

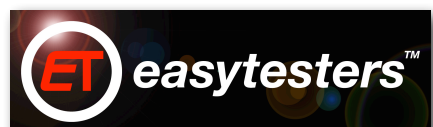
Dated ..... 2014

**EASYTESTERS LIMITED**  
and  
**HIRER**

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**END USER**  
**EQUIPMENT HIRE AND CONFIDENTIALITY**  
**AGREEMENT**

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**THIS AGREEMENT** is dated ..... 2013.

**BETWEEN:**

- (1) **EASYTESTERS LIMITED**, (company number: 6338179) whose registered office is at 5 Bella View Gardens, Glastonbury, BA6 9HQ, United Kingdom ("**EASYTESTERS**");
- and
- (2) **HIRER** incorporated and registered in [COUNTRY] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the "**Hirer**").

**AGREEMENT:**

**1. Definitions and Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

<b>"Business Day";</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>"Commencement Date";</b>	the date that the Hirer takes Delivery of the Equipment.
<b>"Delivery";</b>	the transfer of physical possession of the Equipment to the Hirer in the Territory.
<b>"Deposit";</b>	the deposit amount set out in clause 4.
<b>"Equipment";</b>	the units of equipment listed in Schedule 1, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.
<b>"Rental Payment";</b>	the payments made pursuant to clause 4 below by or on behalf of the Hirer for hire of each unit of the Equipment.
<b>"Rental Period";</b>	the period of hire as set out in clause 3.
<b>"Territory"</b>	the geographical area, known as <b>COUNTRY</b>
<b>"Total Loss";</b>	the Equipment is, in EASYTESTERS's reasonable opinion or the opinion of its insurer(s), damaged beyond repair, lost, stolen, seized or confiscated.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.

## 2. Equipment Hire

EASYTESTERS shall lease the Equipment to the Hirer solely for its **exclusive/non exclusive** use in the Territory subject to the terms and conditions of this Agreement and shall not, other than in the exercise of its rights under this Agreement or applicable law, interfere with the Hirer's quiet possession of the Equipment.

## 3. Rental Period

The Rental Period starts on the Commencement Date and shall continue for a period of 12 (twelve) months unless this Agreement is terminated earlier in accordance with its terms.

## 4. Rental Payments and Deposit

- 4.1 The Hirer shall pay the sum of **£00000** per **year**, per unit of Equipment as a Rental Payment to EASYTESTERS in pounds sterling the first such payment to be made in advance prior to the Commencement Date. **All other Rental Payments shall be paid in advance by the Hirer, by standing order, on or before the last working day of the preceding month/year of hire.**
- 4.2 The Rental Payments are exclusive of VAT and any other applicable taxes and duties or similar charges, which shall be payable by the Hirer at the rate and in the manner from time to time prescribed by law.
- 4.3 If the Hirer fails to pay the Rental Payment or any other sums payable under this Agreement by the due date for payment under this Agreement then, without limiting EASYTESTERS' rights under clause 11.1, the Hirer shall pay interest on such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be paid at the rate of four per cent (4%) per annum above the base rate from time to time of BARCLAYS BANK P.L.C.
- 4.4 The Deposit **(if required)** is a deposit against any loss of or damage caused to the Equipment. The Hirer shall, on the date of this Agreement, **not be required to pay a deposit** to EASYTESTERS. If the Hirer causes any loss or damage to the Equipment (in whole or in part), EASYTESTERS shall be **entitled to charge a Deposit amount of £ ▼ against** any such loss or damage.
- 4.5 Subject to clause 6.7 the Deposit (or balance thereof) shall be refundable within five (5) Business Days of the end of the Rental Period.
- 4.6 On return of the Equipment at the end of the Rental Period for whatever reason but only if the Equipment is returned in damaged condition, EASYTESTERS may (at its option) choose to extend the Rental Period for such reasonable period of time as is necessary to effect repairs to the Equipment. In these circumstances, the Hirer shall be liable to pay a daily rate of hire in addition to any other costs of repair for the Equipment.

## 5. Delivery and Working Order

- 5.1 Delivery of the Equipment shall be made by EASYTESTERS. EASYTESTERS shall use all reasonable endeavours to effect Delivery by the date and time agreed between the parties. Title and risk shall transfer in accordance with *clause* 6 of this Agreement.
- 5.2 The Hirer shall procure that a duly authorised representative of the Hirer shall be present at Delivery of the Equipment. Acceptance by such representative at Delivery shall constitute conclusive evidence that the Hirer has examined the Equipment, tested it and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended. If required by EASYTESTERS, the Hirer's duly authorised representative shall sign a receipt confirming such acceptance.
- 5.3 After taking Delivery of the Equipment, the Hirer shall have a period of not more than seven (7) days to notify EASYTESTERS of any previously undiscovered defects or inoperability in relation to the Equipment. Any failure by the Hirer to comply with this clause will invalidate any claim that the Equipment was defective or inoperable at Delivery and shall result in any risk associated with such defect or inoperability being borne by the Hirer.

## 6. Title, risk and insurance

- 6.1 The Equipment shall at all times remain the property of EASYTESTERS, and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of this Agreement).
- 6.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Hirer on Delivery. The Equipment shall remain at the sole risk of the Hirer during the Rental Period and any further term during which the Equipment is in the possession, custody or control of the Hirer ("**Risk Period**") until such time as the Equipment is redelivered to EASYTESTERS. During the Rental Period and the Risk Period, the Hirer shall, at its own expense, obtain and maintain the following insurances:
  - (a) insurance of the Equipment, to a value not less than its full replacement value of £0,000.00 per unit, comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as EASYTESTERS may from time to time nominate in writing;
  - (b) insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or which is required by any applicable law in the Territory, or such amount as EASYTESTERS may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
  - (c) insurance against such other or further risks relating to the Equipment as may be required by law.
- 6.3 All insurance policies procured by the Hirer shall be endorsed to provide EASYTESTERS with at least twenty (20) Business Days' prior written notice of

cancellation or material change (including any reduction in coverage or policy amount) and shall upon EASYTESTERS' request name EASYTESTERS on the policies as a loss payee in relation to any claim relating to the Equipment. The Hirer shall be solely responsible for paying any deductibles due on any claims under such insurance policies.

- 6.4 The Hirer shall give immediate written notice to EASYTESTERS in the event of any loss, accident or damage to the Equipment or arising out of or in connection with the Hirer's possession or use of the Equipment.
- 6.5 If the Hirer fails to effect or maintain any of the insurances required under this Agreement, EASYTESTERS shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Hirer.
- 6.6 The Hirer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to EASYTESTERS and proof of premium payment to EASYTESTERS to confirm the insurance arrangements.
- 6.7 Upon return of damaged Equipment, EASYTESTERS will determine the extent of the damage and the required repairs. The Hirer will have a reasonable amount of time to inspect the damage. In determining whether equipment shall be replaced or repaired, EASYTESTERS' judgment shall be conclusive. Should EASYTESTERS determine that the equipment must be replaced, the Hirer will be responsible for the cost to replace the Equipment, at current prices, without deduction for depreciation.

## **7. Hirer's responsibilities**

- 7.1 The Hirer shall during the term of this Agreement:
  - (a) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by fully trained, qualified and competent staff following receipt of appropriate training, examination and operating instructions and manuals provided by EASYTESTERS;
  - (b) take such steps (including compliance with all safety and usage instructions provided by EASYTESTERS) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
  - (c) maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Commencement Date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
  - (d) make no alteration to the Equipment (including the removal or covering of EASYTESTERS' logos, serial numbers or other information and shall not remove any existing component(s) from the Equipment;

- (e) pay the cost of all consumable items used by the Hirer in connection with the use of the Equipment;
- (f) keep EASYTESTERS fully informed of all material matters relating to the Equipment;
- (g) at all times keep the Equipment in the Territory and in the possession or control of the Hirer and keep EASYTESTERS informed of its location;
- (h) permit EASYTESTERS or its duly authorised representative to inspect the Equipment at all reasonable times;
- (i) not, without the prior written consent of EASYTESTERS, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
- (j) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of EASYTESTERS in the Equipment;
- (k) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Hirer shall notify EASYTESTERS and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify EASYTESTERS on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (l) not use the Equipment for any unlawful purpose;
- (m) ensure that at all times the Equipment remains identifiable as being EASYTESTERS' property;
- (n) deliver up the Equipment at the end of the Rental Period or on earlier termination of this Agreement at such address as EASYTESTERS requires; and
- (o) not do or permit to be done anything which could invalidate the insurances referred to in *clause 6*.

7.2 EASYTESTERS shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Hirer and the Hirer undertakes to indemnify EASYTESTERS on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Hirer to comply with the terms of this Agreement.

## **8. Confidentiality**

8.1 The Hirer recognizes and acknowledges that EASYTESTERS possesses certain intellectual property rights in and confidential information applicable to the Equipment and that such rights and information constitutes a valuable, special, and unique asset.

- 8.2 As used in this clause 8, the term "**confidential information**" includes all information and materials belonging to, used by, or in the possession of EASYTESTERS relating to the Equipment and other products, its processes, services, technology, inventions, patents, ideas, contracts, financial information, developments, business strategies, pricing, current and prospective customers, marketing plans, and trade secrets of every kind and character, but shall not include (a) information that was already within the public domain at the time the information is acquired by Hirer, or (b) information that subsequently becomes public through no act or omission of the Hirer.
- 8.3 The Hirer agrees that all of the confidential information is and shall continue to be the exclusive property of EASYTESTERS.
- 8.4 The Hirer agrees that he shall not, at any time following the execution of this Agreement, use or disclose in any manner any confidential information. The Hirer agrees that upon expiry or earlier termination of this Agreement, the Hirer will not copy or use the testing or inspection methods applicable to the Equipment and for which the Hirer was trained and will return to EASYTESTERS all drawings, Equipment, procedures, blueprints, notes, memoranda, specifications, designs, writings, software, devices, documents and any other material containing or disclosing any confidential information of EASYTESTERS and will (if required) destroy any such copies and not retain any such materials.

## **9. Warranty**

- 9.1 Except as provided by law, EASYTESTERS offers the Equipment for hire without warranty or guarantee of any kind, express or implied.
- 9.2 EASYTESTERS shall use reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself during the Rental Period, provided that:
- (a) the Hirer notifies EASYTESTERS of any defect in writing within ten (10) Business Days of the defect occurring or of becoming aware of the defect;
  - (b) the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person; and
  - (c) the defect is directly attributable to defective material, workmanship or design.
- 9.3 If EASYTESTERS fails to remedy any material defect in the Equipment in accordance with clause 9.1, EASYTESTERS shall, at the Hirer's request, accept the return of the Equipment and make an appropriate reduction to the Rental Payment and, if relevant, return any Deposit (or any part of it).

## **10. Liability**

- 10.1 Without prejudice to clause 10.2, EASYTESTERS' maximum aggregate liability for breach of this Agreement (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the Rental Payment.

- 10.2 Nothing in this Agreement shall exclude or in any way limit either party's liability for death or personal injury caused by its own negligence, either party's liability for fraud or fraudulent misrepresentation or any other liability which cannot be excluded by law.
- 10.3 This Agreement sets forth the full extent of EASYTESTERS' obligations and liabilities in respect of the Equipment and its hiring to the Hirer. In particular, there are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on EASYTESTERS except as specifically stated in this Agreement. Any condition, warranty or other term concerning the Equipment which might otherwise be implied into or incorporated within this Agreement, whether by statute, common law or otherwise, is expressly excluded.
- 10.4 Without prejudice to clause 10.2, neither party shall be liable under this Agreement for any loss of profit, loss of revenue, loss of business or indirect or consequential loss or damage ,in each case, however caused, even if foreseeable.

## **11. Termination**

- 11.1 EASYTESTERS may, without prejudice to any other right or remedy which may be available to it, terminate this Agreement immediately by written notice to the Hirer if:
- (a) the Hirer commits a material breach of this Agreement which breach is irremediable, or which breach (if remediable) is not remedied within ten (10) Business Days after the service of written notice from EASYTESTERS requiring it to do so;
  - (b) the Hirer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - (c) the Hirer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
  - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Hirer; or
  - (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Hirer; or
  - (f) the holder of a qualifying floating charge over the assets of the Hirer has become entitled to appoint or has appointed an administrative receiver;
  - (g) a person becomes entitled to appoint a receiver over the assets of the Hirer or a receiver is appointed over the assets of the Hirer; or
  - (h) a creditor or encumbrancer of the Hirer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or



enforced on or sued against, the whole or any part of the Hirer's assets and such attachment or process is not discharged within 14 days; or

- (i) any event occurs, or proceeding is taken, with respect to the Hirer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(b) to clause 11.1(h) (inclusive); or
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.2 This Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.

11.3 Upon termination of this Agreement, however caused:

- (a) EASYTESTERS' consent to the Hirer's possession of the Equipment shall terminate and EASYTESTERS may, by its authorised representatives, without notice and at the Hirer's expense, retake possession of the Equipment and for this purpose may enter any premises at which the Equipment is located; and
- (b) without prejudice to any other rights or remedies of the Hirer, the Hirer shall pay to EASYTESTERS on demand any costs and expenses incurred by EASYTESTERS in recovering the Equipment and/or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

11.4 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

## **12. Assignment and subcontracting**

- 12.1 The Hirer shall not, without the prior written consent of EASYTESTERS assign, transfer, mortgage, charge or deal in any manner with this Agreement or any of its rights and obligations under or arising out of this Agreement, or purport to do any of the same.
- 12.2 EASYTESTERS may assign, transfer, mortgage, charge or deal in any manner with this Agreement or any of its rights and obligations under or arising out of this Agreement.
- 12.3 Neither party shall sub-contract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent without the prior written consent of the other party. In particular the Hirer shall not sub-let the Equipment to any other person.

## **13. Entire agreement, variation and no partnership**

- 13.1 This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

- 13.2 Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.
- 13.3 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.4 Nothing in this Agreement shall constitute a partnership or agency between the Hirer and EASYTESTERS. For the avoidance of doubt, the Hirer shall have no authority to bind EASYTESTERS.

#### **14. Contracts (Rights of Third Parties) Act 1999**

A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### **15. Notices**

- 15.1 Any notice or other communication required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid post or recorded delivery or by commercial courier, to each party required to receive the notice or communication at the address set out on page 1:
- 15.2 Any notice or other communication shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
  - (b) if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt; or
  - (c) if sent by pre-paid post or recorded delivery, 9.00 am on the second Business Day after posting.
- 15.3 A notice or other communication required to be given under this Agreement shall not be validly given if sent by e-mail.

#### **16. No waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**17. Severance**

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

**18. Governing law and jurisdiction**

18.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law.

18.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

**THIS AGREEMENT HAS BEEN ENTERED INTO ON THE DATE STATED AT THE BEGINNING OF IT.**

Executed by **EASYTESTERS LIMITED**  
acting by Michael Bowling

.....  
Director

in the presence of:

.....  
WITNESS

Executed by [NAME OF HIRER]  
acting by [NAME OF DIRECTOR]

.....  
Director

in the presence of:

.....  
WITNESS

**Schedule 1**  
**The Equipment**

**1. As identified in Technical Procedure – TEST UNIT**

1.1 Units to be supplied .....