

## EQUIPMENT RENTAL AGREEMENT

THIS EQUIPMENT RENTAL AGREEMENT (this "Agreement") dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**BETWEEN:**

**Up Access of 231 Deadhorse Ln, Mansfield, Victoria 3722**  
(the "Owner")

OF THE FIRST PART

- AND -

\_\_\_\_\_ of \_\_\_\_\_  
(the "Hirer")

OF THE SECOND PART

(the Owner and Hirer are collectively the "Parties")

**IN CONSIDERATION OF** the mutual covenants and promises in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Owner leases the Equipment to the Hirer, and the Hirer leases the Equipment from the Owner on the following terms:

### **Definitions**

1. The following definitions are used but not otherwise defined in this Agreement:
  - a. "Casualty Value" means the market value of the Equipment at the end of the Term or when in relation to a Total Loss, the market value the Equipment would have had at the end of the Term but for the Total Loss. The Casualty Value may be less than but will not be more than the original purchase price of the Equipment.
  - b. "Equipment" means any hired item from the "Owner"
  - c. "Total Loss" means any loss or damage that is not repairable or that would cost more to repair than the market value of the Equipment.
  - d. "Damage Waiver" means the insurance coverage provided to the Hirer from the Owner as set out in the Owners insurance policy, which will be made available to the Hirer upon request

**Lease**

2. The Owner agrees to lease the Equipment to the Hirer, and the Hirer agrees to lease the Equipment from the Owner in accordance with the terms set out in this Agreement.

**Term**

3. The Agreement commences upon delivery or collection of the equipment and will continue until the pickup or return by or to "Up Access (the "Term").

**Rent and Deposit**

4. The rent, inclusive of GST, will be paid prior to delivery or collection in full for the agreed upon term (the "Rent").

**Use of Equipment**

5. The Hirer will use the Equipment in a good and careful manner and will comply with all of the manufacturer's requirements and recommendations respecting the Equipment and with any applicable law, whether local, state or federal respecting the use of the Equipment, including, but not limited to, environmental and copyright law.
6. The Hirer will use the Equipment for the purpose for which it was designed and not for any other purpose.
7. Unless the Hirer obtains the prior written consent of the Owner, the Hirer will not alter, modify or attach anything to the Equipment unless the alteration, modification or attachment is easily removable without damaging the functional capabilities or economic value of the Equipment.

**Warranties**

8. The Equipment will be in good working order and good condition upon delivery.
9. The Equipment is of merchantable quality and is fit for the purposes it is ordinarily used.

**Loss and Damage**

10. To the extent permitted by law, the Hirer will be responsible for risk of loss, theft, damage or destruction to the Equipment from any and every cause.
11. If the Equipment is lost or damaged, the Hirer will continue paying Rent, will provide the Owner with prompt written notice of such loss or damage and will, if the Equipment is repairable, put or cause the Equipment to be put in a state of good repair, appearance and condition.

12. In the event of Total Loss of the Equipment, the Hirer will continue paying Rent, will provide the Owner with prompt written notice of such loss and will replace the Equipment with encumbrance-free Equipment of the same model, type and configuration.

**Ownership, Right to Lease and Quiet Enjoyment**

13. The Equipment is the property of the Owner and will remain the property of the Owner.
14. The Hirer will not encumber the Equipment or allow the Equipment to be encumbered or pledge the Equipment as security in any manner.
15. The Owner warrants that the Owner has the right to lease the Equipment according to the terms in this Agreement.
16. The Owner warrants that as long as no Event of Default has occurred, the Owner will not disturb the Hirer's quiet and peaceful possession of the Equipment or the Hirer's unrestricted use of the Equipment for the purpose for which the Equipment was designed.

**Insurance**

17. The Hirer will be required to pay 10% "Damage waiver" unless evidence is provided in writing of the Hirers own insurance coverage for "Hired in plant"

**Indemnity**

18. The Hirer will indemnify and hold harmless the Owner against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees and costs, arising out of or related to the Hirer's use of the Equipment.

**Default**

19. The occurrence of any one or more of the following events will constitute an event of default ("Event of Default") under this Agreement:
  - a. The Hirer fails to pay any amount provided for in this Agreement when such amount is due or otherwise breaches the Hirer's obligations under this Agreement.
  - b. The Hirer becomes insolvent or makes an assignment of rights or property for the benefit of creditors or files for or has bankruptcy proceedings instituted against it under the bankruptcy law of Australia or another competent jurisdiction.

- c. A writ of attachment or execution is levied on the Equipment and is not released or satisfied within 10 days.

**Remedies**

20. On the occurrence of an Event of Default, the Owner will be entitled to pursue any one or more of the following remedies (the "Remedies"):
  - a. Declare the entire amount of the Rent for the Term immediately due and payable without notice or demand to the Hirer.
  - b. Apply the Deposit toward any amount owing to the Owner.
  - c. Commence legal proceedings to recover the Rent and other obligations accrued before and after the Event of Default.
  - d. Take possession of the Equipment, without demand or notice, wherever same may be located, without any court order or other process of law. The Hirer waives any and all damage occasioned by such taking of possession.
  - e. Terminate this Agreement immediately upon written notice to the Hirer.
  - f. Pursue any other remedy available in law or equity.

**Assignment**

21. THE HIRER WILL NOT ASSIGN THIS AGREEMENT, THE HIRER'S INTEREST IN THIS AGREEMENT OR THE HIRER'S INTEREST IN THE EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF THE OWNER.
22. If the Hirer assigns this Agreement, the Hirer's interest in this Agreement or the Hirer's interest in the Equipment without the prior written consent of the Owner, the Owner will have recourse to the Remedies and will be entitled to all damages caused by the assignment.

**Entire Agreement**

23. This Agreement will constitute the entire agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement will not be binding on either Party except to the extent incorporated in this Agreement.

**Address for Notice**

24. Service of all notices under this Agreement will be delivered personally or sent by registered mail or courier or e-mail to the following addresses:

Owner: Up Access, 231 Deadhorse Ln, Mansfield, Victoria 3722,  
info@upaccess.com.au

Hirer:

**Payment**

25. All dollar amounts in this agreement refer to Australian dollars, and all payments required to be paid under this Agreement will be paid in Australian dollars unless the Parties agree otherwise.

**Interpretation**

26. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

**Governing Law**

27. This Agreement will be construed in accordance with and governed by the laws of Australia and the Parties submit to the exclusive jurisdiction of the Australian courts.

**Severability**

28. If there is a conflict between any provision of this Agreement and the applicable legislation of Victoria (the "Act"), the Act will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Agreement.

**General Terms**

29. This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.
30. Time is of the essence in this Agreement.
31. This Agreement will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each Party to this Agreement.
32. Neither Party will be liable in damages or have the right to terminate this Agreement for any delay or default in performance if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions, wars, insurrections, natural disasters, such as earthquakes, hurricanes or floods and/or

any other cause beyond the reasonable control of the Party whose performance is affected.

**Notice to Hirer**

33. **NOTICE TO THE HIRER:** This is a lease. You are not buying the Equipment. Do not sign this Agreement before you read it. You are entitled to a completed copy of this Agreement upon request when you sign it.

**IN WITNESS WHEREOF** Up Access and \_\_\_\_\_ have duly affixed their signatures under hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Up Access (Owner)

\_\_\_\_\_  
\_\_\_\_\_  
(Hirer)