

## LONG TERM LEASE AGREEMENT

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## Table of contents

1	Acceptance	Page 3
2	Long Term Lease	Page 3
3	Charges and Payment	Page 3
4	Delivery and Return of Equipment	Page 3
5	Customer's Responsibilities	Page 4
6	Risk and Insurance	Page 4
7	Damage Waiver	Page 5
8	Title	Page 5
9	Personal Property Securities Act 2009 (PPSA)	Page 5
10	Sub-Leasing	Page 6
11	Liability	Page 6
12	Default & Consequences	Page 6
13	Termination	Page 7
14	Privacy Act 1988	Page 7
15	General	Page 7
16	Change of Control	Page 8
17	Definitions	Page 8
	Execution Clause	Page 9

**The long-term lease of the Equipment, is subject always to this Contract, which constitutes the full agreement between the contracting parties. Please read these terms and conditions carefully before signing the Contract. Nexxis may, at its sole discretion, decline to lease the Equipment to the Customer.**

## **1. Acceptance**

- 1.1 This Contract provides for the terms and conditions of each lease agreement. Each Quotation shall not constitute a separate lease agreement, but shall be read together with, and form part of, this Contract, incorporating all of the provisions hereof.
- 1.2 The Customer is taken to have exclusively accepted, and is immediately bound, jointly and severally, by this Contract, when the Quotation is accepted by the Customer and duly signed by both parties, or if the Customer accepts Delivery.

## **2. Lease Term**

- 2.1 The Lease Term shall commence on the Start Date, and shall conclude:
  - (a) at 5:00pm on the Expiry Date, unless otherwise extended or terminated in accordance with this Contract; or
  - (b) where no Expiry Date has been specified in the Quotation, on the return of the Equipment to Nexxis in accordance with this Contract.
- 2.2 In the event the Equipment is returned before the Expiry Date, then Nexxis may (at its sole discretion) either:
  - (a) adjust the Charges (pro-rata) to reflect the shorter Lease Term; or
  - (b) require the immediate payment by the Customer of any sums applicable under clause 13.2(a)
- 2.3 Notwithstanding the Lease Term, Nexxis expressly reserves to itself the right to require early cessation, which may be exercised on demand and at the absolute discretion of Nexxis. If Nexxis so demands, the Customer shall immediately return the Equipment to Nexxis. The applicable Charges shall be adjusted and payable on a pro-rata basis. For the purpose of the pro-rata, a week shall be of seven (7) days, and a month shall be thirty (30) days.
- 2.4 The Lease Term may be extended by the mutual agreement between the parties, and will be invoiced thereafter for every fourteen (14) day period accrued until the Equipment is returned to Nexxis in accordance with this Contract (or any amendment hereto).

## **3. Charges and Payment**

- 3.1 At Nexxis' sole discretion the Charges shall be either:
  - (a) as indicated on any invoice provided by Nexxis to the Customer for the supply of Equipment; or
  - (b) Nexxis' quoted Charges (subject to clause 3.2) which will be valid for the period stated in the Quotation, or otherwise for a period of thirty (30) days.
- 3.2 Nexxis reserves the right to change the Charges:
  - (a) in the event of a variation to the Quotation. Any variation from the specifications of the Equipment (including, but not limited to, any variation as a result of additional or varied Equipment required, or as a result of increases to Nexxis due to fluctuations in currency exchange rates between the country of lease and the country of source – where Equipment has been sourced from outside the country of lease) will be charged for on the basis of the Quotation and will be shown as variations on the invoice; and
  - (b) periodically, upon revision by Nexxis on the basis of the movement in the Consumer Price Index (CPI), to allow for increases to Nexxis in the cost of labour and materials (which are beyond Nexxis' control), and Nexxis will notify the Customer in writing of such, and require the Customer to accept the varied Charges in writing within ten (10) days before such variance will take effect. The Customer may terminate this Contract, without suffering any liability for doing so hereunder, in the event the Customer notifies Nexxis in writing that it does not accept the varied Charges; and
  - (c) to include the cost of any maintenance requested by the Customer where the warranty under clause 11 does not apply.
- 3.3 At Nexxis' sole discretion:
  - (a) a non-refundable deposit may be required; and
  - (b) a cancellation fee may apply where the Equipment has been reserved by booking and the Customer cancels the booking without reasonable notice, or fails to take Delivery.
- 3.4 Time for payment for the Equipment being of the essence, the Charges will be payable by the Customer on the date/s determined by Nexxis, which may be:
  - (a) on, or before, Delivery; or
  - (b) by way of instalments, in accordance with any payment terms specified by Nexxis in writing; or
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice furnished to the Customer by Nexxis.

- 3.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the transaction), PayPal, or by any other method as agreed to between the parties.
- 3.6 Unless expressly included, the Charges do not include, and the Customer shall be responsible for the payment of, all costs, taxes, duties, imposts and expenses that arise, or are incurred, by virtue of this Contract, including any stamp duty (or like, or similar duty), any Goods and Services Tax or Value Added Tax (or taxes in the manner or nature thereof), any lease tax or tax on leases, any customs duties and tariffs applicable to the country where the Equipment has been sourced from.
- 3.7 Where the Customer has given a credit card or account debit authority, Nexxis is hereby authorised to debit the Charges (and other associated fees and charges payable by the Customer under this Contract) to the Customer's credit card or account, as the applicable amounts become due.
- 3.8 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed (or claimed to be owed) to the Customer by Nexxis, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.9 Receipt by Nexxis of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then Nexxis' rights in relation to the Equipment, and this Contract, shall continue.

## **4. Delivery and Return of Equipment**

- 4.1 Delivery is taken to occur at the time that:
  - (a) the Customer (or the Customer's nominated carrier) takes possession of the Equipment at Nexxis' nominated address (as specified by Nexxis). The Equipment must be collected within seven (7) days of Nexxis notifying the Customer that the Equipment is ready for collection. Following any failure of the Customer to collect the Equipment within this timeframe, Nexxis will arrange Delivery to the Customer as per sub-clause (b); or
  - (b) Nexxis arranges (with its nominated carrier) for the Equipment to be delivered to the Customer's nominated address, even if the Customer is not present at the address, and all related costs of Delivery shall be payable by the Customer, in addition to the Charges. If no address for Delivery is forthcoming from the Customer, the Customer will be liable for all storage costs and any consequential loss or damage arising from the delay in effecting Delivery.
- 4.2 Nexxis shall not be responsible for any damage to, or loss of, the Equipment whilst the Equipment is being delivered to the Customer.
- 4.3 Nexxis may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in this Contract.
- 4.4 Any time or date given by Nexxis to the Customer is an estimate only. The Customer must still accept Delivery, even if late, and Nexxis will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late.
- 4.5 Return of the Equipment by the Customer is solely the Customer's expense and risk, even if arranged by Nexxis, and shall be to the address specified in the Quotation for return.
- 4.6 The Customer shall ensure that the Equipment is returned to Nexxis complete (with all accessories), undamaged and clean of all foreign matter.
- 4.7 Equipment returned to Nexxis before 9:00am on any business day will be deemed to have been received on the previous calendar day. Equipment received after 9:00am on any business day will be recorded as received on that business day.
- 4.8 Equipment not returned on time, and in accordance with this Contract, will be subject to a continuance of the Charges until return of the Equipment has been accepted by Nexxis.
- 4.9 Where it is agreed between the parties that the return of the Equipment is to be effected by Nexxis' collection thereof, Nexxis will arrange to collect the Equipment within a reasonable period after requested by the Customer to do so, and the Customer agrees to maintain the responsibility for the Equipment whilst it is awaiting such collection.

## **5. Customer's Responsibilities**

- 5.1 The Customer must inspect the Equipment on Delivery to ensure that the Equipment has been received in clean and good working order and that it complies with its description, is in merchantable condition and is fit for the Customer's purpose.
- 5.2 The Customer warrants that the Customer's vehicle is suitable for towing the Equipment (where required).
- 5.3 For the duration of the Lease Term, the Customer shall:

- (a) in respect of the Equipment, comply with all State, Territory and Federal laws, including the compliance with all occupational health and safety laws and regulations relating to the use of the Equipment, and associated operations;
  - (b) permit Nexxis, its agents or servant, to enter the premises where the Equipment is located at all reasonable times in order to inspect and/or carry out repairs to the Equipment; and
  - (c) be responsible for advising Nexxis of any need for the recalibration of the Equipment.
- 5.4 The Equipment, when returned to Nexxis, will not have any information contained in, or associated with, it which would, if received by Nexxis or any other party, be in breach of State, Territory or Federal privacy laws.

5.5 *Use, Operation and Maintenance*

The Customer shall:

- (a) notify Nexxis immediately of the full circumstances of any mechanical breakdown or failure of the Equipment, or accident involving the Equipment (including where the Equipment does not operate properly). The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification, and must request instruction from Nexxis before taking any actions;
  - (b) use the Equipment in a careful and proper manner, and for its intended purpose only, and not interfere, tamper with, repair, alter, modify or make additions to the Equipment (including, but not limited to, altering, modifying or removing any sticker or Nexxis identification from the Equipment), or let anyone else do so, without the prior written consent of Nexxis;
  - (c) utilise the Equipment for its business purposes only (and not for any illegal purpose), and not permit the Equipment (of any part thereof) to be used by any other party and/or for any other purpose without the express permission of Nexxis;
  - (d) ensure that all persons operating or installing the Equipment are instructed in its safe and proper use, and (where required) hold valid proof of training, or hold a valid driver's licence, operating licence or permit valid for the type/class of the Equipment;
  - (e) operate, maintain, store and transport the Equipment in a careful and proper manner and:
    - (i) (where required) strictly in accordance with any instruction and recommendation provided by Nexxis and the manufacturer, and with due care and diligence; and
    - (ii) keep the Equipment in a safe and proper location at the nominated address for Delivery, as specified in the Quotation, unless prior written permission has been obtained from Nexxis to relocate the Equipment elsewhere; and
  - (f) pay to Nexxis, on request, the reasonable costs of consumables provided by Nexxis which have been used by the Customer up to the date the Equipment is returned to Nexxis.
- 5.6 Nexxis shall, at its expense and when it deems necessary, provide maintenance of, and recalibration for, the Equipment, and shall, in the event of any Defect in the Equipment through no fault of the Customer, use its best endeavours to expeditiously repair or replace the Equipment. Nexxis may, at its sole and absolute discretion, and for such length of time as it deems expedient, replace Equipment with another of such type or model as shall for the time being available, and the substitution equipment shall be subject to the terms and conditions of this Contract.

**6. Risk and Insurance**

- 6.1 The Equipment shall at all times, whilst in the care, custody or control of the Customer, be at the sole risk of the Customer.
- 6.2 The Customer agrees with Nexxis that the use of Equipment carries with it dangers and risks of injury, and the Customer agrees to accept all dangers and risks.
- 6.3 Nexxis will maintain current insurance policies in respect of the Equipment to its full insurable value. This insurance does not cover the Customer unless they elect to pay the Damage Waiver Fee described in clause 7.
- 6.4 The Customer will assume all risks and liabilities for, and in respect of, the Equipment, and for all injuries to, or deaths of, persons, and any damage to property howsoever arising from the Customer's possession, use, maintenance, repair, storage or transport of the Equipment.
- 6.5 Subject only to the obligations of Nexxis following payment by the Customer of the Damage Waiver Fee in accordance with clause 7, the Customer will be responsible for any loss, theft, damage or destruction to the Equipment (howsoever caused, but excluding fair wear and tear) during the Lease Term, and without limiting the generality of the foregoing, whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Customer. Furthermore:
- (a) the Customer shall pay to Nexxis the new replacement cost (as assessed by Nexxis) in the event the Equipment is lost, stolen, destroyed or damaged beyond repair;

- (b) in respect of damage or loss of the Equipment, or failure to return all of the Equipment (which may render the Equipment unusable), the Lease Term shall continue and the Customer shall continue to pay the Charges until the Equipment has been returned or repaired, or the Customer has paid the replacement cost of the Equipment and/or accessories;
- (c) if the Equipment shall require repair, recalibration or replacement as a result of the Customer's use of the Equipment, the Customer shall bear the cost of any such repair, recalibration or replacement (including any freight charges, where occasioned);
- (d) the Customer indemnifies Nexxis for all loss or damage suffered as a consequence of such damage or loss to, or failure to return, the Equipment and accessories; and
- (e) the Customer shall pay to Nexxis:
  - (i) a reasonable calibration and refurbishing fee in the event that ownership labels, calibration seals or anti-tamper notices affixed to the Equipment are removed or defaced by the Customer;
  - (ii) together with a fee determined by Nexxis, the cost of any item, article, accessory, consumable, document or thing supplied in conjunction with the Equipment (including operation manuals) not returned to Nexxis on cessation of the Lease Term; and
  - (iii) a reasonable cleaning fee in the event the Equipment is returned in an untidy state.

**7. Damage Waiver Fee**

7.1 Upon payment by the Customer of the optional Damage Waiver Fee, Nexxis shall be responsible for the cost of repairs or replacement of the Equipment due to damage occurring during the Lease Term, subject to any excess payable by the Customer.

7.2 This clause:

- (a) in no way entitles the Customer to, or implies the availability of, compensation from Nexxis of any liability incurred by the Customer in relation to the use of the Equipment;
- (b) will not continue to operate after the Expiry Date, unless an extension of the Lease Term has been granted by Nexxis in writing, and an additional agreed fee is paid by the Customer; and
- (c) will not apply to loss or damage which relates to, or arises from:
  - (i) breach of any statutory laws or regulations in connection with the use of the Equipment by the Customer;
  - (ii) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Equipment;
  - (iii) theft, loss or damage by whatever cause to tools and/or accessories supplied with the Equipment (including, but not limited to, probe tips, probe tip cases, electric leads and cables, USB, AC adapters, manuals, user guides, CD ROMS, batteries, extension cords or cables, and any other accessories in the packing list);
  - (iv) lack of appropriate storing or non-adherence to other normal maintenance requirements that could reasonably be expected of the Customer under this Contract;
  - (v) disregard for instructions given to the Customer by Nexxis in respect of the proper use of the Equipment or in contradiction of the manufacturer's instructions if supplied with the Equipment upon commencement of the Lease Term;
  - (vi) unexplained disappearance of the Equipment;
  - (vii) theft of the Equipment in circumstances where site security is available (including, but not limited to, locked yards, buildings and sheds), where proper security is not used by the Customer to secure the Equipment whilst it is left unattended; and
  - (viii) loading or off-loading Equipment from maritime vessels, transportation of Equipment on maritime vessels or the use of Equipment on any wharf, bridge or over any body of water.

**8. Title**

8.1 The property and title in the Equipment remains with Nexxis, and the Customer:

- (a) is only a bailee of the Equipment on the terms and conditions set out in this Contract, and has no right, title, estate or interest in the Equipment, and must return the Equipment to Nexxis on request; and
- (b) shall not agree, offer or purport to grant (or actually grant) any encumbrance over (or in connection with) the Equipment, assign this contract, or otherwise to deal with the Equipment or conceal the Equipment, or remove the Equipment from the State without the express prior written consent of Nexxis (which Nexxis may withhold in its absolute discretion). For the purposes of this Contract, encumbrance means any mortgage, lien (including a lien in respect of any repairs to the Equipment), charge, bill of sale, option title, retention, pledge (including pledging Nexxis' credit in connection with the Equipment), claim, restriction,

condition, overriding interest, security interest pursuant to the PPSA, or other encumbrance.

8.2 Where the Customer fails to return the Equipment to Nexxis, pursuant to clause 12.1(a), the Customer consents to Nexxis (or its servants and agents) to enter (as an invitee of the Customer) upon and into land and premises owned, occupied or used by the Customer (or any other premises where the Equipment is located), using such force as is necessary, to take possession of the Equipment. The Customer must provide Nexxis with all reasonable assistance in order to locate and collect the Equipment. If the Equipment is not available for collection at the nominated location, date and/or time, the Customer will be liable for any additional costs Nexxis may incur as a result thereof. Nexxis will not be liable for any damage to property caused by any person collecting the Equipment pursuant to this clause.

## 9. Personal Property Securities Act 2009 ("PPSA")

9.1 In this clause "financing statement", "financing change statement", "security agreement", and "security interest" has the meaning given to it by the PPSA.

9.2 Upon assenting to this Contract, in writing, the Customer acknowledges and agrees that this Contract constitutes a security agreement for the purposes of the PPSA and creates a security interest in:

- (a) all Equipment that has previously been supplied (if any), and that will be supplied in the future, by Nexxis to the Customer; and
- (b) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in, for the purposes of securing repayment of all monetary obligations of the Customer to Nexxis for services – that have previously been provided (if any), and that will be provided in the future, by Nexxis to the Customer.

9.3 The Customer undertakes to:

- (a) indemnify, and upon demand reimburse, Nexxis for all expenses incurred in registering a financing statement, or financing change statement, on the Personal Property Securities Register established by the PPSA, or releasing any registration made thereby; and
- (b) not register, purport to register, or permit to be registered a financing statement, or financing change statement (including any in favour of a third party), in respect of the Equipment, without the express written consent of Nexxis.

9.4 The Customer acknowledges and agrees that Nexxis may register its security interest as a PMSI.

9.5 To the extent that Chapter 4 of the PPSA applies to the security interest under this Contract, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are 'contracted out' of this Contract in respect of all goods to which that section can be applied: section 96 (retention of accession), section 121(4) (notice to grantor), section 125 (obligations to dispose of or retain collateral), section 130 (notice of disposal to the extent it requires Nexxis to give notice to the Customer), section 129(2) and 129(3), section 132(3)(d) (contents of statement of account after disposal), section 132(4) (statement of account if not disposal), section 135 (notice of retention), section 142 (redemption of collateral) and section 143 (re-instatement of security agreement).

9.6 The following provisions of the PPSA confer rights on Nexxis: section 123 (seizing collateral), section 126 (apparent possession), section 128 (secured party may dispose of collateral), section 129 (disposal by purchase) and section 134(1) (retention of collateral). The Customer agrees that in addition to those rights, Nexxis shall, in the event of a Default, have the right to seize, purchase, take possession (or apparent possession), retain, deal with or dispose of any goods, not only under those sections, but also as additional and independent rights, under this Contract, and the Customer agrees that Nexxis may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.

9.7 Unless otherwise agreed to in writing by Nexxis, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 Both parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing Nexxis the benefit of section 275(6)(a), and Nexxis shall not be liable to pay any damages (or other compensation), or be subject to injunction, if Nexxis breaches this sub-clause.

9.9 The Customer unconditionally ratifies any actions taken by Nexxis under clauses 9.3 to 9.8.

9.10 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in this Contract is intended to have the effect of contracting out of any of the provisions of the PPSA.

9.11 Only to the extent that the Lease Term exceeds six (6) months (with the right of renewal) shall this clause 9 apply, and this Contract a security agreement for the purposes of PPSA generally, and in particular section 20.

## 10. Sub-Leasing

10.1 The Customer must not lease, sub-lease, bail or otherwise give possession ("Sub-Lease") of the Equipment to any other party without the express prior written consent of Nexxis (which Nexxis may withhold in its absolute discretion). Any such Sub-Lease agreed to by Nexxis must comply with the following conditions:

- (a) the Sub-Lease must be in writing in a form acceptable to Nexxis and must be expressed to be subject to the rights of Nexxis under this Contract;
- (b) the Customer may not vary the Sub-Lease without the prior written consent of Nexxis (which Nexxis may withhold in its absolute discretion);
- (c) the Customer must ensure that Nexxis is provided (at all times) with up-to-date information regarding the Sub-Lease, including the identity of the sub-lessee, the terms of, and state of, accounts and payment under the Sub-Lease, and the location and condition of the Equipment;
- (d) the Customer must take all steps (including registration under the PPSA) as may be required to:
  - (i) ensure that any security interest arising under, or in respect of, the Sub-Lease is enforceable, perfected and otherwise effective under the PPSA;
  - (ii) enabling the Customer to gain (subject always to the rights of Nexxis) first priority (or any other priority agreed to by Nexxis in writing) for the security interest; and
  - (iii) enabling Nexxis and the Customer to exercise their respective rights in connection with the security interest; and
- (e) Nexxis may recover from the Customer the cost of doing anything under this clause 10, including registration fees (as per clause 9.3(a)).

## 11. Liability

11.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the Competition and Consumer Act 2010 and the Fair Trading Act applicable to the State or Territory), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the Competition and Consumer Act 2010 or the Fair Trading Act applicable to the State or Territory) may be implied into this Contract ("Non-Excluded Guarantees"). Nexxis acknowledges that nothing in this Contract purports to modify or exclude the Non-Excluded Guarantees. Without limiting clause 11.6, and except as expressly set out in this Contract, or in respect of the Non-Excluded Guarantees, Nexxis makes no warranties or other representations under this Contract (including, but not limited to, the merchantability, description, quality, suitability, or fitness of the Equipment for any purpose, or as to design, assembly, installation, materials, workmanship, or otherwise). Nexxis' liability to the Customer in respect of these warranties is limited to the maximum extent permitted by law, and the following:

- (a) replacement of the Equipment (or the supply of equivalent equipment), or the payment of the cost of replacing the Equipment (or of acquiring equivalent equipment); or
- (b) repair of the Equipment, or payment of the cost of having the Equipment repaired.

11.2 If Nexxis is required to replace the Equipment under this clause, or the Competition and Consumer Act 2010, but is unable to do so, Nexxis may refund any money the Customer has paid for the Equipment.

11.3 Notwithstanding anything contained in this clause, if Nexxis is required by a law to accept the return of the Equipment, then Nexxis will only accept such return on the conditions imposed by that law.

11.4 Subject to clause 11.1, Nexxis shall be under no liability whatsoever to the Customer in any circumstance for any indirect, economic and/or consequential loss, damage and/or expense (including loss of profit) suffered by the Customer, including arising out of, or by any reason of, any data or information of the Customer being contained in the Equipment on the return or repossession thereof. Alternatively, Nexxis' maximum aggregate liability for all claims relating to this Contract, or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term, or on any other basis, shall be limited to an amount which under no circumstances shall exceed the Charges payable by the Customer under this Contract.

11.5 The Customer acknowledges that it has not relied upon any statement or representation by Nexxis in respect of the purpose for which the Customer desires to use the Equipment, and that Nexxis is not responsible or liable for any failure or unsuitability of the Equipment to perform the purposes required by the Customer.

11.6 The Customer shall indemnify, and keep indemnified, Nexxis against all liability in respect of all actions, proceedings, claims, losses, damages, costs, expenses and injuries suffered (either by the Customer, Nexxis or any third party) in connection with the supply of the Equipment by Nexxis and/or otherwise arising out of, or consequent on, the use of the Equipment, and whether or not arising from any negligence, misuse, failure or omission of the Customer or any other persons.

## 12. Default and Consequences of Default

12.1 In the event of any Default Nexxis shall be entitled to (at its sole discretion and option, and without prejudice to any other remedies Nexxis may have under this Contract, or under law):

- (a) treat this Contract as breached and repudiated by the Customer, and with (or without) any notice, accept the repudiation and terminate this Contract; whereupon the Customer shall immediately (at its own cost and expense) return the Equipment to Nexxis;
- (b) at any time prior to payment in full of the Charges for the Equipment, or any other Equipment supplied by Nexxis for which payment is outstanding:
  - (i) suspend or terminate this Contract;
  - (ii) require the immediate payment of all Charges, in cash, before Delivery (or the performance of any associated services), irrespective of whether or not such are due for payment, or any payment terms previously specified or agreed to between the parties;
  - (iii) takeover, or repossess, the Equipment, and dispose of such, without prejudice to any claim Nexxis may have against the Customer for any damages or loss resulting from any sale or disposal thereof; and/or
  - (iv) exercise all rights to the Equipment as the owner thereof; and/or
- (c) charge the Customer interest on any overdue payments, which shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Nexxis' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

12.2 The Customer agrees to indemnify Nexxis, and be responsible for all costs, disbursements, charges and other liabilities incurred by Nexxis as a result of any Default (including, but not limited to, internal administration fees, legal costs on a solicitor and own client basis, Nexxis' contract default fee, and bank dishonour fees), or as a result of Nexxis' enforcement of any term or condition of this Contract, or arising out of or in any way connected with the use of the Equipment (subject always to clause 11).

## 13. Termination

13.1 Without prejudice to any other remedies Nexxis may have against the Customer, and notwithstanding the Lease Term specified in the Quotation, this Contract may be terminated by Nexxis:

- (a) upon giving the Customer two (2) days written notice of termination at any time during the Lease Term. In which case sub-clause 13.2(a)(ii) shall not apply; and
- (b) without notice in the event of any Default.

13.2 In the event of the premature termination of this Contract (including by notification from the Customer, or as a result of Default, but excluding any breach or termination of this Contract by Nexxis):

- (a) the Customer shall be responsible for the immediate payment of the following sums:
  - (i) all Charges due and payable up to the date of termination, noting applicable rates may change if the Lease Term is shorter than that noted in the Quotation; and
  - (ii) all other sums owing by the Customer under this Contract (or any other contract with the Customer) as a result of the Default and termination of this Contract, including consequential damages for the loss of bargain and all loss, costs, charges and expenses incurred by Nexxis in connection with (and resulting from) the premature termination of this Contract, which shall be calculated at a minimum of sixty percent (60%) of the remainder of the Charges under this Contract for Lease Term.

13.3 Any termination effected by Nexxis in accordance with this Contract shall not prejudice Nexxis' right to recover any unpaid Charges, and/or any other rights or remedies conferred to Nexxis, and obligations placed upon the Customer, under this Contract. Furthermore, Nexxis shall not be liable to the Customer for any loss or damage the Customer suffers because Nexxis has exercised its rights under this Contract.

## 14. Privacy Act 1988

14.1 The Customer agrees for Nexxis to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Nexxis.

14.2 The Customer agrees that Nexxis may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.

14.3 The Customer consents to Nexxis being given a consumer credit report to collect overdue payment on commercial credit.

14.4 The Customer agrees that personal credit information provided may be used and retained by Nexxis for the following purposes (and for other agreed purposes or required by):

- (a) the supply of Equipment; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the supply of Equipment; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Equipment.

14.5 Nexxis may give information about the Customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

14.6 The information given to the CRB may include:

- (a) personal information as outlined in 14.1 above;
- (b) name of the credit provider and that Nexxis is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Nexxis has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of Nexxis, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

14.7 The Customer shall have the right to request (by email) from Nexxis:

- (a) a copy of the information about the Customer retained by Nexxis and the right to request that Nexxis correct any incorrect information; and
- (b) that Nexxis does not disclose any personal information about the Customer for the purpose of direct marketing.

14.8 Nexxis will destroy personal information upon the Customer's request (by email) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

14.9 The Customer can make a privacy complaint by contacting Nexxis via email. Nexxis will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 15. General

15.1 This Contract, and related Quotation, constitute the entire agreement between the parties with respect to the Equipment, and:

- (a) shall not be amended except with Nexxis' consent in writing. The Customer agrees that Nexxis may amend any term or condition of this Contract at any time. If Nexxis makes such amendment, it will notify the Customer in writing of such, and require the Customer to accept the amendment in writing before such amendment will take effect. The Customer:
  - (i) will be taken to have accepted such amendment if the Customer makes subsequent payment of any Charges payable by the Customer under this Contract; or
  - (ii) may terminate this Contract, without suffering any liability for doing so hereunder, in the event the Customer notifies Nexxis in writing that it does not accept such amendment.
- (b) shall prevail to the extent of any inconsistency with any other document or agreement between the parties; and
- (c) shall be governed in all respects by the laws of Western Australia, and the jurisdiction thereof shall apply to any dispute arising out of this Contract; and

- (d) references to any laws or regulations in this Contract include references to amended, replacement and successor provisions thereof.
- 15.2 Both parties agree that any disputes arising from the leased use of the Equipment (except in regard to payment of Charges or associated costs and fees) shall be negotiated with the view to settlement with the assistance of the Hire and Rental Industry Association Limited before litigation is pursued.
- 15.3 Both parties undertake to do anything, such as obtaining consents and promptly signing any documents and/or providing any information (and such information must be complete, accurate and up-to-date in all respects), which the other party may reasonably require in order to enforce any rights, or satisfy any obligation, under this Contract, including in order for Nexxis to:
- (a) register a financing statement, or financing change statement, in relation to a security interest on the Personal Property Securities Register, and:
    - (i) that such security interest is enforceable, perfected and otherwise effective under the PPSA; and
    - (ii) that Nexxis is enabled to gain first priority (or any other priority agreed to by Nexxis in writing) for the security interest; and
    - (iii) that Nexxis is enabled to exercise rights in connection with the security interest.
  - (b) register any other document required to be registered by the PPSA; or
  - (c) correct a defect in a statement referred to in sub-clauses (a) or (b) above.
- 15.4 The failure by Nexxis to enforce any provision of this Contract shall not be treated as a waiver of that provision, nor shall it affect Nexxis' right to subsequently enforce that provision. If any provision of this Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.5 The rights and remedies of Nexxis under this Contract are in addition to, and not in substitution for, Nexxis' rights and remedies under law (including the PPSA), and Nexxis may choose (at its sole discretion) whether to exercise rights and remedies under this Contract, and/or under other law, as it sees fit.
- 15.6 All rights pertaining to industrial or intellectual property including but not limited to copyrights, patents and trademarks, are expressly reserved. The Customer shall not make any copies, or authorise any copying, of anything supplied such as software programs and operating manuals, except with the prior written authority of Nexxis, and the owner/licensor, and in accordance with the license terms (as applicable). All copies must be delivered up with the Equipment.
- 15.7 The covenants, agreement and obligations contained in this Contract will not merge or terminate upon the termination of this Contract, and to the extent that they have not been fulfilled or satisfied or are continuing obligations, they will remain in full force and effect.
- 15.8 Neither party shall be liable for any breach of this Contract due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, or other event beyond the reasonable control of either party. Additionally, Nexxis shall not be liable for any failure to deliver the Equipment, or to perform services under this Contract if the failure arises as a consequence of embargo, inability to secure materials or labour, or any delay or failure to deliver by any freight company or delivery service, or any consequential loss or damage arising in respect of the delivery, late delivery or non-delivery of the Equipment.
- 15.9 The Customer warrants that it has the power to enter into this Contract, and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this Contract creates binding and valid legal obligations on it.
- 16. Change in Control**
- 16.1 The Customer shall give Nexxis not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, addresses, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Nexxis as a result of the Customer's failure to comply with this clause.
- 16.2 The Customer shall notify Nexxis immediately if any judgement or order is levied against the Customer, or property of the Customer, or if a petition is

presented for the liquidation of the Customer, or an administrator or receiver is appointed or a scheme of arrangement is proposed.

## 17. Definitions

**"Charges"** means any lease charges (including the Damage Waiver Fee) and/or purchase price payable for the Equipment, as agreed between the parties in accordance with clause 3 above.

**"Contract"** means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract. If there are any inconsistencies between the incorporated documentation (including, but not limited to, any special terms or conditions), then any conflicting term or condition contained in any Quotation, order, invoice or other document, or amendments expressed to be supplemental to this Contract, shall prevail.

**"Customer"** means the person/s or entity signing this Contract, or any person acting on behalf of, and with the authority of, the Customer (including any employees, servants and agents), as specified in this Contract, and:

- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; or
- (b) any trustee acting on behalf of a Trust shall be liable personally.

**"Damage Waiver Fee"** means the damage waiver fee specified in the Quotation, which may, or may not, apply depending on the individual Quotation.

**"Default"** means where the Customer:

- (a) defaults in making payment of the Charges, or stops or reverses payment thereof; or
- (b) is in breach, or fails to comply, with any part of this Contract; or
- (c) repudiates any term or condition of this Contract, or any other agreement it has entered into with Nexxis; or
- (d) dies, becomes insolvent or subject to bankruptcy laws, calls a meeting of creditors, or being a company – enters into any scheme of arrangement with creditors or makes an assignment/compromise for the benefit of its creditors, or receivers, managers, liquidators (provisional or otherwise), administrators or any similar party is appointed in respect of the Customer (or any asset of the Customer), has any winding up petition presented against it, or ceases to carry on business.

**"Delivery"** means delivery of the Equipment to the Customer (and/or installation thereof) in accordance with clause 4.1.

**"Equipment"** means all Equipment (including any items, articles, accessories, consumables, documents – including operating manuals) supplied by Nexxis to the Customer, at the Customer's request, from time to time (where the context so permits the term 'Equipment' shall include any incidental supply of services).

**"Expiry Date"** means the date upon which this Contract is intended to be concluded (which may be specified in the Quotation), and the Equipment must be returned to Nexxis by 5:00pm on the Expiry Date.

**"Lease Term"** means the term of this Contract, commencing on the Start Date and concluding on the Expiry Date, as specified in the Quotation or any other document/ as provided by Nexxis to the Customer.

**"Nexxis"** means Nexxis Technology Pty Ltd, Nexxis Technology USA Corp, Nexxis Engineering PTE Ltd and its successors and assigns, or any person acting on behalf of, and with the authority of, Nexxis Technology Pty Ltd, Nexxis Technology USA Corp, Nexxis Engineering PTE Ltd.

**"Quotation"** means the letter/s or other document/s prepared by Nexxis, and submitted to the Customer, to describe the Equipment which is to be supplied, the Lease Term (including the Start Date and Expiry Date), addresses for Delivery and/or return, the amount or method of calculation of the Charges, any other associated costs and expenses, and such other information and provisions as Nexxis requires.

**"Start Date"** means the date upon Delivery to the Customer, as specified in the Quotation.

**EXECUTION CLAUSE**

I have read and understand the terms and conditions herein of Nexxis Technology Pty Ltd, Nexxis Technology USA Corp & Nexxis Engineering Pte Ltd and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause herein. I authorise the use of my personal information as detailed in the Privacy Act clause therein. I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer, I shall be personally liable for the performance of the Customer's obligations under this contract. I am authorised to sign this contract on behalf of the Customer.

SIGNED (CUSTOMER):	SIGNED (NEXXIS):
Name:	Name:
Position:	Position:
Company:	
Date:	Date: