

Devices as a Service Terms (linked to MSA)

1. Interpretation

1.1 The following definitions in this paragraph 1 apply in these Device as a Service Terms.

Additional Parts: all additional and spare components supplied in connection with the Rental Devices, including but not limited to, power supplies, sub-assemblies and peripherals.

Approved Vendor: the manufacturer or a third party who has been approved by the manufacturer of the Devices to perform repairs and/or adjustments to Devices to restore the Device to the original OEM quality or standard as approved by such manufacturer or third party.

Approved Warranty: the warranty provided by the manufacturer as set out in the Order Form (as applicable).

Client Devices: the Client owned devices which shall be managed by the Supplier in accordance with these Device as a Service Terms and which are identified expressly in the Inventory.

Corrective Maintenance: means replacing any parts or components of the Device, or the Device itself, as required to restore the Device to Working Order by the Approved Vendor under warranty.

Delivery: the transfer of physical possession of the Rental Devices to the Client at the Client Site.

Deposit: the deposit amount set out in the relevant Order Form.

Devices: the Client Devices and the Rental Devices as set out in the Inventory.

End User: an employee of the Client that is authorised to access and use the Devices.

Excluded Cause: has the meaning given in paragraph 9.3(c)(iii).

Inventory: means a list of Devices.

Maintenance Services: means the maintenance services that the Supplier shall provide in relation to the Devices, which shall include Corrective Maintenance, as more fully described in the relevant Order Form.

OEM: means the original equipment manufacturer of the Devices.

Purchase Option: the Client's option to purchase the Rental Devices as more fully described in paragraph 10.

Purchase Option Price: the price of the Purchase Option calculated and paid in accordance with paragraph 10 and the Order Form as amended from time to time by the Supplier.

Rental Devices: the devices, which shall include all necessary Additional Parts, to be rented by the Client from the Supplier in accordance with these Device as a Service Terms and as identified expressly in the relevant Order Form.

Rental Period: the term as specified within the Order Form.

System Audit: an inspection of the Devices or part thereof either remotely or at the Client Site, which does not include repair or replacement.

Ticket: an issue logged through the Supplier's portal reporting a defect or malfunction in a Device covered by the Maintenance Services.

Working Order: operating in accordance with the applicable specification as set out in the Order Form.

- 1.2 Except as defined in these Devices as a Service Terms, capitalised terms shall have the meanings given to them in the Master Services Agreement found [here](#) (the “Agreement”).
- 1.3 In the event of conflict with the terms of these Device as a Service Terms and the Agreement, the provisions in these Device as a Service Terms shall take precedence and in the event of a conflict with the terms of these Device as a Service Terms and the applicable Order Form, the provisions of the Order Form shall take precedence over these Device as a Service Terms.

2. Rental Devices and Rental Period

- 2.1 The Client shall hire the Rental Devices from the Supplier subject to the terms and conditions of these Device as a Service Terms and the Agreement for the Rental Period.
- 2.2 The Rental Period starts on the Services Commencement Date and shall continue for the period as stated within the relevant Order Form unless and until the Agreement is terminated earlier in accordance with its terms. At the Supplier’s sole discretion, the Supplier may extend the Rental Period in accordance with the Order Form and these Device as a Service Terms.
- 2.3 The Supplier reserves the right to amend the Order Form if required by any applicable statutory or regulatory requirements.
- 2.4 The Supplier shall not, other than in the exercise of its rights under these Device as a Service Terms, the Agreement, the Order Form, or applicable law, interfere with the Client's quiet possession of the Rental Devices.
- 2.5 The Deposit is a deposit against default by the Client of payment of any Fees or any loss of or damage caused to the Rental Devices. The Client shall pay the Deposit on the date of the relevant Order Form, or as otherwise agreed between the Parties. If the Client fails to pay any Fees due in accordance with the relevant Order Form, or causes any loss or damage (fair wear and tear excluded) to the Rental Devices (in whole or in part) in accordance with paragraph 10.3, the Supplier shall be entitled to apply the Deposit against such default, loss or damage. The Client shall pay to the Supplier any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance of the Deposit) shall be refundable within ten (10) Business Days of the end of the Rental Period.

3. Delivery of the Rental Devices

- 3.1 Delivery of the Rental Devices shall be made by or on behalf of the Supplier. The Supplier shall use its commercially reasonable endeavours to effect Delivery of the Rental Devices as set out under the relevant Order Form but any such dates shall be estimates only.
- 3.2 Risk in the Rental Devices shall transfer in accordance with paragraph 4.2 of these Device as a Service Terms.

- 3.3 The Client shall procure that a duly authorised representative of the Client is present at the Delivery of the Rental Devices. Acceptance of Delivery by such representative shall constitute conclusive evidence that the Delivery is accurate and complete. If required by the Supplier, the Client's duly authorised representative shall sign a receipt confirming such acceptance.
- 3.4 The Supplier may make Delivery of the Rental Devices in instalments.
- 3.5 The Client shall provide the Supplier with all relevant information and assistance it may require to make Delivery of the Rental Devices and shall ensure that the conditions at the Client Site allow safe and prompt Delivery of the Rental Devices.
- 3.6 The Supplier shall have no liability for any failure to deliver the Rental Devices to the extent that such failure is caused by:
- (a) a delay from the OEM, third party supplier or other third party;
 - (b) an event of Force Majeure; or
 - (c) the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the Delivery of the Rental Devices.
- 3.7 If ten (10) Business Days after the day on which the Supplier first attempted to make Delivery of Rental Devices the Client has not taken delivery of those Rental Devices or otherwise fails to make satisfactory (in the sole opinion of the Supplier) arrangements relating to Delivery of the Rental Devices, and fails to do so for a further ten (10) Business Days' after receiving written notice from the Supplier, the Supplier may hire out the Rental Devices to another party or otherwise dispose of part or all of the Rental Devices and the Supplier shall not be liable to the Client for the delay or failure in provisioning the Rental Devices.
- 3.8 If the Client does not take Delivery of the Rental Devices on time for any reason, the Supplier may store and insure it pending Delivery, and the Client shall be responsible for paying any reasonable costs incurred by the Supplier for the storage and insurance charges.

4. Title, Risk and Insurance

- 4.1 The Rental Devices shall at all times remain the property of the Supplier, and the Client shall have no right, title or interest in or to the Rental Devices (save the right to possession and use of the Rental Devices in accordance with these Devices as a Service Terms) except where the Client purchases the Rental Devices pursuant to the Purchase Option in paragraph 10.
- 4.2 The risk of loss, theft, damage or destruction of the Rental Devices shall pass to the Client on Delivery. The Rental Devices shall remain at the sole risk of the Client during the Rental Period and any further term during which the Rental Devices are in the possession, custody or control of the Client ("**Risk Period**") until such time as the Rental Devices are returned to the Supplier. During the Rental Period and the Risk Period, the Client shall, at its own expense, obtain and maintain the following insurances:

- (a) insurance of the Rental Devices to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Supplier may from time to time nominate in writing;
 - (b) insurance for such amounts as a prudent owner or operator of the Rental Devices would insure for, or such amount as the Supplier 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 Rental Devices; and
 - (c) insurance against such other or further risks relating to the Rental Devices as may be required by law, together with such other insurance as the Supplier may from time to time consider reasonably necessary and advise to the Client in writing.
- 4.3 The Client shall be responsible for paying any deductibles due on any claims under such insurance policies.
- 4.4 The Client shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the Rental Devices arising out of or in connection with the Client's possession or use of the Rental Devices and shall comply with any relevant requirements under the Client's insurance policies relating to such loss, accident or damage to the Rental Devices.
- 4.5 If the Client fails to effect or maintain any of the insurances as specified in paragraph 4.2, the Supplier 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 Client.
- 4.6 The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Supplier and proof of premium payment to the Supplier to confirm the insurance arrangements.

5. Device Inventory and System Audits

- 5.1 Subject to paragraph 7.1(a), the Supplier shall maintain an Inventory during the Term including details of the Devices, including serial number, model, asset tag, warranty and purchase information, designated user and location, and any other details as agreed in the Order Form.
- 5.2 The Supplier will be entitled at least once every six (6) months during the Term or as otherwise agreed between the Parties and (except in the event of an emergency), on reasonable notice, to carry out a System Audit within Normal Business Hours to confirm that, in the Supplier's opinion, the Devices are in Working Order. If work is required to put any Device into Working Order, the Supplier will notify the Client accordingly.
- 5.3 The Supplier will give the Client written notice if, in its reasonable opinion:
 - (a) any Client Device is identified as "end of life";
 - (b) if a Client Device becomes beyond reasonable repair or spare parts become not readily available;

- (c) if faults in and/or the Client Device's condition are such that overhaul or replacement is necessary;
 - (d) if the Client Device is no longer economically viable to maintain; or
 - (e) if the Client Device requires upgrading or updating.
- 5.4 If the Client does not, within fourteen (14) Business Days of the Supplier's notification (or such longer period as the Parties agree) and at its own expense:
 - (a) have the work referred to in paragraphs 5.2 or 5.3 carried out; or
 - (b) overhaul or replace the Client Device as referred to in paragraph 5.4,the Supplier may on written notice exclude that Client Device from the Inventory.

6. Payments

- 6.1 The Client shall pay the Fees for the Rental Devices and the Maintenance Services as more fully set out in the relevant Order Form.

7. Client Obligations

- 7.1 The Client shall, and procure that each End User shall, during the Term:
 - (a) provide the Supplier (i) before the Commencement Date, and (ii) during the Term promptly on request, with a detailed and accurate list of Client Devices and provide reasonable assistance and co-operation to the Supplier in relation to the Client Devices, including providing information concerning the Client Devices application, use, location and environment as the Supplier may reasonably request to enable it to perform its obligations under these Device as a Service Terms;
 - (b) ensure that the Devices are kept and operated in a suitable environment (which is kept clean and tidy), used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier or recommended by the relevant OEM;
 - (c) take such steps (including compliance with all safety and usage instructions provided by the Supplier or the relevant OEM) as may be necessary to ensure, so far as is reasonably practicable, that the Devices are at all times safe and without risk to health when a Device is being used, cleaned or maintained by a person at work;
 - (d) except where the Supplier is providing Maintenance Services, maintain at its own expense the Devices in good and substantial repair (fair wear and tear excepted);
 - (e) make no alteration to the Devices and shall not remove any existing component (or components) nor remove, deface or obscure any identifying mark from the Devices;
 - (f) keep the Supplier fully informed of all material matters relating to the Devices;

- (g) at all times keep the Devices in the possession or control of the Client or its End Users at the Client Site;
- (h) maintain operating records of the Devices and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;
- (i) comply with the terms of any applicable end user licence agreement imposed by the relevant OEM that may be included as part of the Devices;
- (j) not, without the prior written consent of the Supplier, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Rental Devices or allow the creation of any mortgage, charge, lien or other security interest in respect of them;
- (k) not suffer or permit the Rental Devices to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Rental Devices are so confiscated, seized or taken, the Client shall notify the Supplier immediately and the Client shall at its sole expense use its best endeavours to procure an immediate release of the Rental Devices and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (l) To provide and maintain an electrical power supply as required for the safe and efficient operation of the Devices and which is clean and free from surges and spikes.
- (m) not use the Devices for any unlawful purpose;
- (n) ensure that the packaging of the Rental Devices is retained and kept in good condition (fair wear and tear excepted) at the Supplier's sole discretion;
- (o) return the Rental Devices at the end of the Rental Period (or earlier if required pursuant to these terms) at such address as the Supplier requires, or if necessary irrevocably grant a licence to the Supplier, its employees and agents to enter any Client Site or any premises where the Devices are located for the purpose of removing the Devices;
- (p) notify the Supplier immediately if it becomes subject to any of the events listed in Clause 15.2(d) of the Agreement;
- (q) not do or permit to be done anything which could invalidate the insurances referred to in paragraph 4; and
- (r) not install or use unlicensed software.

7.2 The Client acknowledges that the Supplier shall not be responsible for any loss of or damage, defect, fault or impairment of the Devices arising out of or in connection with the Client's negligence, misuse, mishandling of the Devices, breach of these Device as a Service Terms or otherwise caused by the Client or its officers, employees, agents and contractors, and the Client shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of, or in connection with any failure by the Client to comply with the terms of these Device as a Service Terms.

8. Warranties and Service Levels

- 8.1 The Supplier warrants that it shall carry out any necessary installation or Maintenance Services relating to the Devices using personnel of the required skill, experience and qualifications and with all due skill, care and diligence in accordance with Good Industry Practice.
- 8.2 The Supplier warrants that each of the Rental Devices shall substantially conform to its specification as set out in the relevant Order Form.
- 8.3 The Supplier's only liability to the Client if the Devices fail to comply with the warranty set out in paragraph 8.2 of these Device as a Service Terms is as set out in paragraph 9.4 of these Device as a Service Terms.

9. Maintenance Services

- 9.1 The Supplier shall provide Maintenance Services on the Devices, as more fully set out in the relevant Order Form during Normal Business Hours and (if applicable) at the Client Site specified in the Order Form.
- 9.2 The Client may raise a Ticket in the event of a defect, fault or impairment of the Devices which shall contain reasonably detailed information relating to the relevant defect, fault or impairment and the affected Device(s).
- 9.3 On receipt of a valid Ticket, the Supplier shall use its commercially reasonable endeavours to complete the Corrective Maintenance as more fully set out in the Order Form and to the extent it reasonably can, during the Term (or, in relation to any Rental Devices, the Rental Period, if shorter), provided that:
 - (a) the Client notifies the Supplier of any defect in writing within five (5) Business Days of the defect occurring or of becoming aware of the defect;
 - (b) the Supplier is permitted to make a full examination of the relevant Device; and
 - (c) the defect, fault or impairment did not materialise as a result of:
 - (i) misuse, neglect, alteration or mishandling by the Client or its End Users or from unauthorised manipulation by any person other than the Supplier's authorised personnel;
 - (ii) a use of the Devices in breach of these Device as a Service Terms; or
 - (iii) or directly attributable to, defective material, workmanship or design (together with (i) and (ii) above, the "**Excluded Causes**").
- 9.4 In relation to Rental Devices, subject to paragraph 7.2 and other than where the defect is as a result of an Excluded Cause, if the Supplier is unable to remedy any material defect in any Rental Devices in accordance with paragraph 9.3, the Supplier shall, at its sole discretion, (i) make an

appropriate substitution for the defective Rental Device; or (ii) accept the return of part or all of the Rental Devices and allow a reduction to the Fees payable during the remaining term of the applicable Order Form that is equivalent to the price of the defective Rental Device.

- 9.5 Where, at the Supplier's sole discretion, the Supplier is performing or has performed the Maintenance Services in circumstances where it is reasonably established that the relevant Device was not in Working Order due to any of the Excluded Causes, the Supplier may charge, and the Client shall pay, any additional fees in respect of that work as set out in the relevant Order Form.
- 9.6 A representative of the Supplier shall, at the Supplier's sole discretion, attend the Client Site to perform the Corrective Maintenance. The Supplier's representative shall perform the Corrective Maintenance during Normal Business Hours at such times as may be agreed in advance between the Client and the Supplier from time to time.
- 9.7 The Supplier's representative will use its commercially reasonable endeavours to repair the relevant Device(s) during that visit at the Client Site. If that is not reasonably practicable (or it is not reasonably practicable to do so during Business Hours) the Supplier's representative shall either arrange for a further visit to the Client Site within Business Hours to complete the repair, or remove the defective Device(s) (or part of the defective Device(s), if applicable) for repair off-site.
- 9.8 The Supplier shall not be liable for any delay in providing the relevant repair and/or maintenance if in the Supplier's reasonable opinion it needs to remove the Device (or part of the Device, if applicable) from the Client Site, and the Client unreasonably refuses this request.
- 9.9 The Supplier shall:
- (a) provide to the Client from time in writing such information as to the application and use of the Devices as received from the relevant OEM or as may be otherwise available to the Supplier and as the Supplier may reasonably determine to be necessary or desirable to be provided; and
 - (b) use commercially reasonable endeavours to respond promptly, during Business Hours, by telephone or in writing, as appropriate, to any request from the Client for information concerning the application and use of the Devices, or the repair of any defect in or malfunctioning of the Devices.
- 9.10 The Supplier reserves the right to cancel the Maintenance Services (for the applicable Devices) if the manufacturer of the Devices is unable to supply spare parts and the Supplier is unable to obtain such parts from alternative sources at equivalent prices to those previously quoted.
- 9.11 The Maintenance Services do not extend to:
- (a) any Device not specified in the Inventory including any Device which is in any way changed from that included in the Inventory;

- (b) any Device which exceeds the term of the Approved Warranty as set out in the Order Form;
- (c) refurbishment or repair of casings or outer surfaces caused by accidental or deliberate damage at the Approved Vendor's discretion;
- (d) backup of any Client Data on the Devices;
- (e) reinstatement of customised versions of the standard desktop/operating system;
- (f) deploying security patches or updates unless expressly included in the Services as set out in the Order Form;
- (g) network issues or issues with the Client's wi-fi network;
- (h) resolving the consequences of security breaches and incompatibilities in hardware and/or software; and
- (i) any services which are specifically excluded in the Order Form.

10. Purchase Option

- 10.1 The Client shall, subject to paragraph 10.2, have the option, exercisable by not less than thirty (30) days' written notice to the Supplier, to purchase the Rental Devices on the last Business Day of the Rental Period at the Purchase Option Price.
- 10.2 The Purchase Option may be exercised only if:
- (a) all amounts due to the Supplier under the Agreement up to the date of exercise of the Purchase Option have been paid in full by the Client; and
 - (b) the Rental Period has not ended by reason of the Supplier terminating in accordance with Clause 15 of the Agreement.
- 10.3 The Purchase Option Price shall be calculated as set out in the Order Form in accordance with the Supplier's reasonable assessment of:
- (a) the depreciated value of the Rental Device subject to the condition on inspection by the Supplier; and
 - (b) the market value of the Rental Devices,

at the time of sale.
- 10.4 The Supplier shall, at its sole discretion, determine the condition of the Rental Devices upon inspection.

- 10.5 On completion of the purchase of the Rental Devices, and receipt of the Purchase Option Price, under this paragraph 10, such title to the Rental Devices as the Supplier had on the date of transfer shall transfer to the Client. The Rental Devices shall transfer to the Client in the condition and at the location in which it is found on the date of transfer.

11. Consequences of Termination

- 11.1 On expiry or termination of the Agreement or the applicable Order Form (as the case may be), however caused, other than in relation to any Rental Devices the subject of a Purchase Option:
- (a) the Supplier's consent to the Client's possession of the Rental Devices shall terminate;
 - (b) the Client shall be responsible for the backup of Client Data before the Supplier retakes possession of the Rental Devices;
 - (c) the Supplier may with or without notice and at the Client's expense, request a suitable time, date and location to retake possession of the Rental Devices and for this purpose the Client irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Client (including with vehicles) at which the Rental Devices are located; and
 - (d) without prejudice to any other rights or remedies of the Client, the Client shall pay to the Supplier on demand:
 - (i) all Fees and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to Clause 7.13 of the Agreement; and
 - (ii) any costs and expenses incurred by the Supplier in recovering the Rental Devices or in collecting any sums due under the Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 11.2 The Supplier will inspect the Rental Devices and determine if Client returned the Rental Devices in Working Order and in accordance with its obligation at paragraph 7.1(d) where applicable at the end of the Rental Period or on termination of the Agreement for any reason. If the Supplier, in its sole discretion, finds that the condition of the Rental Devices is not deemed to be in Working Order or in accordance with its obligation at paragraph 7.1(d) where applicable, the Supplier will be entitled to recover any costs or expenses it expects to incur to replace or restore the Rental Devices to Working Order.
- 11.3 The sums payable pursuant to paragraphs 11.1 and 11.2 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to paragraph 11.1(d). Such sums may be partly or wholly recovered from any Deposit.