

DEFINITIONS

“LHD”, “we”, “our” or “us” or “Company” or “Companies” means LIGHTHOUSE DIGITAL LIMITED (LHD) it’s subsidiaries, operating divisions, assignees, successors and any subcontractor engaged by the company to provide the services

“Customer”, “Customer’s”, “You” and “Your” means the person(s) or legal entity named overleaf. If there is more than one and/or it means each of you separately and all of you jointly and severally.

“Agreement” or “Equipment and/or Service Agreement” means the Equipment and/or Service Agreement, its Schedules and terms and conditions, any other terms and conditions specifically relating to the various Equipment and/or Services provided, and all other documents forming part of the Agreement between the Customer and the LHD.

“Business Day” means any day of the week excluding a Saturday or a Sunday and any public holiday when trading banks in New Zealand or Australia are closed for business.

“Equipment”, “Service” or “Services” means the equipment and software (if any) together with any services required by the Customer under the Agreement. The Customer acknowledges that any consumables to be supplied by the LHD shall be charged separately.

“Initial Term” means the minimum term of the contract as stated on the front page of the Agreement.

“Premises” means those premises described on the front page of the agreement.

EQUIPMENT AND/OR SERVICE AGREEMENT

The Customer agrees to rent or purchase the Equipment and/or Services on the terms of the Agreement.

TERM, END OF TERM & TERMINATION

1. The Equipment and/or Service agreement will run for the minimum term listed on the front page of this document (the “AGREEMENT TERM & TYPE”) and following the stated term, the Equipment and/or Service Agreement may be cancelled by either party giving not less than 3 months’ written notice to the other, however if no notice is given then the Equipment and/or Service agreement will automatically renew for a further period of 12 months.

1.1. When this Agreement ends (for whatever reason) you agree to return the Equipment to us at your cost, to our registered office at your expense. Failure to do so will result in us invoicing you for the Equipment cost, based on the then current price list set by the LHD for that type, model and age of equipment.

1.2. If you have chosen the **Lease2Own Option**, upon full payment of all monies payable and fulfilment of all terms and conditions at the expiry of the term, you have the option of either requiring us to retake possession of the Equipment or you may purchase the Equipment upon payment of three months monthly payment amount or such amount as agreed between you and the LHD in writing.

1.3. If you have chosen the **purchase option**, you will be required to pay part or all the purchase price in advance, or, if agreed, a minimum deposit, is due at the time of this agreement being signed, and the balance is due immediately after installation is completed. A purchase includes the warranty as shown on the agreement. The warranty is not transferable and is only for fair wear and tear and does not include any failure caused by abuse, liquids, electrical surges, or pest damage.

PAYMENT

2. You agree to pay the payments (plus GST) as set out in the Agreement to us monthly with the first payment due on the First Payment Date, and thereafter each month during the Term, or if that day is not a Business Day the following Business Day. Time is of the essence in your obligations under the clause as notice and late payment fees will apply (these are outlined in clause 52).

3. The Customer must make payment monthly in advance by direct debit to the account nominated by the LHD. Any different type of payment must be agreed by company.

4. The Customer may not withhold payment or make any deductions from any amount owing to the LHD.

5. The Customer acknowledges that where any deposit is required by the LHD as a part of payment for Equipment and/or Services such deposit is not refundable for any reason and the Customer forfeits the deposit in the event of terminating the Agreement, regardless of the timing of such

termination. If said termination does occur the LHD has the right to go onsite at any time and remove and Equipment and/or Services which they have installed or setup.

6. Full property (being legal and equitable title) in the Products shall remain with LHD until LHD has received full payment for the Products and all other amounts owing to the customer from any cause have been paid in full.

Default

8.1 Any payment that is in arrears shall bear interest at the rate of 2% per month, which shall continue to accrue after judgment.

8.2 The LHD shall have the right to apply all payments received by it from the customer towards any indebtedness of the customer as the LHD thinks fit.

6. OWNERSHIP – Equipment Rental

6.1. The Equipment remains our property at all times. You only have a right to use the Equipment for the Term and no right to purchase the Equipment. You must protect and make clear to others our interest in the Equipment.

6.2. You must not part with the possession of the Equipment (other than for maintenance or repair with an authorised repair technician of our choice or discretion) or alter the Equipment in any way.

6.3. We may act in your name, or on your behalf, to take any steps we deem necessary to protect our interest in the Equipment.

6.4. You must get our consent before the location of the Equipment is changed from the Premises

6.5. You must only use the Equipment in the manner and for the purpose for which it was designed. Opening the cases will be considered abuse and is strictly prohibited.

6.6. You must not purport to assign, sublet, bail, mortgage, pledge, grant a security interest in, sell, dispose of, or otherwise deal with the Equipment to any third party.

6.7. We have the right to enter your premises at any time to exercise our right under this Agreement, including removal of the equipment

6.8. Replaced Components become part of the Equipment once they have been exchanged for any reason;

6.9. If additional or different Equipment is provided to you, it will be on the same terms and conditions as Contained in the Agreement and you must pay all additional Fees thereof

RISK AND USE OF EQUIPMENT

6. The Customer must fully insure the Equipment from the time of delivery as risk passes at time of delivery.

7. The Customer must protect the Equipment, and not damage, deface, alter or tamper, mortgage or otherwise use the Equipment for any security. If the Equipment includes a SIM card, this may only be used with the Equipment supplied by the LHD and the Customer must not alter it in any way.

8. For purchases, the LHD will provide repair or replace the equipment included in this Agreement, where the fault is as result of a failure during the warranty period and due to fair wear and tear. Where the equipment fails outside of the warranty period the Customer will be liable for the replacement cost including parts, labour and any other charges incurred in repairing or replacing the faulty equipment.

6. The LHD may charge the Customer for the cost of repairs in the event the Equipment are damaged, by way of liquid damage, abuse, pest infestation, electrical surges or any other issue excluding fair wear and tear. The LHD may replace or repair any part of the Equipment at their discretion and the Customer is liable for any charges.

7. You acknowledge that the Equipment supplied under this Agreement is being acquired for business purposes only and accordingly the provisions of the Consumer Guarantees Act 1993 do not apply to the Equipment and any Services provided under this Agreement. You also acknowledge that this Agreement is not a consumer credit contract as defined in the Consumer Contracts & Consumer Finance Act 2003 and accordingly your rights and obligations under this Agreement will not be regulated by that Act.

NO WARRANTIES FOR INTENDED USE OF EQUIPMENT

12.1 The LHD gives no warranties as to the quality of the Products or as to their fitness for any purpose, even if that purpose was made known to the LHD and the Customer acknowledges acceptance by the signing of the Acknowledgment of delivery and/or if there have not advised the LHD of any issues within 30 days of delivery.

12.2 In particular, the LHD does not warrant that the Products will provide an uninterrupted or fault free service.

The conditions implied by sections 16 and 17 of the Sale of Goods Act 1908 or by trade usage are excluded from the contract between the customer and the LHD.

PPSA

6. The Customer grants a security interest to the LHD in each and every part of the Equipment as security for payment and for any other amounts owing by the Customer to the LHD from time to time, and for the performance by the Customer of all the Customer's obligations to the LHD from time to time, ("Customer's indebtedness and obligations"). For the purposes of section 36(1)(b) of the Personal Property Securities Act 1999 ("PPSA"), and to ensure maximum benefit and protection for the LHD by virtue of section 36(1)(b)(iii) of the PPSA, the Customer confirms and agrees that the Customer intends to and does grant to the LHD, as a security for the Customer's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("Excepted Property"):
 - 6.1. In or to which the customer has rights; and
 - 6.2. Which has not been supplied by the LHD to the Customer,
 - 6.3. Other than any Excepted Property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by the company to the Customer.
7. The LHD may allocate amounts received from the Customer in any manner it determines, including in any manner required to preserve any purchase money security interest it has in Goods.
8. The Customer waives the right, pursuant to Sections 121, 125, 129, 131 and 132 of the PPSA, to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under this Contract.
9. The Customer agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Customer's rights under sections 121, 125, 129, 131 and 132 of the PSA.

ASSIGNMENT

10. You may not assign your rights under this Agreement to any third party without our prior written consent, which we may grant or withhold at our absolute discretion.
11. You may apply to assign your rights under this Agreement by completing and submitting the LHD's "Assignment Agreement" standard form. Assignment is subject to the creditworthiness of the Assignee and at our discretion.
12. We reserve the right to charge an additional fee to cover the administrative costs of assigning an existing Agreement.
13. The LHD may assign its rights, at its sole discretion and at any time and without notification to the Customer

INSTALLATION, SERVICE, MAINTENANCE OF EQUIPMENT & SERVICE DELIVERY

6. We will carry out the equipment installation, service and maintenance at a time between the hours of 0830 and 1700 hours Monday to Friday except public holidays (Normal Working Hours) with all reasonable skill and care and perform the work in a workmanlike and professional manner. We reserve the right to charge for services outside normal working hours and at penalty rates.
7. You acknowledge and agree that all cutting of ways, excavation, cable trenching, provision of 240 volt mains power connections, cable installations, alternative to existing equipment, interfacing with fire, heat or detection systems, any maintenance costs and lifting equipment, skips or any other items, required to undertake the installation are not included in the pricing unless specified in this Agreement.
8. You agree to ensure that the Premises must at all times be a safe working environment.
9. Unless you have notified us in writing within 30 days of Installation, you deem that the system (or part of) has been installed to your specifications, or prior to this by signing an Acceptance Certificate, or Acknowledgement of Delivery
10. Should you rent the product, then any service shall only be by way of courier swap-out. Should you require onsite service, this will be charged at the normal rates in place by the LHD
11. We may substitute products or equipment offered as part of the Installation with technically equivalent or superior products provided you have been informed.

Should we be delayed in carrying out our work by delays caused by acts or omissions of you, your servants or agents, any contractors or consultants engaged by you or any head contractor or other party to which you have contracted, then we shall be entitled to claim the reasonable cost of the delay from you, and the amount shall be a debt due and owing to us.

SOFTWARE

13. If the Equipment includes software, the Equipment will be supplied with a license to use one copy of the "standard" software, in relation to that specific product.
14. Use of Equipment does not confer ownership rights in respect of any software that any Equipment may contain. The Customer acknowledges and agrees that the LHD owns the intellectual property remains with the LHD. The Customer shall not make copies of software, modify, decompile, disassemble, decrypt, extract or otherwise reverse engineer the software. The license under this clause is only for the software as supplied and does not include automatic entitlement to any present or future upgrades or updates.

INTELLECTUAL PROPERTY

6. The Customer has no right, title or interest in any of the LHD's trademarks, trade names and logos, including those items used by it under license.

LIMITATION OF LIABILITY

- 32.1 The LHD shall not be liable in contract, tort or otherwise for any consequential, indirect or pure economic loss suffered by the customer as a result of any defect in the Products or any failure by the LHD to perform its obligations to the Customer, even if such loss was, or should have been, within the LHD's contemplation.
 - 32.2 Any claim which the customer may have against the LHD, whether in contract, tort or otherwise as a result of any defect in the Products shall expire twelve months after the Commissioning Date unless the customer notifies the LHD of the claim in writing before the expiry of that period;
- 32.3 Should there be a claim then, at the LHD option, to the repair or replacement of defective Products (if applicable) or the refund of a maximum amount equal to amounts actually paid by the Customer to the LHD in respect of the supply and installation of the Products (payable against return of the Products).

DEFAULT

7. If full payment is not made by the Customer to LHD in accordance with the Customer Agreement, then the Customer will be in default under the agreement and LHD may exercise all of its rights and remedies set out and otherwise available at law and
 - 6.1. Disable or disconnect service;
 - 6.2. Cancel this Equipment and/or Service Agreement and sue the Customer for damages;
 - 6.3. Enter on the Customer's premises and recover and retrieve the Equipment;
 - 6.4. Recover all costs associated with the breach or insolvency from the Customer.
 - 6.5. Late payment charges will apply
8. The Customer indemnifies the LHD and will pay all costs incurred by the LHD, including legal costs on a solicitor-Customer basis and debt collectors' costs, due to an Event of Default or incurred in the recovery or attempted recovery of outstanding money or the enforcement of the terms of the Equipment and/or Service Agreement.
9. Payments by the Customer will be applied first in reduction of such interest and costs due, and the balance in reduction of other amounts due.
10. If an Event of Default occurs, the price and any other amount owing (including the full term of the remaining payments due on this agreement) will immediately become due and payable notwithstanding that the due date has not arisen.

TERMINATION AND DEFAULT

11. We may terminate this Agreement immediately by written notice to you if you or any of the following occur:
 - 6.1. You default in the payment of any payment or any other amount owed by you under this Agreement
 - 6.2. You are in breach of any other term of this Agreement and such breach is not remedied within 7 days of breach arising; or
 - 6.3. You are in breach of any other agreement relating to or connected with this Agreement and/or Equipment (including any agreement relating to servicing of Equipment), or any other Agreement with any member of the LHD Group of companies, and such breach is not remedied within 7 days of the breach arising; or

- 6.4. You breach any of the terms of the insurance policy in relation to the Equipment or it is refused or cancelled;
- 6.5. You are unable to pay your debts as they fall due, or an application is made to adjudicate you bankrupt or an application or resolution is passed for your liquidation or winding up, or you are dissolved or struck off the New Zealand or Australian companies office register;
- 6.6. A receiver, liquidator, statutory manager or administrator is appointed over all or any of your assets and income, or you enter into, or propose any composition or arrangement with your creditors; or
- 6.7. Any act which you cause or permit threatens the safety, condition or safe keeping of the Equipment; or
- 6.8. You cease to carry on your business or you repudiate this Agreement or your conduct indicates that you no longer intend to be bound by this Agreement.
- 6.9. Equipment/service obtained by way of fraud or misrepresentation.
- 6.10. Upon termination or expiry, we may enter the premises where the Equipment is stored, and use reasonable force to do so, to enable us to take possession of the Equipment (including Software and related documents).
- 12. If this agreement is terminated for any reason whatsoever you agree to immediately pay to us:**
- 6.1. ANY PAYMENTS DUE AND UP TO THE DATE OF TERMINATION OWING WHICH YOU HAVE NOT PAID**
- 6.2. THE BALANCE OF ALL FUTURE PAYMENTS THAT WOULD HAVE BEEN PAYABLE UP TO THE END OF THE TERM.**
- 6.3. THE MARKET VALUE OF THE EQUIPMENT, IF IT IS NOT RETURNED**
- 6.4. ANY AND ALL COSTS AND EXPENSES INCURRED BY THE COMPANY IN RELATION TO EARLY TERMINATION OF THIS AGREEMENT, INCLUDING ANY TERMINATION FEES, PAYABLE AT THE THEN CURRENT RATES CHARGED BY US, AND ANY COLLECTION AND LEGAL COSTS**
- 6.5. ALL OTHER AMOUNTS OWED BY YOU UNDER THIS AGREEMENT**
- 6.6. ANY ADDITIONAL INTEREST PAYABLE IN RESPECT OF OVERDUE PAYMENTS AND/OR ANY OTHER AMOUNTS OWED BY YOU UNDER THIS AGREEMENT**
- DISPUTE RESOLUTION**
13. Where any question, dispute or difference (“dispute”) arises between the parties concerning or in any way arising out of this agreement or the performance of either party in terms of the Equipment and/or Service Agreement, the parties will make a genuine effort to resolve the questions, dispute or difference without resorting to litigation. If the dispute remains unresolved for 40 days; then the dispute can be referred to the Financial Service Complaints Limited (FSCL) refer to www.fscl.org.nz
- NOTICES**
14. Any notice given under this Equipment and/or Service Agreement must be in writing (or via Email) and delivered by hand or sent by email, post, courier, or facsimile transmission to the last known address of the recipient. Notices delivered by hand or sent by email or facsimile transmission are deemed to have been received on the date of delivery or transmission if made before 5pm on a Business Day. Notices sent by courier are deemed to have been received on the next Business Day and notices sent by post on the 2nd Business Day following posting.
- PRIVACY ACT 1993**
15. The Customer, directors and Guarantor(s) authorise the LHD to obtain, collect, verify, retain and use personal information about the Customer and/or Guarantor(s) (the “Information”) including directors in the case of a limited liability company or trustees in case of a trust. This includes using any of the Customer’s branding or logos on the LHD’s website, marketing or promotional materials.
- 16. AML/CFT ACT 2009 PEP REQUIREMENTS** The Customer shall supply information required by the LHD to comply with the Anti-Money Laundering and Countering of Terrorist Financing Act 2009.
- 40.1 PEP, politically expose person means – An individual who holds or is in any way related to a person who holds or has held in the preceding 12 months, a prominent public function in a foreign country and/or an individual who has joint ownership of legal entity or any legal arrangement or other relationship, with or on behalf of such a person
- GUARANTEE**
17. In consideration of the LHD, at the Guarantor’s request, agreeing to enter into this agreement with the parties named on the front of this agreement, including any additional agreements signed by the same parties, the Guarantor:
- 17.1. Unconditionally and irrevocably guarantees the due and punctual payment by the Customer of all moneys due and payable by the Customer to the LHD and the due observance and performance by the Customer of all its obligations owed to the LHD.
- 41.2. Will pay on demand all moneys due and payable by the Customer to the LHD.
- 41.3. Agrees that the liability of the Guarantor under this guarantee and indemnity is to be construed as if the Guarantor was the sole principal debtor for all moneys due and payable by the Customer to the LHD.
- 41.4. Agrees that this guarantee shall be a continuing guarantee and shall not be satisfied or discharged if the Customer’s account at any time comes to a nil or credit balance or on the winding up, liquidation, dissolution (or similar event) or the Customer or any disclaimer by any liquidator but will continue in full force and effect until the LHD decides otherwise
- 41.5. Agrees to supply on request reasonable evidence of the Guarantor’s financial standing to the LHD.
- 41.6. Indemnifies the LHD against all costs and expenses which either are incurred or incidental to the enforcement of this guarantee and indemnity (including legal fees on a full indemnity basis)
- CREDIT CHECK AND PRIVACY**
18. The Customer authorises the LHD to carry out credit checks in respect of the Customer and/or Guarantor and to collect information concerning the Customer and/or Guarantor. If requested by LHD, the Customer and/or Guarantor will promptly supply without delay all information necessary to check the worthiness of the Customer’s or Guarantor’s credit rating, including financials for commercial Customer’s. The Customer acknowledges that LHD can obtain from a credit reporting agency a credit report containing personal information about the Customer and/or commercial Customers. If required, the LHD can also collect information concerning the Customer in this regard:
- 18.1. to use any personal information about the Customer for purposes other than those for which it has been collected;
- 18.2. to disclose to any third person or organisation personal information held by the LHD about the Customer.
- 18.3. it is unnecessary for the LHD to inform the Customer of the fact that the LHD has collected information about it, the purpose for which the information has been collected or of the Customer’s rights of access to and correction of any personal information held by the LHD.
- GENERAL – OTHER TERMS AND CONDITIONS**
19. **Our Right To Complete This Agreement** – You authorise us to fill out any spaces left blank by you in this Agreement, including but not limited to, the term, fees and to correct any errors relating to any aspect of this Agreement
- 20. Authorised entry/repossession**
- For as long as any amount due and payable by the customer to the LHD remains unpaid, the customer irrevocably authorises the LHD and its servants and agents to enter into any premises controlled by the customer, to search for the Products and to remove them (if necessary, after separating them from any item into which they have been incorporated).
- 21.
22. **Sale By Description** - If there is any conflict between the description of the Equipment in a Quotation and any samples shown to the customer, the description contained in the Quotation shall apply, and the LHD will have fulfilled the contract if the Equipment matches the description.
23. **Warrant Of Equipment Use** – The LHD does not provide any warranties as to the quality of the Equipment or as to their fitness for any purpose, even if that purpose was made known to the LHD. The LHD also does not warrant that the Equipment will provide an uninterrupted or fault free service.
24. **Service Interruptions** - We do not guarantee that the services provided will be free of interruption. We reserve the right to temporarily suspend the services or restrict access to our network for planned and unplanned maintenance or repair. We will be available to fix any service interruption in accordance with the service levels and will use reasonable endeavours to minimise their duration. There is no charge for this except where you (or anyone for whom you are responsible) cause the interruption.
- 24.1. **Scheduled Maintenance** - We require from time to time the ability to perform maintenance on our Equipment and Services. The LHD will

endeavour to ensure the Customer is notified however reserves the right to undertake urgent remedial maintenance at any time and without notice.

25. **Delay** – If any time for delivery or installation is specified, the LHD will use best endeavours to meet this time frame, however such times shall be approximate and shall not be of the essence of the contract. The LHD will not be liable at any time any loss or damages suffered by the Customer due to a failure by the Customer to perform its obligations, where such failure is due to circumstances which are beyond the Customer’s reasonable control including, without being limited to, industrial action, shortage of materials and delays or failures by the LHD, it’s infrastructure, or by any third-party.
26. **Liability** - The LHD shall not be liable in contract, tort or otherwise for any consequential, indirect or pure economic loss suffered by the Customer as a result of any defect in the Equipment or any failure by the LHD to perform its obligations to the Customer, even if such loss was, or should have been, within the LHD's contemplation.
27. **Claims** - Any claim which the Customer may have against the LHD, whether in contract, tort or otherwise as a result of any defect in the Products shall expire twelve months after the Delivery date unless the Customer notifies the LHD of the claim in writing before the expiry of that period. The claim shall be limited, at the LHD's option, to the repair or replacement of defective Products (if applicable) or the refund of a maximum amount equal to amounts actually paid by the Customer to the LHD in respect of the supply and installation of the Products (payable against return of the Equipment).
- 51 **Fees Charges;**
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|------------------------------------|--|
| 51.1 Late payment Fee | \$ 25.00 |
| 51.2 Default Fee | \$ 35.00 |
| 51.3 Repossession/ Field visit Fee | \$ 100.00 in addition to third party charges |
| 51.4 Assignment/ Variation Fee | \$ 100.00 |
| 51.5 Multiple refund Fee | \$ 20.00 |
| 51.6 Monthly invoice Fee | \$ 10.00 |
- 52 If any clause or term of this Equipment and/or Service Agreement shall be invalid, unenforceable, or illegal then the remaining terms and provisions of this Equipment and/or Service Agreement will be deemed to be severable therefrom and will continue in full force and effect unless such invalidity, unenforceability or illegality is fundamental to this Equipment and/or Service Agreement.
- 53 Equipment and/or Service Agreement is governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand Courts.
- 54 The person signing this Agreement confirms that they are properly and duly authorized to sign on behalf of the Customer. Should they not be authorized then they agree to accept full responsibility for all aspects of the Agreement basis.