

Visiscope Equipment Rental Agreement No

Visiscope Limited (Company Number 926940)
(Visiscope)

The Entity named in Schedule 1
(Customer)

Parties

1. **Visiscope Limited (Company Number 926940)** a company having its registered office at 560 Whitford Road, RD 1, Whitford 2571 ("Visiscope")
2. **The Customer named in Schedule 1** ("Customer")

Background

- A. Visiscope is the lessor of the Equipment.
- B. The Customer wishes to rent the Equipment on the terms and conditions contained in this Agreement.

The parties agree as follows:

1. Interpretation

- 1.1 In this Agreement unless the context indicates otherwise:

"Agreement" means this agreement and its schedules including any variations, additions or amendments, as may be agreed in writing by the Parties from time to time;

"Business Day" means any day other than a Saturday, Sunday or a statutory public holiday in Auckland, New Zealand;

"Delivery Date" means the date (or dates) and time (or times) that the Equipment will be delivered to the Customer's premises in accordance with Schedule 1;

"Effective Date" means the date of signing this Agreement or, in the event that this Agreement is signed by the Parties on different dates,

then the date on which the last Party to sign the Agreement signs it;

"Equipment" means all or any part of the equipment referred to in Schedule 1;

"Equipment Warranty" means the Manufacturer's warranties relating to the Equipment as set out in Schedule 1;

"Maintenance Materials" means the documentation required to operate the Equipment and includes operational instructions, user manuals and any other documents of a similar nature;

"Manufacturer" means the original manufacturer of the Equipment;

"Parties" means Visiscope and the Customer and includes their successors and permitted assigns, and **"Party"** means any one of them;

"Rental" means the amount payable by the Customer to Visiscope to rent the Equipment as specified in Schedule 1.

- 1.2 **Schedules:** the Schedules to this Agreement form part of this Agreement.

- 1.3 **Sections, clauses and schedules:** references to sections, clauses and Schedules are references to this Agreement's sections, clauses and Schedules.

- 1.4 **Statutes and regulations:** references to any statutory provision will include any statutory provision which amends or replaces it and any subordinate legislation made under it.

2. Rental

- 2.1 Visiscope agrees to rent to the Customer the Equipment on the terms and conditions of this Agreement.

- 2.2 The rental period starts on the date set out in Schedule 1 and continues for the rental period set out in Schedule 1.

- 2.3 The rental rates are set out in Schedule 1 and are payable as set out in Schedule 1. Unless otherwise specified, all prices will be quoted and billed exclusive of duties and taxes, including GST (as defined in the Goods and Services Tax Act 1985). Payment is strictly 100% within 7 days of date of Visiscope's invoice. Late payments may incur interest at the date of 15%pa from the due date until the date of payment.

- 2.4 A bond is payable by the Customer upon signing this Agreement. Visiscope may have recourse to the bond to cover the costs of any repairs or replacement due to damage to the Equipment or any accessories during the rental period.

- 2.5 The Equipment must be returned at the end of the rental period set out in Schedule 1 to Visiscope at its registered address, by signature required courier, at the expense of the Customer.

- 2.6 If the Equipment is not returned at the end of the rental period set out in Schedule 1, rental charges will continue to accrue at the same daily rate as in Schedule 1 until the Equipment is returned complete with all accessories and undamaged.

- 2.7 Where the Equipment or any accessories are lost, or the Equipment or any accessories are damaged while in the Customer's possession or control, the rental charges will continue to be charged and will be payable until replacement Equipment or accessories is/are acquired and delivered to Visiscope and/or the damaged Equipment or accessories are replaced or repaired to a serviceable condition and returned to Visiscope.
- 2.8 If the Equipment has or develops any faults or defects that are not as a result of the use or misuse of the Equipment by the Customer, the Customer must return the Equipment to Visiscope and liability for rental will then cease. Visiscope cannot guarantee that the Equipment can or will be repaired as repairs will be at the discretion of the Manufacturer, in accordance with and subject to the terms and conditions of the Equipment Warranty.
- 2.9 Visiscope warrants that the Equipment is of merchantable quality and reasonably fit for the purpose for which it was designed. However, Visiscope makes no other representation, statement, warranty or undertaking to the Customer in relation to the quality and/or description of the Equipment. The Customer acknowledges that it has not relied upon any statement or representation from Visiscope in respect of the Equipment or the use of the Equipment.
- 2.10 The parties agree that, given the subject matter of this agreement, and the identity of the parties, the provisions of the Consumer Guarantees Act 1993 do not apply to the rental of the Equipment, and the parties agree it is fair and reasonable for the parties to contract out of such provisions.
- 3. Delivery and Installation**
- 3.1 Visiscope will arrange for the Equipment to be delivered at the location specified by the Customer on the Delivery Date in accordance with Schedule 1.
- 3.2 The Customer will provide access to its premises on the Delivery Date.
- 3.3 If Visiscope considers that it is or is likely to be prevented or delayed from achieving a time or date for delivery on the Delivery Date as specified in Schedule 1, it will immediately give the Customer written notice of such delay and the Parties will work together in good faith to resolve the delivery issue in a manner that is mutually satisfactory to both Parties.
- 4. Title and Risk**
- 4.1 Title to the Equipment at all times remains with Visiscope.
- 4.2 Risk in the Equipment will pass to the Customer following the Equipment leaving the possession of Visiscope. The Customer must insure the Equipment from that point in time.
- 4.3 At all times, the Customer will:
- (a) hold the Equipment as bailee;
 - (b) clearly designate the Equipment as Visiscope's property;
- (c) store the Equipment in such a way that they are identified as Visiscope's property;
- (d) maintain the Equipment in good order and condition; and
- (e) preserve the Equipment in their present form.
- 4.4 Without prejudice to Visiscope's other rights and remedies, Visiscope will be entitled to retake possession of the Equipment at any time if any portion of the rental is not paid when due. The Customer grants Visiscope an irrevocable right and authority to enter onto any place, with a representative of the Customer, where such Equipment is situated, or thought to be situated at any time, and to repossess the Equipment.
- 5. Returns and Maintenance**
- 5.1 It shall be the Customer's responsibility to check the Equipment upon receipt and confirm whether the Equipment is undamaged and complete. If the Customer believes the Equipment to be faulty in any respect the Customer shall follow the Manufacturer's instructions (as set out in the Equipment Warranty) for return of the Equipment to Visiscope. Visiscope has no liability for repair or replacement of the Equipment but may, at its discretion, arrange replacement of the Equipment, should the Manufacturer confirm responsibility for any defects.
- 5.2 Visiscope agrees to supply to the Customer the Maintenance Materials on the Delivery Date.
- 5.3 The Customer will at all times follow

the instructions and advice in the Maintenance Materials on matters dealing with the maintenance and operations of the Equipment.

6. Termination

6.1 This Agreement shall commence on the Effective Date and shall continue in full force and effect, unless terminated earlier in accordance with its terms.

6.2 Either Party may, without prejudice to its other rights or remedies, terminate this Agreement with immediate effect by written notice to the other Party if the other Party commits a material breach of the Agreement (being a single event or a series of events which together amount to a material breach (as the case may be)) which:

- (a) is capable of being cured and following notice from the other Party requiring the Party to cure the breach, that Party does not cure the breach within twenty (20) Business Days of the receipt of written notice of the breach; or
- (b) is not capable of being cured (other than by the payment of money).

6.3 This clause 6 is without prejudice to any other right, power or remedy under this Agreement, at law, or otherwise, that either Party has in respect of a default by the other Party.

6.4 The termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party, nor shall it affect the coming into force or the continuance in force of any

provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after termination.

7. Liability

7.1 In no event shall Visiscope be liable for any general, consequential, incidental, indirect, special, loss of profit or opportunity, exemplary or punitive, special or other damages whatsoever resulting from Visiscope's performance or failure to perform under this Agreement, or the furnishing, performance or use of any products rented pursuant hereto, whether due to breach of contract, breach of warranty, strict liability, product liability, the negligence of Visiscope or otherwise.

7.2 Except where expressly provided in this Agreement:

- (a) Visiscope's liability shall not exceed the amount paid by the Customer for rental of the Equipment which is the subject of, or the cause of (whether directly or indirectly) any claim by the Customer against Visiscope;
- (b) damage limitations provided in this Agreement and the remedies stated herein shall be the Customer's sole and exclusive remedy;
- (c) Visiscope shall not, by reason of the termination of this Agreement, be liable to the Customer for any damages or injunctive relief of any kind, including but not limited to, compensation, reimbursement or damages because of any:

(i) loss of prospective profits;

(ii) expenditures, investments, losses or commitments in connection with the establishment, development or maintenance of the business or goodwill; or

(iii) any other cause by reason of the termination of such relationship; and

(d) this limitation on liability shall survive failure of any essential purpose.

7.3 These terms and conditions do not, and no provision of these terms and conditions purports to, restrict or modify or have the effect of excluding, restricting or modifying the application of any conditions and warranties imposed and required to be binding by statute.

7.4 This clause 7 does not exclude, restrict or modify any condition, warranty, right or liability implied in this Agreement by a statute or by law if to do so would make this clause void. For the avoidance of doubt, nothing in this clause 7 shall limit or exclude Visiscope's liability in respect of any conditions and warranties imposed and required to be binding by statute.

8. Indemnity

8.1 The Customer indemnifies Visiscope against any loss, cost, damage or expense, excluding consequential loss, suffered or incurred by Visiscope resulting, directly, from any default or breach

by the Customer under or in connection with this Agreement.

counterparts shall together constitute the one agreement.

or delay in exercising, (in whole or in part) any right, power or remedy under, or in connection with, this Agreement shall operate as a waiver of that right, power or remedy. A waiver of any breach of any provision of this Agreement shall not be effective unless that waiver is in writing and is signed by the Party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

9. Warranties

9.1 Subject to any express warranties contained in this Agreement, to the extent permitted by law, all warranties, guarantees and representations made to the Customer, expressly or impliedly, by statute or otherwise, are hereby excluded and disclaimed and the Customer acknowledges that it does not rely upon any of those warranties, guarantees and representations.

10.3 **Entire Agreement:** this Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement and supersedes and cancels any previous agreement, understanding or arrangement whether written or oral.

10.4 **Further Assurances:** each Party shall make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this Agreement.

10. General

10.1 **Amendments:** no amendment of this Agreement shall be effective unless it is in writing and duly executed by each Party to it or on behalf of each Party by an authorised representative.

10.5 **Severability:** if any provision of this Agreement is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this Agreement without affecting the validity of the remainder of this Agreement and shall not affect the enforceability, legality, validity or application of any other provision of this Agreement.

10.2 **Counterparts:** this Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all of the

10.6 **No Waiver:** no failure or forbearance by a Party to exercise,

10.7 **Set Off:** Visiscope may deduct from or set off against any amount that is or may become payable by it in relation to this Agreement to the Customer, any amount that is or may become payable to it by the Customer in relation to this Agreement or otherwise.

10.8 **Governing Law:** this Agreement is governed by the laws of New Zealand and the Parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of or in connection with this Agreement.

Signatures:

Signed for and on behalf of
Visiscope Limited
by

)
)
) (Designation)

Signed for and on behalf of
[*Insert Name of Customer*]
by

)
)
) (Designation)

Dated the

day of

2022

Schedule 1

Customer's Name, Address and Contact Details

Equipment Specification

Model – Serial No

Rental start date/Delivery Date:

Rental period:

Rental amount:

Daily rate:

Weekly rate:

Monthly rate:

Bond: \$

The bond must be paid in full prior to taking possession.

Delivery

[Insert Details of Specific Date(s) for Delivery and Installation]

Delivery will take place approximately _____ following receipt of payment of the bond for the Equipment.