

EA Technology Australia Equipment Loan/Lease Agreement

1. Leasing of the Equipment

1.1 EA Technology Australia hires Equipment

The Owner, EA TECHNOLOGY AUSTRALIA agrees to hire the equipment listed above to the person named as "The Leasing Party", on the terms and conditions of this Agreement, from the date of this Agreement until this Agreement is terminated under clauses.

1.2 EATA Retains Ownership

EATA retains full title to the Equipment, notwithstanding that the Equipment may be leased to and in the possession of The Leasing Party

1.3 Leasing Party Responsible for Selecting the Equipment

The Leasing Party acknowledges that in deciding to enter into this Agreement:

- it has not relied in any way on the skill, judgment or any representations made by EATA (and/or its agents and employees); and
- it has satisfied itself as to:
 - I. the compliance of the Equipment with its description in this Agreement as well as its condition, specifications, quality, fitness for proposed purpose and safety;
 - II. the validity of any manufacturer's or supplier's warranties or guarantees; and
 - III. the non-infringement of any patents;
 and in every other necessary respect.

2. Payments and Records

The Leasing Party shall pay to EATA the Rent on the agreed dates on the basis of the number of days that the Equipment has been in Transit, on Stand-by or in Operation, from and including the date of this Agreement for the first payment, and for all following payment dates from and including the day after the previous payment date, up to and including the next payment date.

2.1 Records of use of the Equipment

The Leasing Party shall keep a record of the dates and number of days on which the Equipment is in Transit, on Stand-by or in Operation respectively for the terms of this Agreement and shall submit a copy of this record to EATA in respect of each relevant payment period on or immediately following the relevant payment date for that period.

2.2 Manner of Payment

The Leasing Party shall make each payment to EATA under this Agreement on the due date for payment the agreed method or as specified by EATA by notice to The Leasing Party from time to time.

2.3 Overdue Interest

Where any money is not paid by The Leasing Party on or before the relevant due date, The Leasing Party shall pay interest calculated daily at the agreed lease rate on that outstanding amount, for the period from and including the day on which it fell due for payment to but excluding the day on which that outstanding amount is paid in full.

2.4 Goods and Services Tax (GST)

The Rent is exclusive of GST. The Leasing Party must pay EATA, in addition to Rent, an amount representing the GST payable with respect to that Rent. The Leasing Party must pay the amount representing GST, recoverable by EATA under this clause, on the same date as payment must be made for the supply giving rise to the GST.

In this clause, an expression defined in A New Tax System (Goods and Services Tax) Act (Cth) 1999, has the same meaning.

3. Indemnities and Release

3.1 General Indemnity in respect of the Equipment

The Leasing Party assumes liability for, and indemnifies EATA, its agents and employees against all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and taxes, of whatever kind or nature (including claims for strict liability in tort and claims for breach of copyright), arising (as a result of any or all of the following):

- on account of the delivery, installation, ownership, Leasing, disposition, use (including by reason of the use or incorporation of any invention resulting in the infringement of a patent), condition (including, without limitation, latent and other defects whether or not discoverable by EATA or the Leasing Party) or operation of the Equipment, regardless of by whom it is used or operated (except where used or operated by EATA) during the delivery, installation, ownership, Leasing, disposition, use or operation of the Equipment and in any event during the term of this Agreement;
- in respect of any damage to property or death of or injury to any person which may be suffered or sustained in connection with the Equipment;
- without limiting the operation of (a) and (b), in the event that EATA requires the Leasing Party to return the equipment pursuant to the provision of clause 5.

3.2 General Release in respect of the Equipment

The Leasing Party releases EATA to the fullest extent permitted by law from all claims and demands of every kind arising out of the delivery, installation, ownership, Leasing, use, disposition or operation of the Equipment, including any liability which may arise in respect of any accident or damage to property or death of or injury to any person of whatever nature or kind. The Leasing Party agrees that EATA will have no responsibility or liability for any loss of or damage to any property of the Leasing Party.

3.3 Continuation of Indemnity and Release

The assumption, indemnity and release contained in clauses 3.1 and 3.2 continue in full force and effect notwithstanding any termination of this Agreement (whether by expiration of time or otherwise) as to any act or omission up to the return of the Equipment to EATA. The assumption and indemnity in respect of claims for breaches of patent or copyright also continue in full force and effect throughout the life of the Equipment (other than in respect of modifications made to the Equipment by EATA after termination of this Agreement or any period of holding over).

4. Provisions relating to the Equipment

4.1 Leasing Party not to dispose of the Equipment

- The Leasing Party shall not without the prior consent of EATA:
 - a. sell or otherwise dispose of the Equipment; and
 - b. share possession of the Equipment or grant to any person a sublease, licence or sub-licence affecting the Equipment.
- The Leasing Party shall at all times keep the Equipment free from distress, execution or other legal process.

4.2 Leasing Party to Maintain the Equipment in Good Condition and Repair

The Leasing Party shall at all times and at its own expense keep and maintain the Equipment in proper working order and condition and in good repair (with due allowance for normal wear and tear) so that the Equipment at all times is capable of being operated fully and efficiently for the purpose and to the capacity for which it was intended by EATA. The Leasing Party indemnifies EATA against, and shall pay EATA on demand the amount of, any loss of or damage to the Equipment or any part of it (however occasioned) and shall give reasonable notice to EATA in writing of any such loss or damage of a substantial or material nature.

4.3 Replacement of Defective Parts

- The Leasing Party shall at its own cost and expense replace with reasonable promptness all components, accessories and other items of equipment of whatever nature (for the purpose of this subclause collectively

called "**Parts**") constituting part of the Equipment which may from time to time become inoperative (other than by reason of wear and tear in their normal course of operation), damaged beyond repair or otherwise unavailable for any reason for use by The Leasing Party with the Equipment.

- All replacement parts will be the property of EATA and must be free and clear of all security interests and rights of others and must be in as good condition as and have a value and utility at least equal to the Parts replaced (assuming such replaced parts were in the condition and repair required to be maintained by this Agreement).
- The Leasing Party may not without the consent of EATA make any replacement, alteration or addition of a major nature which may lead to a material reduction in the value of the Equipment.

4.4 EATA's Inspection Rights

The Leasing Party grants EATA the right, and shall use its best endeavours to ensure that others grant EATA the right, to enter with its employees, agents, workmen and experts and with any materials upon any premises where the Equipment is located to examine the state of repair of the Equipment (for which purpose EATA or its employees, agents or experts may carry out such tests on the Equipment as may seem necessary to them). EATA may exercise this right at all reasonable times on reasonable notice (except in case of emergency when no notice is required) and (except in case of emergency) without unduly interfering with the operations of the Leasing Party.

4.5 EATA may Require Repairs

- EATA may retain such properly qualified experts as it thinks fit in order to determine whether the Equipment is in need of repair or replacement.
- EATA or its expert may serve upon The Leasing Party at any time a notice of any defect in the Equipment for which The Leasing Party is responsible under this Agreement, and The Leasing Party shall remedy any defect so specified promptly after receipt of such notice.

4.6 Leasing Party to Comply with Safety Rules

The Leasing Party shall at its own expense comply with all applicable laws, regulations, rules and requirements necessary for the safe and lawful operation of the Equipment and with all reasonable requirements of the manufacturer or supplier of the Equipment. Any addition, replacement or alteration required to be made to or installed on the Equipment as a result of such compliance will, without any further act of EATA or the Leasing Party, become the property of EATA and be considered part of the Equipment for all purposes of this Agreement.

4.7 Notification on Seizure of Equipment

If any person seizes or attempts to seize or interfere with the Equipment, The Leasing Party shall:

- a. notify that person of EATA's title to and rights in relation to the Equipment; and
- b. immediately inform EATA by notice of that seizure, attempted seizure or interference.

4.8 Name Plates

- a. The Leasing Party, at the request by notice of EATA, shall affix such name, name plate, identification number, trade mark or any other mark (each a "**marking**") on the Equipment or any part of it as EATA may require in that notice.
- b. The Leasing Party may not remove or change any marking without the consent of EATA.

4.9 Operation only by Competent Personnel

The Leasing Party at its own expense shall operate each item of the Equipment only by competent and (where appropriate) properly qualified, trained and licensed personnel and by appropriate methods and standards of operation.

4.10 Leasing Party to Act at Own Risk

Except to the extent that the Agreement expressly requires otherwise, The Leasing Party shall:

- a. transport the Equipment from and to the places specified in item 5 of the Schedule, as applicable;
- b. operate, use and keep the Equipment; and
- c. comply with its obligations under this Agreement,

at its sole risk and expense.

4.11 No General Replacement or Additional Parts

EATA is not obliged to supply equipment in replacement of the Equipment for any reason whatever including, without limitation:

- a. because the Equipment may have been damaged or because The Leasing Party may have ceased for any other reason to have the use of the Equipment; or
- b. because the Equipment may not or may have ceased to function as contemplated by EATA or The Leasing Party at the date of execution of this Agreement.

5. Insurance

5.1 Leasing Party to take out Insurances

The Leasing Party shall effect and keep current at all times during the Agreement Term, insurances in relation to the Equipment and the Leasing Party's liabilities under this Agreement covering such risks and containing such terms as EATA may require from time to time.

5.2 EATA may Enforce Insurances

For valuable consideration and as security for the enforcement of its obligations under this Agreement, The Leasing Party irrevocably appoints EATA and each authorised representative of EATA as the Leasing Party's attorney to recover or compromise in their respective names any claim for loss or damage under any insurances required by clause 6.1 or otherwise, and to give effectual releases and receipts for the same.

5.3 Application of Insurance Proceeds

- The Leasing Party irrevocably authorises EATA to appropriate any insurance or other moneys received by it in respect of any loss of or damage to the Equipment towards any moneys then due and owing by The Leasing Party to EATA pursuant to this Agreement. EATA shall make the balance of such moneys available to The Leasing Party to enable The Leasing Party to comply with its obligations under the following paragraph (b) of this subclause.

- The Leasing Party shall apply any insurance moneys made available by EATA to The Leasing Party under paragraph and to the extent that those insurance moneys may be insufficient, its own moneys, to repair or replace the whole of the Equipment to at least as nearly as possible the condition required by this Agreement.

6. Loss of or damage to the equipment

6.1 Consequences of a Casualty Event

- If the Equipment is stolen, destructed, compulsorily acquired or damaged to an extent which in the reasonable opinion of an expert appointed by EATA renders repair impracticable The Leasing Party shall immediately pay EATA the replacement value of the Equipment less any proceeds of insurance or other compensation moneys received by EATA on or before that date. Upon payment of this amount and any other amounts outstanding under this Agreement, this Agreement will terminate.
- If EATA has received payment in full of the replacement value of the Equipment and any other amounts outstanding under this Agreement, it shall pay to The Leasing Party any insurance or other compensation moneys it subsequently receives in respect of the Equipment.

7. Default

7.1 Events of Default

Each of the following, unless waived by notice from EATA, is an Event of Default:

- **(non-payment)** if The Leasing Party fails to pay on time any amount which is due and payable by it under this Agreement;
- **(other obligations)** if The Leasing Party fails to perform any provision of this Agreement requiring performance by it (other than a failure referred to elsewhere in this clause) and that failure is incapable of remedy or, if capable of remedy, continues for 10 business days after The Leasing Party receives a notice from EATA requiring that the failure be remedied;
- **(insolvency)** if The Leasing Party or any of its subsidiaries: suspends payment of its debts;
 - i. ceases or threatens to cease to carry on all or a material part of its business; or
 - ii. is or states that it is unable to pay its debts;
- **(compromise or arrangement)** if The Leasing Party or any of its subsidiaries takes any step for the purpose of entering into a compromise or arrangement with any of its members, or creditors, generally or any class of them

7.2 Consequences of an Event of Default

If an Event of Default has occurred and has not been remedied, EATA may at any time, by notice to the Leasing Party, do either or both of the following:

- take action, either at law or in equity, to enforce performance by The Leasing Party of this Agreement or to recover damages (or both); or
- Terminate this Agreement.

7.3 Termination

Upon the termination of this Agreement:

- EATA will be entitled to retain all Rent and other moneys previously paid by The Leasing Party to EATA under this Agreement; and
- EATA may recover from The Leasing Party all Rent and other moneys due and owing under this Agreement at the date of such termination together with interest as provided in clause 2.3.

8. Procedures on Termination

8.1 Return of Equipment

Upon the termination of this Agreement or where The Leasing Party receives a notice from EATA the Leasing Party shall return the Equipment to EATA at the agreed place

If The Leasing Party fails to return the Equipment to EATA upon termination of this Agreement as required by paragraph (a), EATA will be entitled to retake possession of the Equipment and for that purpose EATA or its employees or agents may enter upon any land, vessel or premises on which the Equipment is kept or on which EATA or any of its employees or agents reasonably suspects that the Equipment is kept. The Leasing Party waives any damages it may suffer as a result of this.

9. Costs

The Leasing Party indemnifies EATA against, and shall pay EATA on demand the amount of all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and taxes in connection with the negotiation, preparation, execution, stamping and registration of this Agreement, the administration, exercise or attempted exercise, enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Agreement (including, without limitation, the fees of any consultant appointed by EATA to advise it in relation to any of these), and any amendment to, release or discharge of or under, this Agreement.

10. Notices

11.1 A notice, consent, approval or other communication under this Agreement shall be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and delivered, sent by pre-paid mail or transmitted by facsimile or as notified by each party to the other from time to time.

11. General

11.1 Quiet Enjoyment

Subject to the other provisions of this Agreement (including, but without limiting the foregoing clause 5), if The Leasing Party pays the Rent and duly and punctually complies with all

provisions of this Agreement, The Leasing Party may peaceably possess and enjoy the Equipment during the term of this Agreement without any interruption or disturbance from EATA or any person lawfully claiming through EATA. No Purchase Option

The Leasing Party acknowledges that neither EATA nor any person on its behalf has granted any option or made any representation (express or implied, written or oral) that The Leasing Party or a nominee of The Leasing Party may purchase the Equipment from EATA either during the term of this Agreement or upon or after its termination.

11.2 Amendment

This Agreement may only be amended or supplemented in writing signed by the parties.