

# LOADSCAN SERVICE & SUPPORT AGREEMENT

**LOADSCAN**<sup>®</sup>  
accurate payload measurement

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## THIS AGREEMENT IS MADE ON THE COMMENCEMENT DATE

between **Loadscan Ltd** of 27 Earthmover Crescent, Hamilton 3200 New Zealand  
(**Loadscan**)  
and **The party identified in the Proposal (Customer)**

## RECITALS

- A. Loadscan is the owner or authorised reseller of the Software and has licensed the Customer to use the Software under the terms of the EULA.
- B. Loadscan is in the business of supplying various services, including maintenance and technical support services for their supplied systems and software.
- C. The Customer wishes to engage Loadscan to provide technical support and maintenance services for any or all the Systems and /or the Software on the terms of this Agreement.

## IT IS AGREED:

### 1. Definitions and Interpretation

#### I. Definitions

In this Agreement unless the contrary intention is apparent or the context otherwise requires:

**Access** means any interaction or communication with the System by way of any communications mechanism using guided or unguided electro-magnetic energy that causes the System to react or respond, in any manner whatsoever, to such interaction or communication and **Accessing** has a corresponding meaning.

**Accessible Code** means source code that is unprotected and accessible in the Software and includes, without limitation, scripts, macros, config files, custom reports and workflows.

**Additional Services** means any additional services requested by the Customer from time to time including any varied services or the provision of any Excluded Services.

**Assisted Upgrade** means an upgrade of any Software product to a new version which is supervised by Loadscan.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in the location of the Loadscan Support Office.

**Commencement Date** means the date specified in the Proposal or as otherwise agreed in writing between the parties.

**Confidential Information** means information relating to a party's Intellectual Property or to a party's business operations including, without limitation:

- a) any information that is designated by a party as confidential;

- b) the Software including the source codes;
- c) all information given or obtained in circumstances where it could reasonably be inferred as being confidential;
- d) the terms of this Agreement; and
- e) all know-how, techniques, processes and commercial and financial information of a party, but does not include information that:
  - f) becomes publicly available other than as a result of a breach of clause 9;
  - g) is authorized, permitted or directed to be disclosed by the other party;
  - h) is required to be disclosed by law; or
  - i) is required to be disclosed to a party's legal or financial advisers.

**Costs** means the charges in Schedule C associated with any additional support, training or development excluded in Clause 3.III and Schedule A.

**Embedded Software** means any third-party software which may contain Accessible Code or Protected Code licensed by Loadscan from a third party and embedded on devices in the system and/or in the Software.

**Error** means a verifiable and reproducible failure of the Software to conform in any material respect to the published specifications under conditions of normal use. **Error** does not include any failure caused by the matters referred to in clause 3.III.

**Error Correction** means a modification or addition that, when made or added to the Software, brings the Software into material conformity with the published specifications.

**EULA** means the end user license agreement between Loadscan and the Customer in respect of the Software.

**Excluded Services** means those excluded services and support identified in clause 3.III and Schedule A.

**Expiry Date means** 12 months from the Commencement Date, or as otherwise agreed in writing between the parties.

**Fees** means the fees set out or calculated in the manner specified in the Proposal.

**Force Majeure Event** means any occurrence or omission outside a party's control including, without limitation:

- a) a physical natural disaster including fire, flood, lightning or earthquake or the after-effects of a physical natural disaster (including without limitation, electricity or telecommunication disruption or travel disruptions or restrictions);
- b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;
- c) epidemic or quarantine restriction;
- d) failure of a third-party service provider's business;
- e) confiscation, nationalization, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency;
- f) any law taking effect after the date of this agreement which has an adverse impact on Loadscan's ability to provide the Services; and

- g) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors.

**Intellectual Property** includes patents, designs, registered designs, copyright, literary and artistic works, circuit layouts, hardware and network architecture, registered and unregistered trademarks, trade and business names, trade secrets, applications of any of the above, as well as rights in and to inventions, discoveries, improvements, look and feel, works and names, including Software.

**Intellectual Property Rights** means the rights comprised in any Intellectual Property or other proprietary rights whether at common law or by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect goodwill or confidential information.

**Loadscan Support Office** means the location of Loadscan's office or agency identified in Schedule A.

**Moral Rights** means the rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed, and rights of a similar nature conferred by statute, that exist, or that may come to exist, anywhere in the world, in the Services.

**Proposal** means the proposal provided by Loadscan to the Customer in respect to the Services, Systems and the Software.

**Release** means any new version of the Software, including Error Corrections and Updates.

**Service Levels** means the service level targets set out in Schedule B.

**Services** means the services identified in Schedule A.

**Software** means the software that accompanies the EULA, including computer software, Accessible Code, Protected Code and associated media, printed materials, 'online' or electronic documentation, internet/cloud-based services and Embedded Software.

**Subscription Licenses** means the licenses of that name granted to the Customer by Loadscan from time to time. This type of license is purchased in 12 month increments with expiration dates based on Fees paid.

**Supported Software** means the supported software identified in the Proposal.

**System** means the Loadscan supplied hardware and/or designated information technology environment in which the Software is to be used.

**Term** means the term of this Agreement specified in clause 2.

**Update** means a new version of all or part of the Software which Loadscan makes available including minor modifications or improvements to the Software.

## II. Interpretation

In this Agreement, unless otherwise stated:

- (a) a reference to this Agreement is a reference to this Agreement as amended, varied, novated, supplemented or replaced from time to time;
- (b) a reference to any legislation includes any amendment or replacement and all subordinate legislation;
- (c) words or expressions:
  - (i) importing the singular include the plural and vice versa;
  - (ii) importing a gender include the other genders;
  - (iii) denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities;
- (d) a reference to a party to this Agreement or any other instrument includes that party's executors, administrators, successors and permitted assigns;
- (e) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;
- (f) a reference to a clause, schedule or annexure is a reference to a clause, Schedule or Annexure of this Agreement;
- (g) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act may be done, or the limit or period will expire, on the following Business Day;
- (h) a provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the Agreement;
- (i) a reference to two or more persons means those persons jointly and severally.

## 2. Term

- (a) Subject to clause 2(b), this Agreement has effect from the Commencement Date and, unless terminated earlier in accordance with the provisions of this Agreement, remains in force until the Expiry Date.
- (b) If, prior to the Expiry Date the parties agree in writing that this Agreement is to have effect for a mutually agreed period after the Expiry Date, then this Agreement, unless terminated earlier in accordance with the provisions of this Agreement, remains in force until the expiration of that period.
- (c) Loadscan will provide the Customer with a renewal reminder notice prior to the expiry date of this agreement.

## 3. Provisions of Services

### I. Services

Subject to the Customer paying the Fees, during the Term Loadscan will provide the Customer with the Services in accordance with the terms of this Agreement.

### II. Additional Services

- (a) Upon the agreement of both parties, Loadscan may provide Additional Services to the Customer from time to time at the costs applicable at the time (See Schedule C for costs). These services may include (without limitation):

- (i) additional training of the Customer's personnel;
  - (ii) detailed assistance applying the software to a specific project; or
  - (iii) development of enhancements to the Software for the Customer's specific use.
- (a) If the Customer requests Loadscan to provide Additional Services or services which are significantly different from the Services, Loadscan will advise the Customer as soon as reasonably possible of the likely additional Costs and associated terms and conditions in providing the additional or varied services as outlined in Schedule C.
- (b) Until the price and terms for the Additional Services is agreed in writing by the parties, Loadscan will not be obligated to provide the Additional Services or varied Services. These services will be provided under a separate agreement.

### **III. Exclusions**

The Customer acknowledges that the Services do not include any services for the support of the Software or the correction of faults, errors or defects arising as a result of:

- (a) misuse, improper use, alteration or damage to the Software;
- (b) a combination of the Software with other programs or equipment that has not been approved by Loadscan;
- (c) the use by the Customer of a superseded or unsupported Release;
- (d) the operation of the Software in a manner that contravenes the Customer's obligations under the EULA;
- (e) failure by the Customer to operate or use the Software in accordance with the EULA or any user documentation or such other direction of Loadscan;
- (f) the Customer manipulating source data in an underlying SQL database/data file. The Customer acknowledges and agree that access to the database must only be via the Loadscan supplied API or user interface;
- (g) use by the Customer of the Software in an information technology environment or platform different from that specified by Loadscan on its website from time to time;
- (h) equipment or System maintenance or programming on the System performed by a person other than Loadscan or its authorized personnel; or
- (i) modifications to the Software or the System made by the Customer or by a third party not specifically authorized by Loadscan to undertake those modifications.

### **IV. Standard of Services**

Loadscan will:

- (a) provide the Services honestly and diligently at a professional standard of skill, care and diligence appropriate for an expert in its field and in accordance with professional standards;
- (b) comply with all applicable laws and regulations and all permits, licenses, authorizations and accreditations applying to Loadscan or the Services;
- (c) take steps to ensure that only Loadscan personnel who need to Access the Customer's System to undertake the Services have Access to the System;
- (d) maintain the confidentiality of the Customer's Confidential Information in accordance with clause 9; and
- (e) comply with all lawful directions given by the Customer in respect to Access.

#### 4. New Releases

##### I. Offer of Releases

From time-to-time Loadscan may provide the Customer with new Releases applicable to the Software, the cost of which is included in the Fees.

##### II. Acceptance of Release

- (a) The Customer is not obliged to accept or install a Release.
- (b) If the Customer elects not to accept or install a new Release:
  - (i) Loadscan will not be liable for any loss or damage that the Customer suffers as a result of any Defects in the Software which are remedied by the Release;
  - (ii) the Customer acknowledges that Loadscan may not be able to adequately support or remedy the Customer's issues; and
  - (iii) the Customer acknowledges that support is only provided on the Releases specified in Schedule A.
- (c) If the Customer accepts a Release (by downloading and installing it):
  - (i) this Agreement will continue to apply in all respects to the Release; and
  - (ii) the Customer will delete all copies of the Software or part of the Software which have been superseded by the Release or otherwise deal with all copies in accordance with Loadscan's reasonable directions.

#### 5. Service Levels

##### I. Platform and Data Input Requirements

- (a) Loadscan will undertake the Services on the basis of minimum hardware and software criteria, specified by Loadscan in supplied documentation, email updates and on its website from time to time, which are required as part of the Customer's System where applicable.
- (b) The Customer acknowledges and agrees that if the Customer's System:
  - (i) does not meet these criteria;
  - (ii) does not meet any other minimum hardware or software requirements specified by Loadscan; or
  - (iii) the Customer's data is not of sufficient quality or is compatible with Loadscan's supported formats (as specified by the software documentation),

Loadscan may be unable to provide the Services to the required standard or the Customer may be unable to receive the benefit of the Services.

##### II. Service Levels

- (a) Service Levels are based on Loadscan's reasonable assessment of the standards which are able to be achieved but are indicative and non-binding targets only.



- (b) Loadscan shall use its reasonable endeavours to complete the Services within the timeframe estimated and will notify the Customer as soon as reasonably possible upon becoming aware of any matter that may delay the indicated time for completion.
- (c) Loadscan is entitled to update all cloud services with a minimum of 48 hours notification of the downtime. This will be communicated through the MyScanner web application.
- (d) Loadscan will endeavour to make the best effort to keep all cloud services running continuously but cannot guarantee uptime.

### III. **Platform and Data Input Requirements**

Where Loadscan provides the Customer with any hardware, complete systems or Software (including Releases):

- (a) risk in the hardware, complete systems, Software or Releases passes to the Customer on delivery to the Customer; but
- (b) title to that hardware does not pass to the Customer until payment in full to Loadscan of the Fees attributable to that hardware or complete system; and
- (c) Loadscan may substitute or modify the hardware or Software prior to delivery if, in the reasonable opinion of Loadscan, that substitution or modification will have no adverse effect on the capacity or performance of the hardware, complete system or Software.

### IV. **Completion of services**

- (a) The Customer must:
  - (i) notify Loadscan in writing as soon as the Customer becomes aware of any defects in the Services; or
  - (ii) provide Loadscan with an email confirming successful completion of any Services Loadscan advises the Customer have been completed.
- (b) If the Customer does not notify Loadscan of any defects under clause 5.IV(a)(i) or provide Loadscan with an email confirming successful completion of the Services within 14 days of Loadscan notifying the Customer that the relevant Services are complete, the Customer is deemed to have accepted the Services.
- (c) If the Customer notifies Loadscan of any defects under clause 5.IV(a)(i), Loadscan will, as soon as possible investigate and (where applicable) undertake rectification of the defects. Upon completion of any defect rectification the Customer must promptly provide an email notification of the successful completion of the services, unless further defects exist. In this case, the Customer is further required to notify Loadscan of such defects.

### V. **Mutual Cooperation**

Both parties will:

- (a) inform the other party as soon as practicable of any unforeseen changes, new developments, or other issues that impact and influence the Services; and
- (b) wherever reasonably possible, accommodate each other's scheduling requirements.

## 6. Customer's Obligations

### I. Information

- (c) The Customer acknowledges and agrees that, in providing the Services, Loadscan is reliant upon the accuracy and completeness of the information provided to Loadscan by the Customer.
- (d) The Customer agrees and accepts that the description, scope, extent, quantity and timeframes and all other attributes of the Services set out in this Agreement are in accordance and are an accurate interpretation of the Customer's requirements and the Customer's System.

### II. General

To enable Loadscan to provide the Services the Customer must:

- (d) in order to enable Loadscan to provide the Services within any indicative timeframes, provide:
  - (i) timely access to the Customer's key personnel;
  - (ii) timely Access to all required Systems and data (including, where necessary or desirable, administrative access);
  - (iii) timely access to premises, including any necessary security clearances, where required;
  - (iv) all items identified as prerequisites in the Proposal;
  - (v) internal stakeholder communication and engagement; and
  - (vi) internal project management;
- (e) use reasonable endeavours to respond promptly and accurately to all reasonable requests by Loadscan to provide information required for the performance of the Services;
- (f) ensure that all information provided to Loadscan is accurate and complete and is not incomplete or misleading;
- (g) permit Loadscan's personnel involved with providing the Services to access the Customer's System and relevant documentation, as required, to enable Loadscan to properly perform the Services;
- (h) where access to a Customer's premises is required, ensure the Customer's premises are safe and comply with all relevant occupational health and safety legislation, regulations and industry standards;
- (i) where relevant, make available to Loadscan suitable personnel of the Customer to:
  - (i) provide information about the Customer's System and information technology environment;
  - (ii) resolve queries; and
  - (iii) provide such other information and assistance as is reasonably requested by Loadscan and its personnel in relation to the provision of the Services.

### III. Access

- (a) During the Term, the Customer must provide Loadscan with:
  - (i) non-exclusive access to the Customer's premises or any other location where the System is located to the extent necessary to enable Loadscan to perform the Services; and

- (ii) Access to the System, whether by attendance at the Customer's premises or other location where the System is located and utilizing the Customer's computers and hardware or by way of remote access.
- (b) Loadscan will ensure its personnel, when using the Customer's premises or facilities:
- (c) comply with all rules, directions and procedures, including those relating to security or occupational health and safety, which are in effect at the premises or facilities;
- (d) avoid unnecessary interference with the passage of people and vehicles; and
- (e) not create a nuisance or unreasonable noise or disturbance.

## 7. Fees, Expenses (Costs) and Payment

### I. Fees

- (a) The Customer must pay Loadscan the Fees for the Services.
- (b) Loadscan will issue an invoice to the Customer for the Fees and the Customer must pay Loadscan the Fee within thirty (30) days of receipt a Tax Invoice from Loadscan.
- (c) In addition to the Fee, Loadscan must, upon presentation to the Customer of receipts or other formal evidence, be reimbursed for:
  - (i) all reasonable out-of-pocket expenses; and
  - (ii) all reasonable travel costs, incurred by Loadscan in performing the Services.
- (d) Costs associated with any additional services - support, training or development excluded in Clause 3.III and Schedule A will be charged as outlined in Schedule C.
- (e) Loadscan may change its Fees from time to time by notification to the Customer.
- (f) Loadscan reserves the right to disable access to the System, Software and complete systems if payment is not made within twenty (20) business days of receipt of a Tax invoice from Loadscan.

### II. Interest

Any Fees or Expenses not paid within twenty (20) business days of the due date are subject to a late charge of five percent (5%) of the amount owing and interest thereafter at the rate of two percent (2%) per month on the outstanding balance.

### III. Quotations

Where at any time Loadscan provides a quotation to the Customer (including but not limited to as part of any Proposal, estimate or Statement of work) the Customer acknowledges and agrees that the quotation is:

- (a) based on Loadscan's reasonable assessment of the time and materials required to undertake the work based on the information available to Loadscan at the time of preparing the quotation; and
- (b) indicative only and is not binding on Loadscan.

### IV. Disputes

If at any time the Customer disputes an amount included in a Tax Invoice, the Customer must immediately pay the amount not in dispute.

## 8. Intellectual Property Rights

The Customer acknowledges that:

- (a) the rights granted to the Customer in the Software and all Updates are a license only on the terms of the EULA;
- (b) the Intellectual Property Rights in the Software, and complete systems and all Updates are owned by Loadscan or relevant third parties under the terms of the EULA; and
- (c) all Intellectual Property Rights created as a result of or in the course of Loadscan providing the Services to the Customer and all Intellectual Property Rights in and to all documents and any other subject matter created for the purposes of, or in the course of, Loadscan providing the Services to the Customer will, upon their creation, be assigned to and vest entirely in Loadscan.

## 9. Confidentiality

### I. Access to Confidential Information

Each party acknowledges that the other party, its employees or agents, may be given access to Confidential Information relating to the other parties' business or the operation of this Agreement or any negotiations relating to this Agreement.

### II. Obligations of Confidence

Each party undertakes to:

- (d) hold in strict confidence all Confidential Information which comes into its possession; and
- (e) as far as commercially feasible, to take the same degree of care as the recipient uses to protect its own Confidential Information.

### III. Survival

The obligations of confidence in this clause 9 survive expiry or termination of this Agreement.

## 10. Force Majeure

Neither party will be:

- (c) in breach of this agreement as a result of; or
- (d) liable for,

any failure or delay in the performance of that party's obligations under this Agreement to the extent that the failure is caused by a Force Majeure Event.

## 11. Termination

### I. Termination of EULA

- (a) This agreement will terminate if for any reason whatsoever the EULA is terminated.
- (b) If this Agreement is terminated under clause 11.I(a), Loadscan will not be under any obligation to refund any Fees already paid by the Customer under this Agreement or the EULA.

### II. Termination by Customer

The customer may terminate this Agreement at any time for its convenience upon ninety (90) days written notice to Loadscan. Without prejudice to any rights or remedies of the Customer, the Customer may, by at least seven (7) days' notice in writing to Loadscan, terminate this Agreement if:

- (a) Loadscan breaches its obligations under this Agreement and:
  - (i) the breach is not capable of remedy;
  - (ii) if capable of remedy, the breach is not remedied within 30 days of receipt of written notice by Loadscan requiring the breach to be remedied, unless the breach, having regard to its nature, importance or the actions being taken by Loadscan during the period to correct any Error, does not justify termination; or
- (b) an Insolvency Event occurs in respect to Loadscan.

### III. Termination by Loadscan

Without prejudice to any rights or remedies of Loadscan, Loadscan may, by at least seven (7) days notice in writing to the Customer, terminate this Agreement if:

- (a) the Customer fails to pay an undisputed invoice within thirty days of receipt of that invoice and persists in that failure for a period of fourteen days after receipt of notice given by Loadscan to the Customer
- (b) the Customer breaches its obligations under this Agreement and:
  - (i) the breach is not capable of remedy;
  - (ii) if capable of remedy, the breach is not remedied within 30 days of receipt of written notice by the Customer requiring the breach to be remedied, unless the breach, having regard to its nature and importance does not justify termination; or
- (c) an Insolvency Event occurs in respect to the Customer.

### IV. After Termination

- (a) Termination of this Agreement does not affect any accrued right or liability of either party nor will it affect the coming into force or the continuation in force of any provision of this Agreement that is expressly or by implication intended to come into or continue in force on or after the termination.
- (b) The Customer must promptly pay to Loadscan all money due and owing as at the date of termination of this Agreement.

- (c) Loadscan must promptly deliver up or return to the Customer the Confidential Information including documents, reports and records of the Customer's in Loadscan's possession, custody or control.
- (d) The Customer must promptly deliver up or return to Loadscan the Confidential Information including documents, reports and records of Loadscan in the Customer's possession, custody or control.
- (e) Loadscan must upon receiving a notice of termination arrange for an orderly cessation of work in accordance with any written advice from the Customer.

## **V. Effect of Termination on Updates**

If a new agreement is not entered into at the expiry or termination of this Agreement, the Customer will not be eligible to Updates to the Software.

## 12. Disclaimer and Limitation of Remedies

### **I. No Warranty**

- (a) Loadscan takes commercial steps to provide the Services so as to meet the Customer's requirements and ensure the Software and any Releases are error free. However, Loadscan makes no representation and gives no warranty that:
  - (i) the Services, Software and any Releases will be error free, meet the Customer's requirements or be fit for any particular purpose; or
  - (ii) the Services will be performed within any particular time.
- (b) Under no circumstances will Loadscan be liable for any incidental, special, indirect, direct or consequential damages or loss of profits, interruption of business, loss of business opportunity or goodwill, any claims for indirect, special or punitive damages, third party claims or any indirect or consequential losses or related expenses which may arise from installation or use of the Software, including but not limited to those resulting from defects in the Software, or loss or inaccuracy of data of any kind and whether or not Loadscan has any notice of the possibility of such damages.
- (c) If Loadscan breaches any provision of this agreement, Loadscan's sole and exclusive maximum liability, whether based in contract, tort, or otherwise, will not in any event exceed the lesser in value of:
  - (i) the total price paid for the Services during the twelve-month period immediately prior to the event of causation;
  - (ii) re-performing the Services; or
  - (iii) re-performance of the Services by a third party reasonably acceptable to Loadscan.
- (d) The Customer agrees that the Customer must commence any action arising out of or related to this Agreement and the Services or the Customer's use of the Software or other Services within one (1) year of the loss or damage arising. After that time the Customer agrees that any cause of action will be permanently barred.
- (e) This No Warranty clause 12.I does not apply to hardware parts of the system that are under warranty purchased as part of the initial proposal.

### 13. Non-Solicitation

- (a) Each party will not:
  - (i) during the Term; or
  - (ii) for a period of six months after the Term or any extension of the Term,solicit the services of, or offer employment to, any employee of the other party.
- (b) For the sake of clarity, this obligation shall not prevent a party from:
  - (i) considering and accepting an application made by any officer, employee or contractor of the other party in response to a recruitment advertisement published generally and not specifically directed at the other party's officers, employees or contractors;
  - (ii) responding to an approach made to a party or its professional advisers by any of the other party's officers, employees or contractors which can be established from written records was initiated by that officer, employee or contractor; or
  - (iii) responding to an approach by a professional recruiter on behalf of any of the other party's officers, employees or contractors party which is made without the recruiter's knowledge of the purpose.

### 14. Relationship

- (a) The Customer and Loadscan acknowledge and agree that:
  - (i) the relationship between the parties is that of independent contractors and not of employer and employee, partners, joint venturers, fiduciaries or principal and agent;
  - (ii) Loadscan has no voting rights nor management control in respect of the Customer or any part of the Customer or its business;
  - (iii) Loadscan has no power to bind the Customer and must not represent himself as having any position of authority nor ability to bind the Customer in any way.
- (b) Loadscan must disclose to the Customer, all actual and potential material conflicts of interest that exist, arise or may arise in the course of performing the Services as soon as practical after he becomes aware of that conflict.

### 15. Assignment or other Transfer

- (a) The Customer can only assign this Agreement to succeeding parties in the case of a merger, acquisition or change of control if:
  - (i) the Customer notifies Loadscan within sixty (60) days of the assignment;
  - (ii) the assignee agrees in writing to be bound by the terms and conditions of this Agreement; and
  - (iii) upon assignment or transfer, the assigning Customer makes no further use of the Software and deletes or destroys all copies of the Software in its possession, custody or control and provides evidence of deletion or destruction to Loadscan's satisfaction.
- (b) Any purported assignment or transfer of the Software by the Customer other than in accordance with the requirements of this clause 15 will be void and will entitle Loadscan to terminate this Agreement in accordance with clause 11.

- (c) Loadscan may assign its rights and obligations under this Agreement without the consent of the Customer. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

## 16. Dispute Resolution

- (a) In the event that any claim or dispute arises under these terms and conditions or the EULA, the Company shall have the right to refer the matter to arbitration by a single arbitrator nominated by the President of the New Zealand Law Society, such arbitration to be otherwise carried out in accordance with the Arbitration Act 1996.
- (b) The parties must each continue to perform their respective obligations under this agreement pending resolution of the dispute.

## 17. Notices

- (a) A notice given under this agreement must be:
  - (i) in writing and signed by or for the sender;
  - (ii) directed to the recipient's address specified in this agreement or as varied by written notice; and
  - (iii) left at, or sent by prepaid registered post, hand delivered or emailed to, that address.
- (b) A notice is deemed to have been given:
  - (i) if left at the recipient's address or hand delivered, on the day of delivery;
  - (ii) if sent by prepaid registered post, 2 Business Days after the date of posting; or
  - (iii) if sent by email, when the sender's email server records that it has been transmitted without error.
- (c) The provisions of this clause 17 are in addition to any other mode of service permitted by law.

## 18. Miscellaneous

### I. Entire Agreement

This Agreement and the EULA:

- (a) constitutes the entire agreement between the parties about its subject matter and supersedes all prior contracts, arrangements and understandings in relation to that subject matter; and
- (b) may only be altered in writing signed by all parties.

### II. Survival

The provisions of the clauses of this Agreement in relation to documents, intellectual property rights, insurance, moral rights, indemnity and confidentiality survive the expiry or termination of this Agreement.



**III. Costs and Expenses**

Each party must pay its own costs and expenses in respect of the negotiation, preparation and execution of this Agreement and any other document executed pursuant to this Agreement.

Schedule A: Service Description

<b>Item</b>	<b>Details</b>
Loadscan Support Office	New Zealand – Hamilton Australia – Newcastle NSW USA – Conroe Texas
Service Days	On Business Days – defined as a day that is not a Saturday, Sunday or a public holiday in the location of Loadscan’s Support Office (above). Holidays/vacations may affect service days.
Service Times	Business hours: 7:30AM – 4PM of the nearest Loadscan Support Office.
Support Logging Methods	Email: <a href="mailto:support@loadscan.com">support@loadscan.com</a>  Web: <a href="https://www.loadscan.com/support/">https://www.loadscan.com/support/</a>
Support Call Requirements	<ul style="list-style-type: none"> <li>• Users logging support calls must be registered as the Expert User or a registered contact for the organisation.</li> <li>• Users must have attended a Loadscan basic training session.</li> <li>• Users logging the call must provide requested information to the Loadscan support representative.</li> </ul>
<b>LVS/MPS/CVS/Overview/LoadSync On-premises system/software – Support Inclusions</b>	
Supported Software Versions (Releases)	<ul style="list-style-type: none"> <li>• Current/latest version.</li> <li>• Immediate prior version.</li> <li>• A specific version installed by a Loadscan technical representative.</li> </ul>
Included Service/Support	<ul style="list-style-type: none"> <li>• User issues;</li> <li>• Bug fixes;</li> <li>• Supply of patches;</li> <li>• Supply of new versions;</li> <li>• Assistance with installing new versions;</li> <li>• Support advice on client version compatibility;</li> <li>• Providing required information for the Customer’s internal incident management, problem management, change management, and request fulfilment processes and systems;</li> <li>• 1 remote user training session/course booked in advance;</li> <li>• Loadscan supplied hardware failure diagnoses;</li> <li>• Loadscan supplied part warranty related issues;</li> <li>• Customer service reports as reasonably requested.</li> </ul>
Excluded Service/Support	<ul style="list-style-type: none"> <li>• 3rd party issues attributable to the IT platform/environment or non-supported 3rd party applications;</li> <li>• Customer IT environment / platform issues;</li> <li>• Customer internal networking support/issues;</li> <li>• Mobile/Cellular network connectivity and troubleshooting;</li> <li>• Unsupported versions of client software – e.g. SQL Server 2000.</li> <li>• Client device support;</li> <li>• Unsupported client hardware;</li> <li>• Providing custom / new functionality on request;</li> <li>• Alteration of any customer specific Scripts, Process Maps or Plugins;</li> </ul>

	<ul style="list-style-type: none"> <li>• Issues with customer data/inputs that do not conform to design specifications or user documentation;</li> <li>• Directly undertaking configuration of new or existing implementations;</li> <li>• Performing any customer specific User Acceptance Testing;</li> <li>• Using support systems other than Loadscan’s own system;</li> <li>• Being responsible or accountable for the Customer’s internal incident management, problem management, change management, and request fulfilment processes and systems;</li> <li>• Performance testing of the IT environment;</li> <li>• Additional training;</li> <li>• Any customized documentation.</li> </ul>
<b>MyScanner Web application – Support Inclusions and Exclusions</b>	
Included Service/Support	<ul style="list-style-type: none"> <li>• User issues;</li> <li>• Bug fixes;</li> <li>• Providing required information for the Customer’s internal incident management, problem management, change management, and request fulfilment processes and systems;</li> <li>• 1 remote user training session/course booked in advance;</li> <li>• Customer service reports as reasonably requested.</li> </ul>
Excluded Service/Support	<ul style="list-style-type: none"> <li>• Customer IT environment / platform issues;</li> <li>• Customer internal networking support/issues;</li> <li>• Client device support;</li> <li>• Mobile/Cellular network connectivity and troubleshooting;</li> <li>• Support of product during scheduled maintenance periods;</li> <li>• Providing custom / new functionality on request;</li> <li>• Issues with customer data/inputs that do not conform to design specifications or user documentation;</li> <li>• Being responsible or accountable for the Customer’s internal incident management, problem management, change management, and request fulfilment processes and systems;</li> <li>• Performance testing of the IT environment;</li> <li>• Additional training;</li> <li>• Any customized documentation.</li> </ul>

Schedule B: Service Level Targets

<b>Severity</b>	<b>Support Type</b>	<b>Description</b>	<b>Indicative Response Time</b>	<b>Resolution Time &amp; Description</b>
Critical	System Defect	An essential function of the system has ceased to work, which prevents performance of critical day-to-day business activities. A workaround is not immediately available.	6 Business Hours	Provide a solution within 5 Business Days. The solution may include a workaround or a private fix of the product.
	User Assistance	User requires assistance with the system functionality to produce a result that is critical to day-to-day business activities. A workaround is not immediately available.	6 Business Hours	Provide a solution within 5 Business Days. The solution will contain instructions or workarounds to achieve the desired result (if at all possible).
High	System Defect	A core function of the system has ceased to work. A workaround is available.	1 Business Day	Provide a solution within 10 Business Days. The solution may include a workaround or a public fix of the product.
	User Assistance	User requires assistance with the system functionality to produce a result which is a core feature of the system. A workaround is available.	1 Business Day	Provide a solution within 10 Business Days. The solution will contain instructions or workarounds to achieve the desired result (if at all possible).
Medium	System Defect	The system has an issue that is having only a minor impact on normal operating activities. A workaround is available.	2 Business Days	Provide a solution within 20 Business Days. The solution may include a workaround or a commitment to implement a fix into a future release of the product.
	User Assistance	User requires assistance with the Software functionality to improve their productivity, user issues having a minor impact on software usability or questions of a general nature. A workaround is available.	2 Business Days	Provide a solution within 15 Business Days. The solution may include a workaround or a commitment to implement a fix into a future release of the product.

Low	System Defect	Minor issues with the system that are not causing the end-user an inconvenience.	5 Business Days	Provide a response within 20 Business Days. The solution may consist of submitting feature requests to product management, and/or scheduling changes to future releases of the product.
	User Assistance	Suggested Enhancements	5 Business Days	Provide a response within 20 Business Days. The solution may consist of submitting feature requests to product management, and/or scheduling changes to future releases of the product.

**Service Level Target Conditions**

**a) Severity, Response and Resolution times**

- (i) Loadscan and the Customer will categorise the severity of all issues (acting reasonably) and Loadscan will consult with the Company’s Expert User on any demoted incidents or where Loadscan does not agree with the Customer’s proposed categorisation.
- (ii) Response Times are indicative. Loadscan will make the best effort to respond within the stipulated timeframe but cannot guarantee response times.
- (iii) Target Resolution times are calculated from the point at which the Customer has provided Loadscan with sufficient information (and the customer’s data files if required) for Loadscan to reproduce the issue and the issue can be successfully reproduced by Loadscan.
- (iv) Resolution Target times are “paused” when Loadscan Support is waiting on the Customer for additional information or if support has been scheduled for a specific time.
- (v) Any issue deemed by the Customer as a Critical issue, must be raised by the Customer when logging the support request.

**b) Access to servers/desktops/laptops for Loadscan On-premises software support**

- (i) All On-premises software support will be provided remotely, using remote access or remote-control tools if customer system interaction is required. Use of these remote-control tools is subject to the Customer’s Approval.

**c) Access to Loadscan Supplied Hardware and any servers/desktop Loadscan on-premises software is installed on**

- (i) In order to provide Support Services for Loadscan on-premises systems/software, the Customer must provide Loadscan with the following:
  - A. Remote Access: provided via MeshCentral, VNC or similar remote-control software. Where remote access is restricted by means of a secure firewall, secure gateway, VPN or other security mechanism, the Customer must ensure Loadscan Support is provided with all network and security rights, privileges, access tokens, certificates, and information necessary to enable Remote Access to the hardware running the Loadscan on-premises software to provide the Support Services.

- B. Access and/or Administrative privileges: the Customer must provide Loadscan with user accounts that have sufficient privileges to the hardware running the Loadscan on-premises software to provide the Support Services. The exact privileges required will be specified in Loadscan's installation and upgrade documentation and may vary between the "installation" and "normal operation" phases of the product's lifecycle.
  - C. Physical Site and Hardware Access: will not be required under normal circumstances; however, where the usual Remote Access mechanisms are not technically feasible to achieve the Support Services, onsite support may be provided (at Loadscan's discretion and with Customer's permission) and require local access to the relevant Customer Site and associated hardware running the Loadscan on-premises software. The Customer shall be responsible for any out-of-pocket expenses incurred by Loadscan in providing such onsite Support Services – see Schedule C.
- (ii) The minimum access requirements under this clause enable authorised Loadscan personnel to review the exact Customer environment (including software, data and configuration) and significantly improve problem analysis and resolution and undertake software upgrades or configuration changes.
  - (iii) Only those Loadscan personnel who are specifically authorized by the Customer will be permitted access to the Customer's network and hardware running the Loadscan on-premises software. Loadscan will, where requested by the Customer, comply with all reasonable security requirements, forms, undertakings, policies etc to obtain such access.

**d) Expert Users**

- (i) The Customer must appoint an internal Expert User (or users as required) at each Site to act as its representative and point of contact in relation to all system defect reporting and user assistance requests. The Expert User/s must have completed appropriate formal training provided by Loadscan staff.
- (ii) The Expert User/s will be an initial point of contact for all other users in relation to system defect reporting, customer specific issues/procedures and user assistance requests.
- (iii) Prior to reporting a system defect or submitting a user assistance request, an Expert User must attempt to diagnose the issue or respond internally to a user assistance request. If the initial attempt to diagnose the issue or answer the User Assistance request is unsuccessful, the Expert User will then raise the issue with Loadscan Support.
- (iv) When necessary to raise a system defect issue with Loadscan Support, the Expert User/s will coordinate and forward reproducible steps, and related data files if required, to Loadscan Support for resolution.
- (v) The Expert User approach:
  - D. has been found to be beneficial for both customers and Loadscan;
  - E. will enable identification of training requirements, procedural issues and reduction in identical calls made to Loadscan; and
  - F. allows Customers, if they choose to, to significantly reduce training costs through Train-the-Trainer like approaches.

**e) Other conditions**

- (i) If a user continually logs “User Assistance” support calls that are covered by standard Loadscan training courses, Loadscan may recommend a training course as part of a solution. Training courses above the stipulated entitlement will be charged at the rate in Schedule C.
- (ii) The Service Level Targets apply to “applicable use” of the product/s only. For clarity, the product should only be used as per the documentation supplied.
- (iii) The Service Level Targets do not apply to supported 3rd party applications, modules or components, even if they are integrated into the Loadscan system. Notwithstanding this, Loadscan will monitor the relationships with those 3rd party application developers and support providers and use best endeavours to adhere to the Service Level Targets.
- (iv) If a user who has raised a ticket/s leaves their employment with the Customer, and the Customer does not within a reasonable time advise an alternative person to whom the ticket should be assigned, Loadscan reserves right to close the ticket at its discretion.
- (v) Resolution time does not include the time to configure and dispatch new hardware that may be required for the system. The time taken for configuration and dispatch of hardware is over and above the stipulated resolution time.
- (vi) Loadscan cannot guarantee delivery time of a hardware item due to the uncertain nature of the delivery process.

**f) Dependence on External Suppliers**

- (i) To provide the Services, Loadscan is dependent in some cases upon certain external suppliers for certain products, information and services (“dependencies”).
- (ii) Loadscan will endeavour to manage all the relationships with any external suppliers so as to not impact on the Services provided by Loadscan under this Agreement.
- (iii) If the Customer requires support on an issue which relates to a dependency, as part of the Services Loadscan may have to refer the issue to the external supplier for correction or response. Loadscan will keep the Customer informed of progress and timeframes for correction as advised by the external supplier.
- (iv) Should an external supplier cease production, supply or support of any product or service on which Loadscan is dependent to provide the Services, Loadscan will inform the Customer, and Loadscan reserves the right to provide the relevant Services thereafter on a “best endeavours” basis.

Schedule C: Costs for Additional Services (Expenses)

- a) For support and development requests not covered/excluded in this agreement (Schedule A), the costs associated for these additional services are outlined below.

<b>Description</b>	<b>Amount</b>
Technical support/Customer training	\$150 / hour
Hardware installation/repair	\$95 / hour
Network Engineering	\$150 / hour
Mileage (NZ/AUS)	\$0.95 / KM
Mileage (USA)	\$0.67 / mile
Travel labour	\$ 50 / hour
Software design, architecture, analysis, scoping and project management	\$280 / hour
Software development	\$250 / hour

- b) Additional support and development will be scheduled on a case-to-case basis and will not take precedence over Loadscan's Business as Usual (BAU) tasks and development roadmap.
- c) All additional work will be estimated with an intended delivery timeline, and a statement of work proposal issued to the Customer for approval. No additional work will commence without the Customer's approval.
- d) Any timelines and costs proposed for additional support and development are estimates made using the knowledge and information available to the Loadscan support and development team at the time and are subject to change. The customer will be notified of any change in delivery and costs and will have:
- (i) 24 hours to accept the updated estimate before work resumes for a support/networking issue.
  - (ii) 72 hours to accept the updated estimate and timeline delivery for any development work. Work will be suspended until the receipt of the Customer's approval.
- e) Timelines are based on the start dates stipulated in the statement of work proposal. If the customer's approval for the statement of work has not been received by Loadscan at least 1 business day before the stipulated start date, Loadscan are not committed to the delivery timeline and the additional work is likely be scheduled for a later start date.
- f) If the scope of the additional work is changed by the Customer, that is, a requirement outside the agreed statement of work, the work will need to be re-estimated in an updated statement of work proposal. Work will be "paused" until the updated statement of work has been approved by the Customer.
- g) If for any reason there is a dispute between Loadscan and the Customer over the statement of work and the supplied estimate, then:
- (i) All work will immediately be "paused".
  - (ii) The customer is still liable for the cost of the work carried out until the dispute has been logged.
  - (iii) No refunds will be issued for any work that has already been performed by a Loadscan employee.



- (iv) The timeline for delivery will automatically be delayed by the period from when the dispute was logged, until the dispute has been resolved.