

Cardy Communications Limited – Lease Terms & Conditions

1. In construing this Agreement the Owner shall mean and include Cardy Communications Limited (“Cardy”), its nominees, successors and assigns. The Renter shall mean and include the renter of the Equipment, its permitted successors and assigns.
2. The Renter acknowledges that:
 - (a) the Owner has acquired or will acquire equipment (“Equipment”) at the request of the Renter for the sole purpose of enabling the Owner to enter into this Agreement; and
 - (b) this Agreement cannot be cancelled or terminated except as expressly provided in this Agreement; and
 - (c) time is of the essence in respect of the Renter's obligations to the Owner.
3. Any reference to Equipment shall include any attachments to the Equipment or any parts or accessories from time to time in addition to or in replacement of any part of the Equipment.
4. At the expiration of this Agreement or upon the sooner determination of this Agreement, at the sole discretion of the Owner, the Renter will either, deliver up the Equipment at the Renter's expense to the Owner at such place as the Owner may in writing reasonably direct, in good order, repair and condition (reasonable wear and tear excepted). If the Renter does not return the Equipment when required, the Owner may at any time recover the equipment at a minimum charge of \$500 plus GST per site together with any additional costs and expenses incurred by the Owner retaking or attempting to retake possession of the Equipment. Collection or delivery of the Equipment shall be payable by the Renter to the Owner. The Renter authorises the Owner to enter upon any premises where the Equipment may be located and take possession of the Equipment. The Renter waives releases and indemnifies the Owner from any liability for any damage or loss occasioned in retaking or attempting to retake possession. If the Owner considers (in its absolute discretion) the Equipment to be at risk, the Owner may retake possession of the Equipment without any prior notice to the Renter. This clause 4 shall survive termination or expiry of this Agreement.
5. The Renter agrees that:
 - (a) this Agreement shall not be binding upon the Owner until the acceptance of the Owner has been endorsed on this Agreement. The provisions of this clause shall not be affected or prejudiced by reason of any payment of monies by the Renter or the delivery of the Equipment to the Renter. Any such delivery shall, pending acceptance, be deemed merely as conditional;
 - (b) in the event of the Equipment coming into the possession of the Renter before the execution of this Agreement, the obligations of the Renter set out in this Agreement as to insurance, care and use of the Equipment and otherwise shall be deemed in force from such possession.
6. Personal Property Securities Act 1999 (“PPSA”) This Agreement creates and/or provides for a Security Interest in favour of the Owner in the Equipment, which may be registered under the PPSA. The Renter undertakes to do such acts and provide such information as in the Owner's opinion may be necessary or desirable to enable the Owner to perfect the Security Interests created or provided for by this Agreement as a first priority interest. The Renter must act immediately when requested by the Owner and at its own cost. The Renter waives the right to receive a Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the Security Interest created by this Agreement. To the extent that Part 9 of the PPSA applies to this Agreement the Renter agrees that:
 - (a) where the Owner has rights in addition to, or existing separately from those in Part 9 of the PPSA, those rights will continue to apply and in particular will not be limited by section 109 of the PPSA.
 - (b) nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to this Agreement, or the Security Interest created by this Agreement; the Renter will not have the rights referred to in sections 116, 119, 120(2), 125, 129 and 131 of the PPSA and the Renter waives its rights to object under section 121 and to redeem under section 132. The Renter indemnifies the Owner against any costs the Owner incurs in maintaining the Security Interest in the Equipment and exercising any of the Owner's rights under Part 9 of the PPSA.
7. The Renter agrees:
 - (a) to keep the Equipment in good order and repair and properly maintained and serviced by Cardy or their nominated agents (reasonable wear and tear only excepted);
 - (b) to indemnify the Owner against loss or damage arising from loss of, or damage to the Equipment (including lawful confiscation of the Equipment);
 - (c) not to alter or make any addition to or installation on the Equipment without prior consent in writing of the Owner and not to alter any identifying number or mark;
 - (d) to keep the Equipment in the control of the Renter and not to attempt or purport to sell, transfer, dispose of or encumber the Equipment in any way;
 - (e) not to assign this Agreement or the Renter's rights under this Agreement without the prior written consent of the Owner;
 - (f) not to move the Equipment from the address where the Equipment is installed, as recorded in the schedule, without the prior written consent of the Owner;
 - (g) to notify the Owner immediately following any loss or damage to the Equipment;
 - (h) not to use or install the Equipment in a manner that would lead to the Equipment becoming a fixture to land or an accession (as defined in the PPSA);
 - (i) to comply with all relevant acts, regulations and by-laws relating to the use, possession, operation, registration, and licensing of the Equipment;
 - (j) to indemnify the Owner to the fullest extent permissible against any claims and costs whatsoever arising out of the use, operation, or keeping of the Equipment, present or future;
 - (k) that the Owner may at any reasonable time enter any premises where the Owner believes the Equipment may be located for the

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purpose of inspecting or testing the Equipment provided the Owner gives reasonable notice where possible;

(l) to at all times follow the Owner's instructions and advice on matters dealing with the maintenance and operation of the Equipment and house it in suitable premises and in a suitable environment;

(m) comply with the manufacturer's instructions and recommendations relation to the Equipment;

(n) prepare the installation site prior to delivery of the Equipment and provide such electric power supplies, environmental conditions, telecommunications facilities and cabling as required by the Owner for installation; and

(o) that the Owner may use the name of the Renter and act on behalf of the Renter in exercising any rights or instituting, carrying on or enforcing any legal proceeding which the Owner may think desirable to protect the rights of the Owner in the Equipment.

8. The Renter also agrees:

(a) that risk in the Equipment will be borne by the Renter from the execution of this Agreement, and loss of or damage to the Equipment will not affect the obligations of the Renter (including its obligations to pay money, whether arising before or after the date of loss or damage) under this Agreement. Title to the Equipment shall remain with the Owner. The Renter's only right to the Equipment is the right to use it on the terms of this Agreement;

(b) to keep the Equipment insured against fire, accident and theft and such other risks as the Owner may require for an amount equal to the full insurable value of the Equipment and to insure and keep the Owner insured against all liability, (or liability limited to such extent as the Owner may approve in writing) however arising in respect of the Equipment with a reputable responsible and solvent insurer in the name of the Owner as owner and the name of the Renter as renter for their respective rights and interests;

(c) if required by the Owner, hand to the Owner copies of all policies of insurance and all certificates of currency in relation to those policies. To pay promptly all premiums in respect of such policies and to permit the Owner to receive all insurance monies and production of the policies shall be proof of the irrevocable authority of the Owner to receive such insurance money;

(d) not to do or permit to be done anything which might or could prejudice any insurance mentioned in this clause;

(e) that in the event of loss, destruction or damage to the Equipment, the Owner alone shall have the power to enforce, settle and compromise any claim against the Renter in respect of the Equipment; and

(f) that any monies received on account of insurance referred to in this clause shall be applied at the option of the Owner either in or towards the repair or replacement of the Equipment or in reduction of the monies owing or to become owing under this Agreement or to otherwise compensate the Owner for such loss, destruction or damage.

9. The Renter further agrees:

(a) to pay to the Owner the Rent by the monthly payments at the times and in the manner as described;

(b) that the obligation to pay rent, free of all deductions, withholdings, set-offs, counterclaims and exchange will continue irrespective of any loss, damage, destruction, forfeiture, defect, breakdown, unsuitability, failure to operate or any other matter or thing whatsoever relating to the Equipment;

(c) to make all payments to the office of the Owner specified in the Schedule or such other place as the Owner may direct in writing;

(d) to pay interest to the Owner at the rate of 2% per month, calculated on a daily basis compounding, on any monies payable under this Agreement which may from time to time be overdue;

(e) to pay to the Owner any expenses or costs which the Owner may incur by reason of the Owner retaking or attempting to retake possession of the Equipment following any breach by the Renter of this Agreement;

(f) to repay to the Owner on demand any monies which the Owner may incur to make good any failure by the Renter to comply with any obligation under this Agreement or any other obligation incurred by the Renter in respect of the Equipment and any other expenses which the Owner may incur in the enforcement or protection of the rights of the Owner in the Equipment including monies paid by the Owner in releasing any lien claimed over the Equipment, in dismantling and removing the Equipment from any premises and in the reasonable repair or renovation of such premises;

(g) if the Renter is required to make any deduction or withholding from any money paid or payable by the Renter to the Owner, to pay such additional amount to the Owner as may be necessary to ensure that after the making of that deduction or withholding, the Owner receives and obtains (free from any liability in respect of any such deduction or withholding) an amount equal to what it would have received and retained had no such deduction or withholding been required or made;

(h) to reimburse the Owner for its own staff's time at \$150 per hour plus GST and any collection or legal costs incurred by the Owner to recover any amount due under this Agreement; and

(i) to pay a collection cost for equipment returned to the Owner at the end of the rental term.

10. If during the term of this Agreement:

(a) the Owner ascertains that the Renter has made a false statement in relation to this Agreement;

(b) the Renter does not pay any instalment described in the Schedule€ the due date;

(c) the Renter shall commit any other material breach of the provisions of this Agreement, which the Renter shall fail to rectify within 14 days after notice by the Owner to do so;

(d) the Renter shall commit or suffer an act of bankruptcy or enter into an arrangement with its creditors or being a company, shall go into liquidation or have a receiver and/or manager or administrator appointed;

(e) the Renter shall do or cause to be done or permit or suffer any act or thing likely to endanger the safety or condition of the Equipment;

(f) any insurance proposal made by the Renter in respect of the Equipment is declined or any insurance policy in respect of the Equipment is cancelled; or

(g) the Renter is convicted of an indictable offence, then in any such case the Owner may at its option without prejudice to any other

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right or remedy of the Owner contained or implied in this Agreement or at general law:

(A) take appropriate action to enforce the performance of this Agreement by the Renter and/or to recover damages for breach of this Agreement; or

(B) by notice to the Renter cancel this Agreement. In such event the Renter shall forthwith return the Equipment to the Owner (or to such place as may be nominated by the Owner) and in the event of the Renter failing to so return the Equipment, the Owner may retake possession of the Equipment as provided under clause 4.

11. In the event that the Owner cancels this Agreement under Clause 10, then without prejudice to any other rights or remedies of the Owner, the Renter shall pay to the Owner upon demand the aggregate of:

(a) all unpaid rent to the date of cancellation of this Agreement or the date of repossession of the Equipment (whichever shall first occur) together with any other monies which may then be payable to the Owner under this Agreement plus an early termination amount of three (3) months rental; and

(b) Upon payment to the Owner of all such monies and interest (if applicable) the Renter shall be relieved of all liability to the Owner for rent under this Agreement. Without affecting the Renter's obligations above, the Owner will use all reasonable endeavours to mitigate its loss and will credit the Renter for any part of the loss which it is able to mitigate.

12. The Renter acknowledges and agrees that:

(a) nothing contained in this Agreement shall confer on the Renter any property or interest in or to the Equipment except as a Renter of the Equipment on the terms of this Agreement;

(b) they are satisfied with the Equipment's suitability for the Renter's purposes;

(c) no express warranty, condition or representation has been given by the Owner as to the quality, fitness, safety, suitability or otherwise of the Equipment prior to or at any time during the continuance of this Agreement;

(d) the Equipment is being supplied to the Renter for the purposes of a business and that the provisions of the Consumer Guarantees Act 1993 will not apply to the supply under this Agreement;

(e) so far as the law permits, all conditions and warranties which might be implied on the part of the Owner are excluded; and

(f) liability for a breach of any implied conditions or warranty on the part of the Owner which is not capable of exclusion shall be limited (but only to the extent permitted by law) to any one or more of the replacement of the Equipment, the supply of the equivalent equipment, the repair of the Equipment, the payment of the cost of replacing the Equipment or renting equivalent equipment or the payment of the cost of having the Equipment repaired, whichever the Owner shall in its discretion think fit. To the maximum extent permitted under law in no circumstances shall the Owner be liable for any indirect, incidental, consequential, economic or special loss incurred by the Renter or any third party.

13. The Owner may (subject always to the rights of the Renter under this Agreement) sell or assign either absolutely or by way of security its rights under this Agreement and to the Equipment.

14. A letter given by the Owner or any person duly authorised by the Owner shall be prima facie evidence of the amount of monies due, owing or recoverable from the Renter under this Agreement.

15. The parties acknowledge that the Rent described in the Schedule includes goods and services tax payable on the taxable supply under this Agreement unless stated otherwise. GST has been calculated at the rate of 15% per annum. The Renter agrees to pay to the Owner any additional goods and services or like tax payable in connection with this Agreement or in connection with any payment, receipt or other transaction arising under this Agreement. The Owner may require the Renter to pay such amount either on demand or with the rental instalments.

16. (a) If the Renter requests a variation (Variation) of the Term and/or Rental and/or Equipment rented under this Agreement the Owner may in its absolute discretion agree to such Variation and forward a Rental Agreement Variation of the Rental Agreement to the Renter setting out the details of any such change.

(b) Any Variation shall be effective from the date specified in it and shall be binding on the Renter upon signing of the Rental Agreement Variation.

(c) Other than as specified in an Acknowledgment the Terms and Conditions of this Agreement shall remain unchanged following a Variation.

17. No waiver by the Owner of any default, breach or repudiation of this Agreement by the Renter shall affect the rights of the Owner in respect of any further or continuing default, breach or repudiation.

18. If any provision contained in this Agreement is rendered void, invalid or unenforceable, then such provision shall be severed from this Agreement without affecting the remaining provisions.

19. If the Renter wishes to terminate this Agreement prior to the end of the term, the Renter must pay to the Owner the balance of the Renter's obligations under this Agreement, plus a sum equal to three (3) months rental.

20. Unless the Renter notifies the Owner in writing at least thirty (30) days before the expiration of the Agreement that the Renter does not want the Agreement extended, the period of this Agreement shall be extended for a further twelve (12) months at the same Rental and on the same Terms and Conditions in this Agreement and will continue until one party gives to the other three (3) months' notice of termination.

21 If the Renter fails to return the equipment at the expiration of the Agreement then the period shall thereafter be deemed extended for further twelve (12) months period at the same Rental and otherwise on the same Terms and Conditions in this Agreement with clause 20 continuing to apply.

22. The Renter hereby irrevocably authorises the Owner to complete any blank spaces in the Automatic Payment and Schedule, in

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particular, the serial numbers and other identification data with respect to the Equipment.

23. Any notice to be given by the Owner shall (without prejudice to any other method of giving notice) be deemed to have been given if delivered or placed in the post addressed to or transmitted by email to the Renter at the address of the Renter referred to in the schedule or the address of the Renter last known to the Owner.

24. Notices placed in the post addressed to the Renter as above shall be deemed to have been received on the fifth business day following such posting and notices transmitted to the Renter by email shall be deemed to have been received when sent (unless a transmission error notice is received by the sender). 25. This Agreement is governed by and is to be construed in accordance with the laws of New Zealand and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the Courts of New Zealand.

26 Guarantors & Guarantors Indemnity

26.1 This clause only applies if Guarantors are stated in the Schedule.

26.2 In consideration of Cardy Leasing the Leased Products to You, the Guarantors unconditionally and irrevocably guarantee to Cardy the due and punctual performance by You of Your obligations under this Agreement, including Your payment of all monies You owed Cardy under the Agreement (Guaranteed Monies).

26.3 If You default in payment of the Guaranteed Monies, the Guarantors must pay those monies to Cardy on demand by Cardy.

26.4 The Guarantors indemnify Cardy against all loss Cardy suffers if You do not pay the Guaranteed Monies including all legal and other costs of enforcing this Agreement on a full indemnity basis.

26.5 The Guarantors charge all of its real property (present or future) as security for the Guarantor's obligations under this guarantee and indemnity. The Guarantors acknowledge Cardy will at its discretion register a caveat on such property in respect of the interest conferred on it under this clause.

26.6 The Guarantors' obligations are principal obligations and are continuing, and will not be affected by:

- (a) any arrangement increasing the Guaranteed Monies or otherwise varying the terms of this Agreement;
- (b) any waiver, release or extension of time given by Cardy;
- (c) an Insolvency Event of You or any Guarantor; or
- (d) any failure by Cardy to give any notice, or any other omission, delay or error on Cardy's part.