



Lanmark PC as a Service (PCaaS) Terms of Service

VERSION 1.0



Document Control

Document Reference	Lanmark PC as a Service Terms of Service		
Document Version	1.0		
Document Date	October 2020		
Revision History	Date	Version	Reason
	22/10/20	1-0	Document Published

Introduction

These PC-as-a-Service Terms of Service (“PCaaS Terms”) as may be updated from time to time, set out the terms and conditions upon which Lanmark Limited (“Supplier” or “Lanmark”) provide PCaaS to the Customer (as identified in the Account Application Form) and is governed by the Master Services Agreement set out at lanmark.com/terms-of-business (“MSA”).

These PCaaS Terms together with the MSA, the Account Application Form, the applicable Order Form and/or Quote, other applicable Additional Conditions and any other documents agreed between the Parties, constitutes the entire agreement between the Parties in relation to the supply of the PCaaS by the Supplier.

Definitions and interpretation:

1. Except as defined in these PCaaS Terms, all capitalised terms used in these PCaaS Terms shall have the meaning given to them in the MSA.
2. The terms set out in these PCaaS Terms are in addition to and should be read in conjunction with the terms of the MSA.
3. In the event of a conflict, the provisions of these PCaaS Terms shall take precedence over the MSA.

PC-as-a-Service Terms of Service

1. DEFINITIONS.

- 1.1. “Equipment Under Agreement (EUA)” – means any hardware and software, excluding any software offered as a service, as specified in an Order Form and/or Quote or otherwise, regardless of whether such Goods and/or Services are leased, or subscribed to.
- 1.2. “PC-as-a-Service” or “PCaaS” – as used herein, means loaned equipment and software made available as a service to the Customer by the Supplier, where no perpetual license is granted.
- 1.3. “Services” – as used herein, means the work provided by the Supplier or its subcontractors that may include Up-Front Services and Ongoing Services, regardless of whether such Services are purchased, leased or subscribed to.
- 1.4. “Software as a Service” or “SaaS” – as used herein, means hosted software made available as a service to the Customer by the Supplier, where no perpetual license is granted.
- 1.5. “Up-Front Services” – as used herein, means the Services provided initially that are necessary to achieve first productive use, including but not limited to, site survey, project management, installation, configuration and training.
- 1.6. “End User” – as used herein means the Customer’s authorised permanent or contract staff utilising the EUA.
- 1.7. “Ongoing Services” – as used herein, means the Services provided subsequent to Up-Front Services, including but not limited to, Support Services, internet connectivity, cellular data connectivity, Hosting Services, monitoring, optimization, repairs, reporting and software maintenance.
- 1.8. “Software Maintenance” – as used herein, means access to the Customer care centre, all defect fixes and software updates.
- 1.9. “First Productive Use” – As used herein, means the point at which the EUA are handed over by the Supplier and are available to the Customer.

2. ACCEPTANCE OF PCAAS TERMS.

These PCaaS Terms are applicable to the provision of any and all EUA, provided by Lanmark, its subcontractors or Third Party Suppliers to the Customer. These PCaaS Terms are applicable to any PC-as-a-Service services Agreement, Order Form, Quote, proposal and/or any documents incorporated by reference herein. The Agreement is the complete and exclusive statement of agreement between the Customer purchasing PCaaS services and the Supplier, unless otherwise agreed to by the parties in writing. The Supplier expressly objects to and rejects any other terms and conditions, including any additional or conflicting terms and conditions the Customer includes at any stage during the order process, including but not limited to, quotes, purchase orders, invoices and/or any other documents submitted by the Customer regarding an order, unless otherwise set forth in the Agreement. The Customer's acceptance of EUA will constitute its acceptance of these PCaaS Terms. The Supplier reserves the right to update these PCaaS Terms and any document referenced herein at any time.

3. ORDERS.

The Order Form and/or Quote will list all EUA provided by the Supplier, the associated Fees and the rental term ("Term"). The Commencement Date will be set on EUA delivery to the Customer and the Term will run for the period as stated on the Order Form and/or Quote.

A party may request to amend an Order Form and/or Quote by requesting the change in writing and if such request results in an Order Form and/or Quote being changed, such change will be documented by the Supplier issuing a written document, which must be accepted and signed by the Customer and may result in additional Fees. All Order Forms and/or Quotes are final and may not be cancelled, returned, or exchanged, except as provided herein

4. PRICE, BILLING AND PAYMENT.

The Supplier reserves the right to change the pricing for any EAU at any time by providing written notice to the Customer at least sixty (60) days prior to the change, unless otherwise stated in the Contract Documents.

- 4.1. If applicable, the Fees for Software Maintenance will be calculated annually at fifteen-percent (15%) of the then current list price of the Software license(s).
- 4.2. Unless otherwise indicated by the Supplier, prices are exclusive of VAT and the Customer agrees to pay all taxes or duties, except taxes based on the Supplier's income.
- 4.3. All service Fees are payable by Direct Debit in advance.
- 4.4. If the Customer fails to make timely payments, has a receiving order in bankruptcy made against it, makes any arrangement with its creditors, or has a receiver appointed, the Supplier may, without prejudice to its other rights, demand immediate payment of all unpaid accounts, suspend further deliveries and/or cancel all Orders without liability. Payments are not subject to setoff or recoupment for any claim the Customer may have.

5. PROVISION OF EUA

5.1. LOANED EUA

5.1.1. The Customer agrees that the EUA utilised by the Customer, in the execution of this PCaaS service shall remain the property of the Supplier. The Customer further agrees to cease the use and return when requested any technology that remains the property of the Supplier or its licensors upon termination of PCaaS. If any EUA is stolen, is damaged and cannot be repaired under warranty or is destroyed, the Customer must continue to pay the monthly Fees as stated on each Order Form and/or Quote and payable to the end of the Term stated on each Order Form and/or Quote.

5.1.2. If the Customer's data set becomes more than the EUA unit is capable of storing, then the Supplier will notify the Customer of any additional Fees related to the Supplier providing a larger replacement EUA or additional EUA units. On agreement of additional Fees by the Customer, the Supplier will provide larger replacement EUA or additional EUA units within twenty (20) Business Days. The Customer agrees to provide access to the Customer Site for installation of new EUA within five (5) Business Days of the Supplier's notification. Failure by the Customer to give the Supplier access may result in storage failures and will be exempt from support and the Supplier's service under these PCaaS Terms. Any new EUA devices will be subject to a new Service Fees starting from the date of delivery.

5.2. TITLE

Title of the EUA does not pass to the Customer and the Customer shall have no right, title or interest in or to the EUA (save the right to possession and use of the EUA subject to these PCaaS Terms).

5.3. DELIVERY DATES

Unless expressly guaranteed by us in writing all delivery dates are subject to change without notice.

5.4. RISK

5.4.1. The risk of loss, theft, damage or destruction of the EUA shall pass to the Customer at the time the EUA are handed over to the transportation company. The EUA shall remain at the sole risk of the Customer during the Term and any further term during which the EUA is in the possession, custody or control of the Customer ("Risk Period") until such time as the EUA is redelivered to the Supplier. During the Term and the Risk Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

- 5.4.1.1. insurance of the EUA 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;
- 5.4.1.2. insurance for such amounts as a prudent owner or operator of the EUA 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 EUA; and

- 5.4.2. insurance against such other or further risks relating to the EUA 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 Customer.
- 5.4.3. The Customer shall give immediate written notice to the Supplier in the event of any loss, accident or damage to the EUA arising out of or in connection with the Customer's possession or use of the EUA.
- 5.4.4. If the Customer fails to effect or maintain any of the insurances required under these PCaaS Terms, 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 Customer.
- 5.4.5. The Customer 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.

5.5. DELIVERY

- 5.5.1. Delivery shall be made in accordance with the Agreement.
- 5.5.2. In the event of any Drop Ship delivery, the Customer shall ensure that the End User complies with the Customer's obligations set out in clauses 11.9, 11.10 and 11.11 of the Agreement.
- 5.5.3. If the Customer cannot accept delivery the Supplier may at its option: (a) store and insure the EUA at the Customer's expense and risk or (b) sell the EUA at the best price reasonably obtainable and (after deducting reasonable storage insurance and selling costs) pay to the Customer any excess over the sale price or charge the Customer for any shortfall or (c) rearrange delivery provided that the Supplier may charge the Customer for the additional delivery costs incurred.

6. EUA SUPPLIED PURSUANT TO THESE PCAAS TERMS

- 6.1. The Customer shall during the Term:
 - 6.1.1. ensure that the EUA are kept and operated in a suitable environment, 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;
 - 6.1.2. take such steps as may be necessary to ensure, so far as is reasonably practicable, that the EUA are at all times safe and without risk to health when being installed, used, cleaned or maintained by a person at work;
 - 6.1.3. maintain at its own expense the EUA in good and substantial repair in order to keep in as good an operating condition as it was on the date of delivery (fair wear and tear only excepted) and in accordance with these PCaaS Terms;
 - 6.1.4. make no alteration to the EUA and shall not remove any existing component (or components) from it without the prior written consent of the Supplier. Title and property in all substitutions, replacements, renewals made in or to the EUA shall vest in the Supplier immediately on installation;
 - 6.1.5. keep the Supplier fully informed of all material matters relating to the EUA;

- 6.1.6. permit the Supplier or its duly authorised representative to inspect the EUA at all reasonable times and for such purpose to enter the premises at which the EUA may be located, and shall grant reasonable access and facilities for such inspection;
 - 6.1.7. maintain operating and maintenance records of the EUA and make copies of such records readily available to the Supplier, together with such additional information as the Supplier may reasonably require;
 - 6.1.8. 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 EUA or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
 - 6.1.9. not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Supplier in the EUA;
 - 6.1.10. not suffer or permit the EUA to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the EUA are so confiscated, seized or taken, the Customer shall notify the Supplier and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the EUA and shall indemnify the Supplier on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
 - 6.1.11. not use the EUA for any unlawful purpose;
 - 6.1.12. ensure that at all times the EUA remains identifiable as being the Supplier's property and wherever possible shall ensure that a visible sign to that effect is attached to the EUA;
 - 6.1.13. deliver up the EUA upon request to Supplier at the end of the applicable rental period or on earlier termination of these PCaaS Terms or the Agreement to such address as the Supplier requires, or if necessary allow the Supplier or its representatives access to Customer's premises where the EUA are located for the purpose of removing the EUA; and
 - 6.1.14. not do or permit to be done anything which could invalidate any applicable insurances.
- 6.2. The Customer acknowledges that Supplier shall not be responsible for any loss of or damage to the EUA arising out of or in connection with any negligence, misuse, mishandling of the EUA caused by the Customer or its officers, employees, agents and contractors, and the Customer shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of, or in connection with any failure by the Customer to comply with these PCaaS Terms.
- 6.3. The Supplier reserves its right not to provide Ongoing Services with respect to the EUA in the event that Customer fails to comply with this Clause 6.

7. EUA

- 7.1. Firmware; The Supplier grants to the Customer a non-transferable, non-sublicensable, non-exclusive, perpetual license to use firmware contained or embedded in the hardware EUA ("Firmware") in object code only and only as necessary to operate the hardware EUA in compliance with the documentation accompanying the EUA.
- 7.2. License; To the extent EUA is provided by the Supplier to the Customer, the Supplier grants to the Customer a non-transferable, non-sublicensable, non-exclusive, perpetual license to use EUA in object code only for its internal purposes and business operations. EUA will remain the exclusive property of the Supplier or its licensors.
- 7.3. License Restrictions; The Customer may not (a) reproduce EUA, or any component thereof or any documentation related thereto, (b) use the EUA for any unlawful purposes, (c) decompile, disassemble, compile or reverse engineer EUA, or otherwise attempt to gain access to the source code, or (d) use the EUA to develop any software application intended for resale which uses the EUA in whole or in part. The Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the EUA and shall notify the Supplier promptly of any unauthorized access. The Customer will not use, duplicate or disclose any technical data or any information regarding EUA for any purpose. These rights are subject to any third party license underlying any component or application the EUA.
- 7.4. The Customer Responsibility; The Customer is solely responsible for all actions taken by the Customer, its employees, agents and others accessing or using the EUA. The Customer is solely responsible for all necessary software, hardware, internet connection and network and all other EUA and services necessary to access and use the EUA.
- 7.5. The Customer Responsibility; EUA Performance and Limited Warranty. The Supplier shall procure a warranty or other benefit from the manufacturer in respect of the EUA which is provided under these PCaaS Terms for the Term. Unless otherwise stated in the applicable Order Form or Quote, the Supplier shall comply with this clause 7.5 in the event that the EUA fails to conform in all material respects to and perform substantially in accordance with its documentation during the Term, provided that: (i) the Customer gives the Supplier written notice of any such failure while this warranty is in effect; (ii) any such breach is not, in the Supplier's reasonable opinion, a result of any modification of or damage to the EUA or its operating environment by any party other than the Supplier or a party acting under the Supplier's control or direction; and (iii) the Customer is in compliance with these PCaaS Terms and the Agreement. The Customer's sole and exclusive remedy shall be as follows: (a) the Supplier will endeavour to repair or replace the nonconforming EUA within thirty (30) days of receiving written notice from the Customer, or such longer period as the parties may mutually agree, such that the EUA conforms to the foregoing warranty; or (b) if the Supplier is unable to repair or replace the non-conforming EUA within such period such that the EUA conforms to the foregoing warranty, either party may terminate that particular EUA license (and all licenses granted hereunder), the Customer shall return the non-conforming EUA and the Supplier shall refund the proportion of the license fee which has been paid in respect of the remainder of the Term. The Supplier's warranty (including without limitation any extended warranty) applies solely to the EUA and its documentation as it existed at the time of installation and warranties covering any follow-on versions, all updates, or upgrades are subject to a further written agreement by the Parties.
- 7.6. Viruses and Disabling Codes; The Supplier confirms that to the best of the Supplier's knowledge, the EUA shall not contain viruses, worms, or spyware (collectively, "Malicious Code") at the date of delivery; provided, however, that, notwithstanding the foregoing, the Customer acknowledges and agrees that the Supplier reserves the right to remotely prevent access to and/or use of the

EUA in the event that (i) the Supplier becomes aware, from the Customer or otherwise, of unauthorized access or use of the EUA by any third party, or (ii) the EUA license is terminated. Notwithstanding any provision of these PCaaS Terms to the contrary, in no event shall the Supplier be in breach of this Clause 7.6 if, at the time any Malicious Code was introduced into the EUA, the Supplier employed commercially-reasonable measures, consistent with the standards of the Supplier's industry, to detect such Malicious Code in order to prevent its introduction into the EUA.

7.7. Audit Rights; The Customer shall, while using the EUA and for one year thereafter, keep true and accurate accounts and records in sufficient detail to enable an audit of the manner and extent of the use, sublicensing, transfer, or other disposition of the licensed EUA, its derivatives, or any product or service based upon or incorporating or using all or portions of the EUA to confirm the Customer's compliance with the PCaaS Terms and/or the Agreement. At the reasonable request of the Supplier, but no more than once per year, unless there is a reasonable suspicion of a breach of these PCaaS Terms and/or the Agreement, the Customer shall allow the Supplier to inspect and audit such information and the Customer facilities as is necessary to ensure the Customer's compliance with these PCaaS Terms.

8. HAZARDOUS MATERIALS.

The Customer acknowledges that certain materials provided by the Supplier may be considered hazardous materials under various laws and regulations. The Customer agrees to familiarize itself (without reliance on the Supplier, except as to the accuracy of special safety information furnished by the Supplier), with any hazards of such materials, their applications and the containers in which such materials are shipped and to inform and train its employees and the Customers to such hazards. The Customer will hold the Supplier harmless against any claims by its agents, employees or the Customers relating to any such hazards, except to the extent such claims arise solely and directly from the Supplier's failure to meet its written specifications or the inaccuracy of safety information furnished by the Supplier.

9. SUSPENSION.

Without waiving any other rights or remedies, the Supplier may suspend performance hereunder and/or under any Order Form and/or Quote or other contract if: (i) the Customer fails to pay any invoice within seven (7) days from receiving a written notice from the Supplier requiring payment; (ii) the Supplier reasonably believes the Customer's use of the EUA may violate any applicable law, rule or regulation, or infringes upon third party rights; or (iii) the Supplier is entitled to terminate for cause.

10. PROPRIETARY RIGHTS.

The Supplier and its licensors will retain all Intellectual Property Rights to the EUA, including without limitation, all designs, drawings, patterns, plans, specifications, technology, technical data and information, technical processes and business methods, whether patentable or not, arising from the provision of EUA to the Customer, including the Supplier rendering engineering services to and designing systems and goods for the Customer's use. The Customer agrees not to enforce against the Supplier or the Supplier's Customers any patent rights that include any system, process or business method utilizing or otherwise relating to the EUA.

11. RESALE.

The Customer, by placing an Order Form and/or Quote and accepting these PCaaS Terms, hereby expressly agrees, acknowledges, represents and warrants to the Supplier that the Customer is leasing or renting the EUA for its own internal business use and not for resale.

12. TECHNOLOGY REQUIREMENTS.

In instances where the Supplier is providing PCaaS or any ongoing services requiring remote access, the Supplier assumes the presence of and access to a Customer-provided/managed Wi-Fi network for remote access to intersections and vehicles, unless a the Supplier-provided Wi-Fi and/or cellular data plan have/has been included amongst the listed services.

13. SERVICES.

The Customer is responsible for Up-Front Services and Ongoing Services, unless such Services are included in the Order Form and/or Quote or a subsequent Order Form and/or Quote. Prices for Up-Front Services and Ongoing Services are charged at the then-prevailing rates, unless otherwise agreed to in writing in the Agreement. Services exclude integration of the Supplier's EUA with third party products, unless otherwise agreed to in writing by the Supplier. The Customer is responsible for any delays due to failure to comply with its portion of any applicable project plan related to Services.

13.1. Notwithstanding Clause 6, Ongoing Services to be provided by the Supplier and required due to the following are excluded and/ or at Supplier's sole discretion shall be subject to an additional Fee: (1) modification of EUA without the Supplier's written consent; (2) use of parts and/or supplies not approved by the Supplier for use with the EUA; (3) misconduct, accident, neglect or misuse; (4) failure of Customer Site to conform to the Supplier's applicable specifications; (5) failure or inadequacy of electric power, humidity or air control; (6) failure to follow operating procedures provided by the Supplier; (7) the Customer's failure to ensure that the traffic infrastructure, including the traffic controller, is compatible with the EUA; and (8) service or maintenance performed by an unauthorized representative of the Supplier.

13.2. The Customer acknowledges that it is aware that in order to install EUA and perform Services it may be necessary to drill holes and/or connect to a vehicle's electrical system and/or traffic cabinet's electrical system and agrees that the Supplier shall not be liable for any costs, expenses or damages arising from such work.

14. REPLACEMENT PARTS.

In performing PCaaS, the Supplier reserves the right to use replacement parts that are new, refurbished or equivalent in performance to new parts, at no extra charge to the Customer. Parts being replaced will be the property of the Supplier. The Customer acknowledges certain parts may be subject to discontinuance by the manufacturer, in which event the Supplier's obligation will be limited to making reasonable efforts to replace such discontinued parts with an equivalent part.

15. DATA.

The Customer warrants that it has sufficient rights, title and interests in and to all means of information, data and/or files the Customer transmits or uploads to or stores on any environment, in connection with its use of the EUA ("the Customer Data"). The Customer will not transmit or upload any personally identifiable information and will be solely responsible for the security of such information. The Supplier may view, store, copy, delete or otherwise process any Customer Data to

provide the EUA to the Customer and unless prohibited by law, the Supplier may also collect, analyse and otherwise use anonymized versions of the Customer Data for its own business purposes.

16. TERMINATION.

16.1. The Customer agrees that it will not replace the Supplier's EUA with its own or a competitive goods or services. Termination of the Agreement, will not relieve the Customer from any accrued payment obligations. The Customer will be responsible to return all EUA to the Supplier within 10 Business Days after Agreement termination date.

16.2. The Customer may terminate the PCaaS and give in writing no less than 90 days' notice to expire at the end of the Initial Period or Subsequent Period (as the case may be) of their intention to cancel and terminate the service. The Customer will be required to settle in full the balance up to the end of the Term on each Order Form and/or Quote of the net total of Ongoing Services. The Customer will be responsible to return all EUA to the Supplier within ten (10) Business Days after Agreement termination date.

16.3. On termination of these PCaaS Terms or the Agreement, however caused:

16.3.1. the Supplier's consent to the Customer's possession of the EUA shall terminate;

16.3.2. the Supplier may, by its authorised representatives, without notice and at the Customer's expense, retake possession of the EUA and for this purpose may enter the Customer Site or any premises at which the EUA is located; and

16.3.3. without prejudice to any other rights or remedies of the Customer, the Customer shall pay to the Supplier on demand:
(a) all applicable Fees and other sums due but unpaid at the date of such demand together with any interest accrued; and
(b) any costs and expenses incurred by the Supplier in recovering the EUA or in collecting any sums due under the Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

16.4. On termination of these PCaaS Term or the Agreement, without prejudice to any other rights or remedies of the Supplier, the Customer shall pay to the Supplier on demand a sum equal to the whole of the Fees that would (but for the termination) have been payable if these PCaaS Terms or the Agreement had continued from the date of such demand to the end of the Term.

16.5. The sums payable pursuant to clause 16.4 shall be agreed compensation for the Supplier's loss and shall be payable in addition to the sums payable pursuant to clause 16.3. Such sums may be partly or wholly recovered from any Deposit.

16.6. Termination or expiry of these PCaaS Terms or the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

17. SUPPORT

The Supplier will provide helpdesk support as part the Support Services during the Supplier's Normal Business Hours excluding public holidays as detailed on the Form and/or Quote.

18. CHANGE REQUESTS TO SERVICES

18.1. Service Additions

The Customer can request additions to Services including

- 18.1.1. PCaaS
- 18.1.2. SaaS
- 18.1.3. Ongoing Services

The Supplier will issue a new Order Form and/or Quote for any additional Service requested by the Customer. The Customer agrees that additional Fees stated on the new Order Form and/or Quote will be applied starting from date of delivery. The Supplier will add all provided EUA onto the EUA schedule.