

# MASTER SERVICES AGREEMENT

## SERVICE DESCRIPTION



### SERVICE DESCRIPTION: DEVICE AS A SERVICE

#### PART A - PRODUCT OVERVIEW

Device as a Service ("**DaaS**") is available for Customers who wish to subscribe to a service for a personal connectivity device.

A range of Device(s) are available and are updated as new Device(s) come to market. One New Zealand will maintain a list of supported Device(s), updated quarterly, which is available on request.

##### 1. YOUR DEVICE AS A SERVICE

- 1.1 Your Device as a Service will consist of the components set out in the following table, which are further described in this Service Description:

Component	Description
<b>Subscribed Device(s)</b>	Your selected Subscribed Device(s)
<b>Asset Lifecycle Management Portal</b>	Access to One New Zealand's web portal for management and reporting of Subscribed Device(s) within your fleet
<b>Shared Loan Device Pool</b>	Not Applicable
<b>Asset Lifecycle Management Service</b>	Proactive management of the Device lifecycle (retire & refresh)
<b>Staging</b>	Not included unless specified

- 1.2 Your Device as a Service exclusions are set out in the following table.

Component	Description
<b>Other</b>	Any other activity not listed in 1.1 including staging, enrolment, or pre-deployment activities
<b>Additional Warranty</b>	Warranty is per Manufacturer Warranty provided for the device at time of Subscription commencement.

#### PART B – PRICING

- 1.3 Refer to the Pricing Schedule for details of the applicable Charges.
- 1.4 We may change the Charges and Device(s) in the Pricing Schedule at any time without notice, but any changes will not affect existing Subscriptions. A change under this clause is deemed not to cause you material detriment and will not give rise to a right to terminate under clause 7.4 of the Business Terms.
- 1.5 In the event any Subscribed Device(s) are requested, which are not listed in the Pricing Schedule, pricing will be POA.

#### PART C – SERVICE LIMITATIONS

##### 2. SERVICE LIMITATIONS

- 2.1 One New Zealand does not provide certification of Device(s) on the One New Zealand network or other service providers' networks, however the models provided are very often available from the other service providers and should be fit for purpose and compatible with most GSM networks.

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- 2.2 Device availability is subject to the manufacturer being able to supply the Subscribed Device(s).

### PART D – OTHER TERMS AND CONDITIONS

#### 3. ORDERING DEVICE(S)

- 3.1 Orders may be placed either via the One New Zealand self-service portal or email address notified to you by your One New Zealand Account Manager.

#### 4. ASSET LIFECYCLE MANAGEMENT PORTAL

- 4.1 Each Subscribed Device will be recorded in the Asset Lifecycle Management Portal, where you will be able to view details of each device including the Subscription Commencement and Termination Dates.

#### 5. SUBSCRIPTION AND PAYMENT

- 5.1 **Subscription:** During the Subscription Period, you will subscribe to the specified Device(s) from us for the specified period(s) as set out in the Agreement.

##### 5.2 **Obligation to Pay:**

- (a) We will invoice for each calendar month of the Subscription Period without adjustment for part month periods. Billing will commence at the beginning of the month following each Subscription Commencement Date.
- (b) You agree to pay each invoice by the date specified on the invoice with your obligation to pay being unconditional and not subject to set-off, counterclaim, deduction or withholding for any reason; and
- (c) Your obligation to pay the Subscription Amount and any other moneys due under the Agreement in respect of the Subscribed Device(s) will continue regardless of any defect in, breakdown, accident, loss or theft of, or any damage to, the Subscribed Device(s) or the occurrence of a Force Majeure Event.

- 5.3 **General Gross Up:** If for any reason you are required by law to make a deduction or withholding from the Subscription Amount, you will increase the amount payable by you on the next payment date, to ensure that we receive the full Subscription Amount which you would have paid, had no deduction or withholding been made.

#### 6. OWNERSHIP OF SUBSCRIBED DEVICE(S)

- 6.1 **Owner of Equipment:** You understand that we may not be the owner of the Subscribed Device(s).

- 6.2 **Agent for Owner:** If we are not the owner of the Subscribed Device(s):

- (a) We are not required to tell you this or to provide you with information about the owner; and
- (b) We will be the agent of the owner of the Subscribed Device(s), and all of our rights under the Agreement in respect of the Subscribed Device(s) will be held on trust by us for the owner, and enforceable by us as the agent of the owner; and
- (c) Your rights under the Agreement in respect of the Subscribed Device(s) will be the same as if we were the owner. You will continue to deal with us in the same manner as though we were the owner and will not deal directly with the owner unless we agree to this; and
- (d) We may be entitled to payment by the owner of a commission for arranging the subscription to you of the Subscribed Device(s).

#### 7. WARRANTY

- 7.1 All Device(s) are covered with the OEM Manufacturer warranty that starts from the date of the Subscription Period and ends per the term of that warranty. No other warranty is applicable to the Device(s). The warranty does not include cover for damage to Subscribed Device(s).

- 7.2 Details of the applicable warranty will be provided at the time of purchase.

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### 8. USE OF SUBSCRIBED DEVICE(S)

8.1 **Use of Subscribed Device(s):** You agree to use the Subscribed Device(s) only in your business operations and only for the purposes for which they have been designed.

8.2 **Your Obligations:** In addition to any other obligations that you may have under the Agreement in respect of the Subscribed Device(s), you will:

- (a) Keep the Subscribed Device(s) in good order and repair and ensure that the Subscribed Device(s) are properly operated, serviced, and protected. The Subscribed Device(s) will be held by you at your risk from the time the Subscribed Device(s) are first delivered to you to the time at which the Subscribed Device(s) are delivered back to us (including the entire Subscription Period);
- (b) Not sell, assign, dispose of, or encumber, the Subscribed Device(s) in any way; and
- (c) Comply with all relevant laws relating to the use of the Subscribed Device(s).

8.3 **Damage** to Device(s) will incur a chargeable repair. Where a device is damaged beyond repair, this will be treated as an early termination for which Early Termination Charges and a Non-Returned Device Charge will apply as set out in the Commercial Schedule. Specific service exclusions include:

- (a) Impact damage - the Device(s) has been dropped and damaged
- (b) Liquid or moisture damage - the electronics have been exposed to excess levels of moisture.

### 9. REPLACEMENT, ALTERATIONS, MODIFICATIONS AND ADDITION OF PARTS

9.1 **Modifications:** You may not make any modifications to the Subscribed Device(s) without our prior written consent. If you make any modification to the Subscribed Device(s) without our prior written consent we may vary the terms of this Service Description, including the Subscription Amount or impose a charge on expiry of the Subscription Period, as we consider appropriate in order to compensate us.

9.2 **Treatment of New Parts:** As soon as any part of a Subscribed Device(s) is replaced, modified or added to, the replacement or new part will be treated as part of the Subscribed Device(s).

9.3 **Costs:** You will be responsible for the cost of any modification (as per clause 9.1) which you make to the Subscribed Device(s) including any loss which you may suffer as a result.

### 10. LOSS OR DESTRUCTION

10.1 **Occurrence of Loss or Destruction:** You will notify us if all or any part of the Subscribed Device(s) are lost, stolen, or destroyed (the "Lost Equipment").

10.2 **Consequences of Lost Equipment:** If a Subscribed Device is lost or stolen, you must immediately notify us and the Subscription Period for that Subscribed Device will immediately terminate, and Early Termination Charges and Non-Returned Device Charges will be charged to you as set out in the Commercial Schedule. To replace the Subscribed Device a new Subscription would need to be agreed to.

### 11. EXCLUSIONS OF LIABILITY

11.1 If a Subscribed Device has a defect that we could not reasonably have been expected to be aware of, and as a result of the defect the Subscribed Device causes any damage, injury or loss to be suffered by you, we will not be liable for the damage, injury or loss. In such circumstances, our obligations will be limited to the terms of the warranty (if any).

11.2 Except as expressly set out in the Agreement, all express and implied terms and warranties regarding the Subscribed Devices are excluded.

### 12. ACKNOWLEDGEMENTS/INDEMNITIES

12.1 **Acknowledgments by You:** You acknowledge that:

- (a) You are satisfied that the Subscribed Device(s) are suitable for your purposes; and

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- (b) Nothing in the Agreement confers on you title to the Subscribed Device(s).
- 12.2 **Indemnities:** To the extent permitted at law, you will indemnify us at all times against:
  - (a) Any loss of or damage to the Subscribed Device(s) including any loss or damage suffered by us as a result of your actions under clause 9.
  - (b) Liability for any death, injury or damage to any person or property which arises in respect of a Subscribed Device or its use.
- 13. **SHARED LOAN DEVICE POOL**
- 13.1 Not Applicable – No shared or dedicated pool is available.
- 14. **TERMINATION OF SUBSCRIPTION**
- 14.1 **Termination by us:** In addition to any other termination rights under the Agreement, we may terminate the subscription of any Subscribed Device(s) under the Agreement by giving you written notice if you have failed to comply with an earlier written notice given to you by us specifying a breach of the Agreement relating in any way to the Subscribed Device(s) and (in the case of a breach which is capable of being remedied) requiring you to remedy that breach within 5 Business Days.
- 14.2 **What Happens on Termination of Subscription:** Upon the Subscribed Device(s) Termination Date:
  - (a) You must immediately return the relevant Subscribed Device(s) to us and comply with any reasonable instructions given by us relating to arrangements for packaging and return. The Subscribed Device(s) are to be returned at your cost, and are to be returned in good working order and undamaged condition (with the exception of reasonable wear and tear).
  - (b) You must de-enroll the Subscribed Device(s) in any applicable Mobile Device Manager (i.e. Apple DEP, Samsung KNOX, Microsoft Intune) prior to returning the Subscribed Device(s)
  - (c) You must immediately pay any moneys owing to us in relation to those Subscribed Device(s) at the Subscribed Device(s) Termination Date.
  - (d) You must immediately pay any moneys owing to us in relation to those Subscribed Device(s) at the Subscribed Device(s) Termination Date.
  - (e) If you do not return the Subscribed Device(s) to us, or it is returned beyond economic repair, we will charge you the Non-Returned Device Charge.
- 14.3 Early Termination Charges are charges incurred when ending the Subscription Period early for a device as set out in the Commercial Schedule.
- 15. **EXTENSION OF SUBSCRIPTION PERIOD**
- 15.1 **Notice From You:** At least 3 months prior to the Subscribed Device(s) Expiry Date, you will deliver written notice to us either:
  - (a) **Termination:** Of your intention to return the Subscribed Device(s) to us on the Subscribed Device(s) Expiry Date; or
  - (b) **Extension:** Of your intention to extend the Subscription Period, in which case the Subscribed Period will be extended by the period agreed on the same terms and conditions (except for any change necessary to take into account the new Subscribed Device(s) Expiry Date or any other agreed changes).
- 15.2 **Failure to provide Notice:** If you fail to give notice in accordance with clause 15.1 the Subscribed Device(s) Expiry Date will be deemed to be extended until terminated in accordance with clause 15.3 .
- 15.3 **Subscribed Device(s) Expiry Date.** The Subscribed Device(s) Expiry Date for each Subscribed Device(s) will be the later of:
  - (a) the date of receipt of the returned Subscribed Device(s); and

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(b) expiry of a Notice given by you terminating the Subscription.

### 16. PERSONAL PROPERTY SECURITIES ACT 1999 (THE PPSA)

16.1 **Waiver of Rights to Verification Statements:** Pursuant to Section 148 of the PPSA, you waive your rights to be given a copy of any verification statement for any financing statement or financing change statement registered in relation to any security interest relating to or arising from the Agreement (including, without limitation, any financing statement or financing change statement registered pursuant to Part 12 of the PPSA).

16.2 **Financing Change Statements:** You agree that:

- (c) you will not give a written demand, or allow any other person to give a written demand, requiring the registration of a financing change statement under the PPSA regarding any security interest relating to or arising from the Agreement;
- (d) you will not enter into, or allow any other person to enter into, the register of personal property securities, a financing change statement regarding any security interest relating to or arising from the Agreement; and
- (e) if, notwithstanding clauses 11.2(a) and (b), pursuant to Section 162 of the PPSA you request the discharge or amendment of any financing statement that has been registered under the PPSA in respect of any Subscribed Device(s) sent, then we shall be entitled to charge you such fee as we may from time to time determine in respect of the processing of that request.

16.3 **Change of Contact Details:** You agree that you will not change your name, address or contact details without providing us with at least 20 Business Days prior written notice.

16.4 **Further assurances in respect of the PPSA:** You agree that if and when requested by us, you will, at your cost, do all such things as are reasonably necessary to enable us and/or the owner of the Subscribed Device(s) to obtain and maintain, in respect of all Subscribed Device(s), a security interest in respect of the Agreement that is at all times perfected under the PPSA with the priority required by us, including:

- (a) the provision of such information as we may require in order enable the registration or renewal of registration under the PPSA of any security interest relating to or arising from the Agreement (including, without limitation, registration under Part 12 of the PPSA, if appropriate); and
- (b) the execution of such further documentation as we may reasonably require for that purpose.

16.5 **Inconsistent Provisions of the PPSA:** You agree with us that if the rights and obligations of either us or you under the Agreement are inconsistent with any provision of the PPSA, then to the extent permitted by the PPSA, the relevant provisions of the Agreement (as appropriate) will prevail, with the intent that, the rights and obligations of us and you will be determined by reference to the Agreement, to the maximum extent permitted by law.

16.6 **Non-application of Part 9 of the PPSA:** References in this clause 11.6 to provisions contained in Part 9 of the PPSA do not mean that we accept that Part 9 of the PPSA applies to the Agreement. Instead, they are included in case a court holds that Part 9 does apply. If the Agreement is, or is held to be, subscriptions for a term of more than 1 year that secure payment or performance of an obligation, for the purposes of Section 105 of the PPSA, then you:

- (a) agree that any powers given to us under the Agreement or the PPSA may be exercised by us whether or not we or the owner of the Subscribed Device(s) are a first ranking secured party in respect of the relevant Subscribed Device(s) and section 108, 109 and 111(1) of the PPSA are considered amended accordingly;
- (b) agree that nothing in section 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to the Agreement;
- (c) waive your rights to:
  - (i.) receive a statement of account under Section 116 of the PPSA;

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- (ii.) recover surplus under Section 119 of the PPSA;
- (iii.) receive notice of a secured party's proposal to retain collateral under Section 120(2) of the PPSA;
- (iv.) object to a secured party's proposal to retain collateral under Section 121 of the PPSA;
- (v.) not have goods damaged when a secured party removes an accession under Section 125 of the PPSA;
- (vi.) refuse permission to remove an accession under Section 127 of the PPSA;
- (vii.) receive notice of the removal of an accession under Section 129 of the PPSA;
- (viii.) apply to the Court for an order concerning the removal of an accession under Section 131 of the PPSA; and
- (ix.) redeem collateral under Section 132 of the PPSA.

### 17. DEFINITIONS AND INTERPRETATION

**Definitions:** In this Service Description, in addition to the terms defined elsewhere in the Agreement, the following defined terms will apply to this Service Description:

**Subscription Amount** means the amount appearing as such in the Pricing Schedule plus any GST payable on that amount.

**Subscribed Device(s) Commencement Date** means the date the device is dispatched as recorded in the ALM (Asset Life Cycle Management) portal.

**Subscribed Device(s)** means Device(s) which are being subscribed to you by us at any time.

**Subscribed Device(s) Expiry Date** means the date specified in the Agreement Schedule as amended by clause 15 of this Service Description as the last day of the period during which you will subscribe the Subscribed Device(s) from us.

**Subscribed Device(s) Termination Date** means, in respect of any Subscribed Device(s):

- (a) the Subscribed Device(s) Expiry Date; or
- (b) the date of termination under clauses 8.3, 10.2 or 14; or
- (c) the date on which the Agreement is terminated,

whichever occurs first.

**Subscription Period** means, in respect of any Subscribed Device(s), the period from the Subscribed Device(s) Commencement Date to the Subscribed Device(s) Expiry Date (inclusive).

**POA** means, pricing will be based on applicable rates at time of application, (Price on Application).