT Easy shall be entitled to subcontract to one or more third parties some or all of its obligations to provide Services under any Schedule but IT Easy shall remain liable to the Client for the performance of all Services in accordance with this Agreement.

5. PRODUCTS PURCHASED

5.1 Ownership of any product purchased from IT Easy will not pass to the client and will remain with IT Easy until such time as the product and all related services have been paid in full.

6. EQUIPMENT RENTED

6.1 The Rented Equipment must only be used for a business carried on by the Client.

6.2 The Rented Equipment remains the property of IT Easy. Any accessories, parts or other items supplied with or for the equipment remain the property of IT Easy.

6.3 IT Easy is allowed to act in the Client's name and on the Client's behalf to take any steps necessary to protect IT Easy's interests in the Equipment.

6.4 The Client must keep the Rented Equipment in the same good condition as at the commencing date of this contract.

6.5 The Client is not allowed to alter the Equipment unless IT Easy agrees in writing.

6.6 The Client cannot sell the Equipment or any part of it. The Client cannot give possession of the Equipment to any other party without the prior written consent of IT Easy.

6.7 The Client cannot attempt to give an interest in the Equipment to anyone as security for the payment of repairs or other costs.

6.8 The Client must allow IT Easy from time to time to enter any of your properties where IT Easy believes the Equipment is for the purposes of inspecting, testing or taking repossession of it.

6.9 The Client must pay IT Easy for any loss of, damage to or destruction of the Rented Equipment even if it is not caused by the Client. The Client must notify IT Easy immediately of any damage to the Rented Equipment.

6.10 If any of the Rented Equipment is lost, stolen, or damaged beyond economic repair, the Client will pay to IT Easy the sum of the amounts calculated under clause 19 (other than the value of the Rented Equipment) in so far as those amounts relate to those Rented Equipment; and the then present value (calculated using the discount rate referred to in clause 19) of the residual value of those Equipment assumed by IT Easy in calculating the return at the inception of the Agreement.

6.11 Upon receipt of such monies the Agreement will terminate with respect to that Rented Equipment; the renting of the remaining Equipment will continue at a new rent, commencing on the next occurring payment date, being the rent otherwise payable less the proportion of rent payable in respect of the Equipment which has been lost, stolen or damaged, as the case may be.

7. FEES AND PAYMENTS

7.1 IT Easy may, at its discretion, pro-rate the first invoice to align billing periods with calendar months.

7.2 All Fees and Rates are subject to an annual escalation of the greater of 5% or the annual percentage increase in CPI (calculated on the CPI quarter preceding the anniversary of the Commencement Date each year with an effective date of the 1st business day after that anniversary).

7.3 The Monthly Fee shall be payable in advance.

7.4 Service Fees other than the Monthly Fee shall be invoiced in arrears with 14-day terms or as agreed in writing by both parties from time to time.

7.5 Products shall be payable on order.

7.6 IT Easy may send invoices to the Client in any manner in which notices may be served pursuant to this Agreement or by electronic means.

7.8 Where Fees are paid and the transaction is dishonoured the Client will pay to IT Easy on each such occasion a fee of \$20.00 plus any fees payable by IT Easy to any financial institution in respect of the transaction. IT Easy may make reasonable increases in such fees from time to time on giving prior notice in writing to the Client.

7.9 Payments received will be assigned to invoices as per IT Easy's discretion.

7.10 Payments via credit card will incur an additional 4% service fee, excluding GST. If appropriate a separate invoice will be supplied.

7.11 IT Easy may charge, and the Client authorises IT Easy to charge at its discretion, the Credit Card nominated by the client on an Order Form for any and all charges incurred during the Term.

7.12 Fees must be paid in full and on time even if the Equipment or Service is, for any reason, not usable, and whether or not the Client claims a counterclaim, set-off or other right against IT Easy or any other person. In addition to the Fees payable as stated in the Schedule, if the Commencement Date is not the First Payment Date, Fees are payable for the period from the Commencement Date to the First Payment Date of the amount which will IT Easy will advise which will be based on a daily rate calculated as the relevant proportion of the Fee. The client's obligation to pay the Fees and any other amounts payable under this contract is absolute and unconditional. Time is of the essence of the client's obligation in this clause.

7.13 Hourly rates

Unless otherwise stated in the Services Schedule, Services will be charged in units of one quarter of an hour, at the following hourly rates.

(a) Services delivered during Extended Business Hours will be charged at the rate of 1.5 x Business-Hours Hourly Rate.

(b) Services delivered during Non-Business Hours will be charged at the rate of 2 x Business-Hours Hourly Rate indicated on the Order Form.

(c) Within any Month, providing that the total number of hours of services does not exceed the bundled number of hours purchased, services that are delivered during Business Hours will not be subject to any additional charge.

(d) Within any Month, once the total number of hours of services meets the bundled number of hours purchased, additional services delivered during Business Hours will thereafter for the

remainder of that Month be charged at the rate of the Business-Hours Hourly Rate.

8. TAXES

8.1 Fees do not include GST unless specifically stated otherwise. The Client will pay to IT Easy an additional amount equivalent to the GST payable by IT Easy in respect of supply of the Services.

9. INTEREST

9.1 IT Easy may charge interest on all overdue amounts at 2% per annum over the annual rate of interest charged by IT Easy's principal banker on overdrafts in excess of \$100,000.

10. REASONABLE USE POLICY

10.1 The Client shall ensure that users of the services are sufficiently trained to use the Client Equipment to a minimum of reasonable intermediate business level of competence.

10.2 User training will be considered additional Services.

10.3 The costs detailed in the Services Schedule are based on the number of users and frequency and degree of usage of the Client Equipment and resources and IT Easy reserves the right to increase the Fees if the number of users or frequency of usage or degree of usage increases during the term of this Agreement.

11. INTELLECTUAL PROPERTY

11.1 Each party hereby grants to the other a non-exclusive licence for the Term to use, copy and reproduce any material forming part of its Intellectual Property for the sole purpose of provision or use of the Services under this Agreement.

11.2 Except as expressly provided in this Agreement neither party will acquire any right or interest in the Intellectual Property of the other or any Intellectual Property belonging to third parties.

11.3 Each party undertakes that for a period of 12 (twelve) months after the termination of this Agreement or at any time whilst IT Easy provides Client with Services, neither party nor any of their subsidiaries shall directly or indirectly either for itself or as an agent for another party, persuade, induce, solicit, encourage or procure any present or past employee of the other party to terminate his/her employment with that other party. Should a party breach this undertaking, it agrees to pay to other party upon such breach an amount equivalent to one half of the gross annual salary (including any commissions or other payments) made to such employee or an amount equivalent to the gross annual payment made to such consultant as calculated immediately prior to the breach.

12. CONFIDENTIAL INFORMATION

12.1 Each party will:

(a) keep the Confidential Information of the other party confidential and in no event exercise less than reasonable care in maintaining the confidence of such information and shall not disclose it or make it available directly or indirectly to any

third party (subject to disclosure permitted under Clause 12.2).

(b) use the Confidential Information solely for the purpose of provision or use of the Services.

12.2 Each party may only disclose the other party's Confidential Information to its officers, employees and permitted subcontractors who have a need to know such Confidential Information for the purposes of this Agreement (and only to the extent that each has a need to know) and who have undertaken to maintain the confidentiality of the Confidential Information in accordance with this clause or, where reasonably necessary, to its lawyers or accountants.

12.3 Each party will immediately notify the other of any information which comes to its attention regarding any actual or potential breach of confidentiality, disclosure or unauthorised use of the other party's Confidential Information and take all steps to prevent the suspected breach.

12.4 Upon demand and upon termination or completion of this Agreement each party will deliver to the other party all of the other party's Confidential Information in its possession which is capable of being delivered and delete, erase or otherwise destroy any of the other party's Confidential Information contained in computer memory, magnetic, optical, laser, electronic or other media in its possession or control which is not capable of delivery to the other party except to the extent that records are obliged by law to be maintained or records are required in respect of any outstanding claim between the parties.

12.5 The obligations of confidentiality under this clause do not extend to information that (whether before or after the date of this Agreement):

- (a) was rightfully known to or in the possession or control of the recipient prior to its receipt from the other party and which is not subject to an obligation of confidentiality on the recipient;
- (b) is received by the recipient in good faith from a third party without an obligation to keep such information confidential;
- (c) is public knowledge (otherwise than as a result of a breach of confidentiality by the recipient or any of its disclosees)
- (d) is independently developed by one party to this agreement without the use of the other party's Confidential Information, or
- (e) is required to be disclosed by a governmental agency or law so long as the party to this agreement promptly provides the other party with written notice of the required disclosure.

13. SECURITY

13.2 The Client is responsible for maintaining the secrecy and confidentiality of all log-ins and passwords and is liable for all use of the Services accessed through such log-ins and passwords, whether authorised by the Client or not.

13.3 The Client must notify IT Easy immediately if it suspects any breach of security such as loss, theft or unauthorised disclosure or use of its log-ins or passwords.

14. SUBSTITUTION OF THIRD PARTY SERVICES

14.1 The Client agrees that IT Easy may, subject to prior notification and approval if any expenditure is associated, make arrangements at any time (on giving reasonable notice to the Client in cases where any disruption would otherwise be caused to the Client) for any of the Services to be obtained from another third party in substitution for a third party from whom they were previously obtained.

15. BACKUP RECORDS

15.1 The Client is solely responsible for maintaining complete backup records of all data and information relating to its business including any information provided to the Client by IT Easy or any third party.

16. INDEMNITIES AND WARRANTIES

16.1 Each party will at all times indemnify the other party and its officers, employees and agents (those indemnified) against all expenses, losses, damages and costs (including legal fees) incurred by those indemnified as a result of:

- (a) any injury to or death of any person caused by an act or omission of the first party or its officers, employees, agents or subcontractors;
- (b) any damage to property of any type caused by any act or omission of the first party or its officers, employees or agents or subcontractors;
- (c) negligence or wilful misconduct of the first party or its officers, employees, agents or subcontractors;
- (d) a breach of the Agreement by the first party or its officers, employees, agents or subcontractors, or
- (e) use of Services by the first party (including the reproduction, broadcast, transmission, communication or making available of any material, data or information of any type).

16.2 The Client indemnifies IT Easy against all claims and costs arising out of or in connection with the Client's use of the Client Equipment, including its use, operation and keeping of them, and any loss of, damage to, or destruction of the Client Equipment, and any loss damage or destruction caused by the Client Equipment.

16.3 The Client must take out and keep current insurance policy in respect of the Rented Equipment and provide IT Easy with details of the insurance and, if reasonably required, a copy of the policy.

16.5 The Client must follow the terms and conditions required by the insurance policy so that the insurance company will honour any claim.

17. LIMITATION OF LIABILITY

17.1 Subject to any warranties expressly stated in this Agreement and those warranties which cannot be specifically excluded under legislation,

IT Easy makes no warranty to any person in relation to the provision of Services and all other terms, conditions, warranties, undertakings, inducements or representations, whether express or implied, or implied under statute (including the Trade Practices Act 1974 and the Sale of Goods Act of each State) are hereby expressly excluded.

Neither party shall be liable in any circumstances for economic indirect or consequential loss, including loss of profits, data or goodwill or anticipated savings, even if that party had been advised of the possibility of such loss.

17.2 The Client acknowledges that risks, delays and failures in Internet access will occur due to factors outside of IT Easy's control, the open nature of the Internet as a medium, communication loads, failures and other characteristics of the Internet and the behaviour of other users. Without limiting Clauses 17.1, 17.3, 17.4 and 17.5 both parties excludes all and any responsibility for such risks beyond their reasonable control.

17.3 Where applicable, IT Easy does not warrant that the Client or its customers will have continuous access to the Services. Without limiting Clauses 17.1, 17.2, 17.4 and 17.5 IT Easy will not be liable in the event that Services are unavailable to the Client or its customers due to computer downtime attributable to malfunction, upgrades or preventative or remedial maintenance activities.

17.4 Without limiting Clauses 17.1, 17.2, 17.3 and 17.5 IT Easy will not be liable for any loss or damage of any kind caused by malicious attack on its hardware or software made from within or outside its business.

17.5 To the extent that warranties are implied under legislation in respect of the provision of Services, IT Easy's liability for any loss arising as a result of a breach of such warranties, including any economic or consequential loss which may be sustained or incurred shall be limited to:

- (a) in the case of goods:
- (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired;
- (b) in the case of services:
- (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

17.6 Without limiting Clauses 17.1 to 17.5 inclusive and notwithstanding any other provision of this Agreement, other than in respect of any losses due to IT Easy's wilful misconduct IT Easy's total cumulative liability under or in any way connected with this Agreement or the provision of the Services no matter how arising whether in contract, tort or otherwise shall be limited, to the extent permitted by law, to the Fees paid by the Client to IT Easy in

the 12 months period prior to the date the liability arose.

18. TERMINATION

18.1 Either party may immediately (or with effect from any later date it may nominate), terminate this Agreement by written notice to the other party if:

- (a) after advice by IT Easy of increases to fees to be charged outside of the increases provided for in the Agreement, agreement between the parties cannot be reached, as identified in Clause 2;
- (b) the other party materially breaches the Agreement and (if such breach is capable of being remedied) fails to remedy such breach within ninety (90) days of receipt of notice from the first party specifying the breach and requiring it to be remedied,
- (c) any step is taken to appoint a receiver, receiver and manager, official manager, controller, liquidator, provisional liquidator, administrator or other similar person of the whole or any part of the other party's assets, undertaking or business;
- (d) any step is taken by a mortgagee or chargee to enforce a security held in respect of the whole or any part of the other party's assets, undertaking or business;
- (e) any step is taken to enter into any scheme of arrangement between the other party and its creditors;
- (f) any thing with the same or similar effect to paragraphs (b), (c) or (d) happens under the laws of any overseas jurisdiction;
- (g) the other party becomes insolvent or is otherwise unable to pay its debts as and when they become due;
- (h) if IT Easy's right to provide or use any of the Services is terminated by a third party for any reason whatsoever and in that event IT Easy shall not be liable for payment of any compensation or damages to the Client.

18.2 IT Easy may immediately (or with effect from any later date it may nominate) terminate this agreement if the Client does not pay any Fees due under this Agreement by their due date.

19. CONSEQUENCES OF TERMINATION

19.1 The expiry or termination of this Agreement will not affect or limit any accrued rights of the parties.

19.2 On expiry or termination of this Agreement the Client will pay to IT Easy the outstanding Fees and other moneys due by the Client to IT Easy including Fees payable for the balance of the Term within 14 days of the date of expiry or termination.

19.3 The operation of Clauses 11, 12, 16, 17 shall survive termination of this Agreement.

19.4 The client must return the Rented Equipment to IT Easy, in good condition and with any spare parts, together with all software, manuals, computer discs and other items supplied with the Rented Equipment, and pay for the cost

of delivery. The Equipment must be returned to an address nominated by IT Easy within Australia.

19.5 It is the Client's responsibility to erase all Client data from any computers before returning the Equipment.

19.6 The Client will also be liable to pay IT Easy the sum calculated as follows ("payout amount"): any Rent owing which the Client has not paid IT Easy plus the present value of the Fee which is still to fall due (as liquidated damages for IT Easy's loss of bargain) plus if the Equipment has not been returned to IT Easy, the value of the Equipment as though it was in good condition. The present value of an amount is calculated by applying a discount (equal to the annual rate of interest charged by IT Easy's principal banker on unsecured rental facilities, less 2%) to that amount.

19.7 The Client's liability to IT Easy under this clause does not limit any other legal action for breach of this contract.

19.8 Upon acceptance by IT Easy of the Client's repudiation of this contract, IT Easy will take all reasonable steps to mitigate its loss by attempting to re-hire the Equipment for the balance of the Term. IT Easy will give the Client credit for the amounts which IT Easy will receive from re-hiring the Equipment. Such credit (which is payable upon re-hire of the Equipment) is only payable after the Client has paid the full payout amount. If the Equipment cannot be re-hired within 2 months after first being offered for re-hire, then the amount of credit will be deemed to be zero.

19.9 If the Agreement is terminated prior to the end of the Initial Term, the Client must pay IT Easy the payout amount referred to in clause 19.6 plus a sum equal to three times the monthly Fee.

20. FORCE MAJEURE

20.1 Except for the Client's obligation to pay Fees to IT Easy, neither party shall be liable for any failure to perform due to causes beyond its reasonable control. If any such force majeure event continues for a period of more than 60 days then the second party may terminate this Agreement on giving written notice to the first party (being subject to the force majeure event).

21. AMENDMENT

21.1 The terms of this Agreement shall not be varied except by agreement in writing signed by the parties.

22. ASSIGNMENT

22.1 IT Easy may assign its rights under this contract either absolutely or by way of security.

23. NO WAIVER

23.1 A waiver by a party of a provision or a right under this Agreement is binding on the party granting the waiver only if it is given in writing and is signed by the party or a person authorised by the party granting the waiver.

23.2 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

23.3 Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

24. SEVERABILITY

24.1 Any provision of this Agreement will be read down to the extent necessary to prevent that provision or agreement being invalid, voidable or unenforceable in the circumstances.

24.2 Any provisions which are invalid in law will be ineffective but will not make the other provisions in the agreement invalid.

25. ENTIRE DOCUMENT

25.1 This Agreement constitutes the entire agreement of the parties about their subject matter and supersedes any previous understandings or agreements on that subject matter. Each party acknowledges on entering into this Agreement that it:

(a) has not relied on any statement made or conduct engaged in by another party or any person on behalf of another party other than the statements set out in this Agreement; and

(b) was not influenced or induced to enter into this Agreement by any statement or conduct of the type referred to in paragraph (a).

26. FURTHER ASSURANCES

26.1 Each party will promptly at the request of the other party sign and deliver such further documents and do such further acts as shall be reasonably necessary to give full effect to this Agreement and the transactions pursuant to or contemplated by this Agreement.

27. NOTICES

27.1 Any notice given under this Agreement:

(a) must be in writing addressed to the intended recipient at the address shown in this Agreement or the address last notified by the intended recipient to the sender;

(b) must be signed by a person duly authorised by the sender;

(c) may be delivered or sent by prepaid post to such an address or sent by facsimile to the facsimile number shown in this Agreement or the facsimile number last notified by the intended recipient to the sender or the then current facsimile number of the recipient;

(d) will be taken to have been given when delivered to or received at such address and where notice is sent by pre-paid post will be deemed to have been delivered 3 Business Days after the date of posting if it has not been received prior to that time;

(e) in the case of facsimile transmission will be taken to have been given when the transmission has been completed except when the sender's machine indicates a malfunction in the transmission or the recipient immediately notifies the sender of an incomplete transmission, in which case the facsimile transmission shall be deemed not to have been given, and



(f) where any notice is given or otherwise deemed to be given outside of Business Hours in the place where the notice is given, then such notice shall be deemed to have been received at the commencement of Business Hours on the next Business Day in that place.

28. GOVERNING LAW

28.1 This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of Courts exercising jurisdiction therein.

29. DISPUTE RESOLUTION

29.1 The parties agree to negotiate in good faith before undergoing and completing mediation via an Mediation Agent authorised by the laws New South Wales prior to commencing legal proceedings.

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