



# Last Yard Product Specific Terms

## Digital Board specific terms

Effective from: 23 January 2019

Your use of Last Yard Digital Boards is subject to the terms of the Last Yard Customer and Licence Agreement (the "Agreement") as well as the following additional terms. Any capitalized terms used but not defined below have the meanings in the Agreement.

### 1 Definitions

- 1.1 **Board Count** means the total number of Boards included in the Last Yard Digital Board service
- 1.2 **Last Yard Media Player** means the small format PC, remote control and cables.

### 2 Terms

- 2.1 You must provide power to each Last Yard Media Player.
- 2.2 You must provide a Wi-Fi or wired internet connection for each Last Yard Media Player.
- 2.3 On receipt of a tax invoice, you must pay for Last Yard Media Players.
- 2.4 You are responsible for the supply and installation for each TV or display panel.
- 2.5 You agree to connect each Last Yard Media Player to your internet connection so that product and price information can be displayed on the Board.
- 2.6 You shall use the Last Yard Media Players in accordance with all laws, operating manuals and service agreements.
- 2.7 You may increase the number of Digital Board Subscriptions using the Last Yard Digital Board Service in any billing period and you will pay the additional Subscription Fees.

### 3 Supplies and Service

- 3.1 If you require service on the Last Yard Media Players during the Subscription Term, you may request service by contacting the Last Yard help desk.

### 4 Implied Terms and Consumer Guarantees

- 4.1 Subject to subclause 4.2, any condition or warranty which would otherwise be implied in this agreement is hereby excluded.
- 4.2 Pursuant to ss 64A of the Australian Consumer Law, this subclause applies in respect of any goods or services supplied under this agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this subclause will not apply if you establish that reliance on it would not be fair and reasonable. Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited:
  - a) in the case of goods, to any one of the following as determined by Last Yard:
    - i. the replacement of the goods or the supply of equivalent goods;

- ii. the repair of the goods;
  - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - iv. the payment of the cost of having the goods repaired; and
- b) in the case of services, to any one of the following as determined by Last Yard
- i. the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again.

## 5 Limited Warranty

5.1 This Agreement provides no additional warranty on the Media Players.

5.2 Warranties for Tobacco Boards

- a) If for any reason, Tobacco Regulations deem that Digital Tobacco Price Boards do not comply with the State or Territory Legislation and Regulations, Last Yard will not be liable for any penalties, costs, recourse or refunds.
- b) Last Yard will not be liable for any penalties issued to you or the Subscriber for breaches of tobacco display and advertising restrictions.
- c) Last Yard will ensure the Tobacco Price Board complies regarding:
  - i. The maximum size of the Tobacco Price Board;
  - ii. The product information displayed on the Tobacco Price Board (product line, size, price);
  - iii. The size and colour of the lettering;
  - iv. The background colour of the display;
  - v. Inclusion of the Quitline number
- d) You must comply with ALL OTHER restrictions, including but not limited to:
  - i. The number of Tobacco Price Boards within the outlet;
  - ii. The display of all regulatory tobacco related signs, health warnings and images within the outlet;
  - iii. The location of the Tobacco Price Board within the outlet

# Professional Services specific terms

Effective from: 23 January 2019

Your use of Last Yard Professional Services is subject to the terms of the Last Yard Customer and Licence Agreement (the "Agreement") as well as the following additional terms. Any capitalized terms used but not defined below have the meanings in the Agreement.

## 1 Scope

- 1.1 You may request "Professional Services" to be provided by Last Yard.
- 1.2 Under the scope Last Yard may be required to provide project management, software design, software development, unit testing, testing support, implementation, training, warranty support and other Services to service and support your Last Yard solution.
- 1.3 The Scope may include:
  - a) Change Requests to implement future enhancements and customisations to the Last Yard solution.
  - b) Project Management to manage the deliverable in conjunction with you.
  - c) Testing services and support of your test teams.
  - d) Training Services.

## 2 Approval and payment

- 2.1 Professional Services requested by you will be scoped and estimated by Last Yard.
- 2.2 Professional Services are charged on a time and materials basis at the then current Daily Rate.
- 2.3 Only after your approval to proceed, will Last Yard commence with the Professional Service.
- 2.4 Last Yard will manage all enhancements into a release for delivery.
- 2.5 Invoices for Professional Services must be paid within 14 days of receipt of invoice or as agreed with Last Yard
- 2.6 If regular monthly Professional Services are requested, the charges may be added to your monthly Last Yard Subscription Fee
- 2.7 You may choose to pre-purchase a number of hours in advance.

## 3 Travel

- 3.1 If you request Last Yard staff to be on-site to provide Professional Services, you will be asked to approve all travel expenses.
- 3.2 Travel costs will be capped at the current Last Yard travel rates.
- 3.3 If the travel is approved, flights and accommodation will be booked by Last Yard and paid for by you within 14 days of invoice.

# Managed Print Services specific terms

Effective from: 23 January 2019

Your use of Last Yard Managed Print Services is subject to the terms of the Last Yard Customer and Licence Agreement (the "Agreement") as well as the following additional terms. Any capitalized terms used but not defined below have the meanings in the Agreement.

## 1 Definitions

- 1.1 **Average Page Coverage** means the percentage of a printed page containing ink from each toner (CMYK).
- 1.2 **Consumables** means toner, ink, consumables, maintenance kits, drums and other parts.
- 1.3 **Contract term** means the initial term as defined on the Order Form.
- 1.4 **Equipment** means the devices you have purchased and listed on the Order Form
- 1.5 **FXA** means Fuji Xerox Australia.
- 1.6 **Print Rate Per Page** means the charges by Last Yard for using the Managed Print Service as defined on the Order Form
- 1.7 **Print Charges** means the fee payable to Last Yard by you which is calculated by adding the Print Rate Per Page charges for all printed pages for all printers included in Managed Print Service
- 1.8 **Printer Quantity** means the total number of printers included in the Managed Print Service.
- 1.9 **XDA Software** means the Fuji Xerox software that gathers data from Your print and multi-function output devices for reporting and billing purposes.

## 2 Terms

- 2.1 You agree that Last Yard can install and make operational the XDA software on your network so that meter reads and Equipment device information can be retrieved automatically from the Equipment.
- 2.2 If a meter read is not transmitted automatically, you agree to provide, when requested, a manual meter read to Last Yard support staff. If no manual meter read is provided, you agree to Last Yard using an estimated meter read based on previous usage.
- 2.3 You acknowledge that if you do not provide meter readings that FXA will not be able to provide you with Consumables at the right time and the Equipment may not function or produce prints.
- 2.4 You shall give Last Yard at least 30 days' prior written notice before moving the Equipment from the current location to a different location. The notice must include the delivery address of the new location so that Consumables are sent to the new location.
- 2.5 You shall not sell or otherwise transfer any rights in the Equipment unless you first get Last Yard's permission.
- 2.6 You shall use the Equipment in accordance with all laws, operating manuals and Xerox service agreements.
- 2.7 The Print Charges is invoiced in arrears. During any Term, Last Yard will automatically bill Your credit card or issue an invoice every month.
- 2.8 The Print Rate Per Page fee is provided based on the Average Page Coverage. Where the Average Page Coverage is exceeded, Last Yard reserve the right to increase the Print Rate Per Page to you in line with the coverage by providing 30 days' notice.

- 2.9 On receipt of a tax invoice, you will pay the Print Charges within the Payment Term. Last Yard reserves the right to suspend the Managed Print Service or terminate this Agreement if the Print Charges are overdue.
- 2.10 You may increase the Printer Quantity using the Managed Print Service in any billing period.

### 3 Supplies and Service

- 3.1 Last Yard will provide you with all Consumables necessary for you to print and operate the Equipment.
- 3.2 Consumables will be shipped to you directly from FXA or a FXA Distributor Warehouse.
- 3.3 You agree to order all Consumables through Last Yard or the Xerox Services Portal during the Term of this Agreement.
- 3.4 If you purchase Consumables not through Last Yard or the Xerox Services Portal, these Consumables will not be reimbursed.
- 3.5 You acknowledge that FXA will provide service for the Equipment pursuant to FXA's standard service agreement for the Equipment. The terms and conditions (including exclusions for accidents, misuse, abuse, unauthorised repair, unauthorised disassembly, etc.) of the applicable Equipment service agreement shall apply.
- 3.6 If you require service on Equipment during the Term, you may request service by placing a request using the Xerox Services Portal.
- 3.7 You agree to inform Last Yard if FXA replace a printer due to equipment failure.
- 3.8 You agree that:
- a) You must separately purchase all supplies other than Consumables, including, without limitation, paper, at your own cost.
  - b) You must separately purchase Equipment service, parts or supplies required by your negligence, misuse of the Equipment, failure to follow the FXA's suggested use instructions, or breach any warranty or service agreement provided by FXA.
  - c) Last Yard is a separate and independent company from FXA and FXA is NOT Our agent.
  - d) To use the Consumables provided under this Agreement only in the Equipment and that any use of Consumables in devices other than the Equipment constitutes a violation of this Agreement.
  - e) You shall order Consumables only when needed.
  - f) Consumables are the property of FXA until used by you in the Equipment.
- 3.9 We reserve the right to invoice you for any unused Consumables that are not returned at our then established retail prices, plus shipping and handling charges.
- 3.10 You acknowledge that FXA reserves the right to audit Consumables orders and hold or deny shipments until the requests are validated.
- 3.11 You acknowledge that Last Yard reserves the right to charge you for travel costs outside of metropolitan areas.

### 4 Implied terms and consumer guarantees

- 4.1 Subject to subclause 4.2, any condition or warranty which would otherwise be implied in this agreement is hereby excluded.
- 4.2 Pursuant to ss 64A of the Australian Consumer Law, this subclause applies in respect of any goods or services supplied under this agreement which are not of a kind ordinarily acquired for personal,

domestic or household use or consumption, provided that this subclause will not apply if the Customer establishes that reliance on it would not be fair and reasonable. Liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by ss 51 to 53 of the Australian Consumer Law) is limited:

- a) in the case of goods, to any one of the following as determined by Last Yard:
  - i. the replacement of the goods or the supply of equivalent goods;
  - ii. the repair of the goods;
  - iii. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - iv. the payment of the cost of having the goods repaired; and
- b) in the case of services, to any one of the following as determined by Last Yard
  - i. the supplying of the services again; or
  - ii. the payment of the cost of having the services supplied again.

## 5 Limited Warranty

- 5.1 The warranties made to the Equipment are covered in the applicable FXA Service agreement.
- 5.2 This Agreement provides no additional warranty on the Equipment.
- 5.3 If you continue to use Equipment beyond its warranty period, the Print Charges invoice may include a service charge which you agree to pay.

## 6 Fuji Xerox Flow Down Terms and Conditions

- 6.1 Xerox Tools. you agree that you shall have no rights to use, access or operate the Xerox Tools except for the Xerox Device Agent (XDA) and limited access to Xerox Report Manager (XRM) and the Xerox Services Portal (FMP). With the exception of XDA, the Xerox Tools will be installed and operated only by Fuji Xerox or its authorised agents. You will have access to data and reports generated by the Xerox Tools (via XRM and FMP) (which data and reports shall be the property of You). All Xerox Tools and access to Xerox Tools may be removed by Fuji Xerox or its authorised agents at the expiration or termination of the applicable contract for Partner Managed Print Offering. Customer acknowledges that other than for XDA, Fuji Xerox does not licence any Xerox Tools to Customers.
- 6.2 XDA Licence. Fuji Xerox grants you a non-exclusive, non-transferable licence to use each instance of the XDA software provided to it as part of a contract for Partner Managed Print Offering within the country of delivery on any single unit of equipment during the term of the applicable contract for Partner Managed Print Offering. you have no other rights to the XDA software and, in particular, may not:
  - c) distribute, copy, modify, create derivatives of, decompile, or reverse engineer this software (except to the extent required to obtain interoperability with other independently created software as explicitly permitted by law); or
  - d) allow others to engage in same. Title to the XDA software and all copyrights and other intellectual property rights in it shall at all times reside solely with Fuji Xerox and/or its licensors.
- 6.3 The Xerox Tools are Fuji Xerox Confidential Information and shall be protected until such Confidential Information:

- a) was in the public domain prior to, at the time of, or subsequent to the date of disclosure through no fault of Customer;
- b) was rightfully in the receiving party's possession or the possession of any third party free of any obligation of confidentiality; or
- c) was developed by Customer, its employees or agents independent of and without reference to any of Fuji Xerox's Confidential Information.

6.4 Remote Data Collection. XDA enables Reseller to automatically collect from the equipment on which it is installed or connected, via electronic transmission to a secure off-site location in the United States, certain data used by Reseller or a designated servicer to support and service the equipment, or for billing, supplies replenishment or product improvement purposes. Automatically transmitted data may include, but is not limited to, product registration, meter read, supply level, equipment configuration and settings, software version, and problem/fault code data. All such data shall be transmitted in a secure manner specified by Reseller. The automatic data transmission capability will not allow Reseller to read, view or download the content of any Customer documents residing on or passing through the equipment or Customer's information management systems.

#### 6.5 Dispute Resolution

- a) Cooperation in Resolving Issues. The parties agree that they will each act in good faith in an effort to resolve any issues in relation to Xerox Tools or Partner Managed Print Offering or otherwise in connection with this agreement and will each attempt to resolve issues at the earliest opportunity and at the appropriate level of management.
- b) Escalation Process. If the parties are unable to settle a dispute arising from or pursuant to this agreement informally pursuant to sub-Clause (a) above, then either party shall provide written notice to the respective authorised representatives of Customer and Reseller, which shall be at the next level of management not directly involved in the dispute, and such representatives will attempt to resolve the dispute. In the event such representatives are not able to resolve the dispute within 10 business days of the receipt of such notice, then such dispute shall be escalated to an officer of each party, who shall have an additional 30 business days to resolve such dispute. The parties may agree to extend these periods.
- c) Continuing Performance. Subject to the provisions of this agreement, the parties shall continue the performance of their respective obligations during the resolution of any dispute or disagreement, unless and until this agreement or the applicable order is terminated or expires in accordance with its terms.
- d) Other Remedies. Notwithstanding the foregoing regarding dispute resolution, nothing will prevent either party from
  - i. applying for any interim, interlocutory or preliminary injunctive or declaratory relief;
  - ii. from bringing any claim for contribution or indemnity or
  - iii. exercising its termination rights under this agreement.

## 7 Termination

- 7.1 You can terminate this agreement by sending email to [support@lastyard.com](mailto:support@lastyard.com)
- 7.2 This Agreement shall terminate if you breach this Agreement and fail to remedy the breach within 30 days' of being given written notice to remedy the breach by Last Yard.
- 7.3 Upon termination, you shall return to Last Yard all unused Consumables at your expense.

# Print Support Services specific terms

Effective from: 07 November 2019

Your use of Last Yard Print Support Services is subject to the terms of the Last Yard Customer and Licence Agreement (the "Agreement") as well as the following additional terms. Any capitalized terms used but not defined below have the meanings in the Agreement.

## Customer Acceptance

By accepting these terms:

1. The Customer acknowledges it has reviewed, understood and agrees to be bound by the Agreement (including the Customer Expectation Document (CED)(s) available at [www.fujixerox.com.au/products/CED](http://www.fujixerox.com.au/products/CED) and the Software Terms available at [www.fujixerox.com.au/products/softwareterms](http://www.fujixerox.com.au/products/softwareterms).
2. The Customer declares that the credit to be provided to Customer by Last Yard, as credit provider, is to be applied wholly or predominantly for: business purposes; or investment purposes other than investment in residential property. Important. Customer should only sign this declaration if the amounts to be financed under this document are wholly or predominantly for: business purposes; or investment purposes other than investment in residential property. By signing this declaration, Customer may lose its protection under the National Credit Code.

## Terms and Conditions

### 1 Agreement

**(a) Offer:** By accepting these terms, Customer irrevocably offers to acquire the Services. LAST YARD is not bound by this document until Customer has been advised in writing of its unconditional acceptance of this document or it has commenced performing the Services, whichever occurs first. The Agreement may only be accepted or varied on behalf of LAST YARD by a duly authorised representative. **(b) Order of priority:** To the extent of any inconsistency between the different parts of the Agreement, the inconsistency will be resolved in the descending order of priority given for that supply in the definition of "Agreement" in **clause 10.** **(c) Missing information:** Customer authorises LAST YARD to update the Last Yard Order Form with the Commencement Date, agreement and order references and serial number(s) which are missing when the document is signed by Customer. If LAST YARD exercises its rights under this sub-clause (c), LAST YARD will provide the Customer with details of the information updated by it as soon as reasonably practicable. The Customer will have a reasonable opportunity to review and correct such information.

### 2 Minimum Term and Hold Over Period

**(a) Minimum Term:** Unless terminated earlier in accordance with its terms, the Agreement will continue until the end of the Minimum Term. **(b) Holding Over:** If, prior to the date being no later than 90 days prior to the end of the Minimum Term, a party has not given written notice of an intent to terminate the Agreement at the end of the Minimum Term, the Agreement will continue in hold over following the Minimum Term (**Hold Over Period**). The Hold Over Period may be ended by a party on 90 days' written notice to that effect. During the Hold Over Period, the Agreement will continue to bind the parties and Customer shall continue to pay the Charges.



### 3 Performance, delivery, title and risk

**(a) Performance:** LAST YARD will use reasonable endeavours to perform the Services by any date specified in the Agreement but, to the extent permitted by law, LAST YARD will not be liable to Customer or others for Claims in relation to any delay. **(b) Delivery, title and risk:** Risk in Parts and Consumables passes to Customer on delivery and title to Parts and Consumables passes to the owner of the Equipment on delivery. LAST YARD's claim to title in Consumables (but not the cartridges or drums containing Consumables, for which title remains with LAST YARD) lapses when Consumables are used up in the course of operating the Equipment.

### 4 Customer

**(a) Customer obligations: Customer must:** (i) ensure the Products are not used for any unlawful purpose and not modified, tampered with or moved, without LAST YARD's prior written consent; (ii) not part with possession of the Products; (iii) if Equipment meter readings are not captured by the LAST YARD Tools for any reason, provide LAST YARD with meter readings for each Billing Period and, if requested by LAST YARD, implement any LAST YARD Tools reasonably required by LAST YARD to overcome such failure to capture meter readings; (iv) provide and maintain proper Site, environmental, operating and network conditions, including those specified in the Specifications or as otherwise issued by LAST YARD from time to time; (v) use appropriate Consumables and Document Supplies for Equipment; (vi) comply with the Specifications and any reasonable directions issued by LAST YARD; (vii) implement all necessary network security practices, including regularly backing up its own data and using commercially available anti-virus software; (viii) allow LAST YARD or its agents immediate access to the Site and the Products to perform its obligations and verify that the terms of the Agreement are being complied with giving the Customer reasonable notice if it is practical to do so in the circumstances; and (ix) not subcontract, or appoint an agent in respect of, any of its obligations under the Agreement without LAST YARD's prior written **consent**.

### 5 Support Services

**(a) Introduction:** Support Services are provided by LAST YARD to help maintain LAST YARD Equipment and Base Software performance. **(b) Support Services description:** Support Services means: (i) access to remote assistance for LAST YARD Equipment and Base Software through LAST YARD's online support assistant or customer support centre;

the repair and replacement of Parts for LAST YARD Equipment which, through Normal Wear and Tear, become unserviceable. Replacement Parts will be of serviceable quality and may be new, used or reconditioned; (iii) the supply of Mandatory Retrofits; (iv) if in scope, supply of Included Paper; and (v) unless otherwise specified in the Last Yard Order Form, the supply of Consumables for LAST YARD Equipment. Consumables (where included) must only be used in LAST YARD Equipment and are included as follows:

(1) in respect of toner, ink, fuser, drums and waste toner containers, included at the rate of 5% toner or ink coverage per Impression (unless an alternative rate of coverage is specified in the CED or the Last Yard Order Form); and (2) in respect of any other Consumables specified in the Last Yard Order Form, included at the rate of usage assumed by LAST YARD based on the manufacturer's specifications. **(c) Performing Support Services:** LAST YARD may elect to provide Support Services by providing access to its support website, telephone, e-mail, remote diagnostics or by using any LAST YARD Tools and, for Equipment, if LAST YARD considers necessary, by providing on-site Support Services. **(d) Return of cartridges and drums:** Customer must deliver up to LAST YARD the cartridges, drums and other consumed Consumables supplied by LAST YARD once their use in Equipment ceases. **(e) Exclusions:**

Support Services do not include Additional Services or Excess Consumables. **(f) Third Party Equipment:** Where the Last Yard Order Form or a SOW expressly sets out that LAST YARD will provide Support Services for Third Party Equipment the Support Services will, unless otherwise agreed in writing, be provided on the same terms as the Support Services for LAST YARD Equipment. **(g) Ceasing Equipment Support Services:** LAST YARD may on 90 days' notice de-scope Support Services if LAST YARD ceases supplying Support Services for that model to the market generally. In the event that LAST YARD ceases the supply of Support Services in accordance with this clause, it will vary the Charges accordingly. In such circumstances, LAST YARD will where possible provide support at the Customer's request on a time and materials basis at its then current Charges.

## 6 Charges, payment and GST

**(a) Payment:** Customer must as a fundamental term of the Agreement pay LAST YARD in full without any deduction or set off all Charges by the due date noted on the invoice. The Charges are due without notice at the agreed interval to be paid by direct debit or, subject to administration charges, by an alternative payment method acceptable to LAST YARD. **(b) Charges:** LAST YARD will invoice Customer: (i) in accordance with the Billing Period or one-off Charges (as applicable); and (ii) LAST YARD's then standard charges for any Additional Services. Impressions made by Customer prior to the first Billing Period may be charged in a later Billing Period. **(c) Base Support Charge:** LAST YARD may impose a Base Support Charge for the remaining term of the Agreement by giving Customer 30 days' notice if, in any rolling quarter, actual Impressions are less than the aggregate AMPV for that period. **(d) Meter readings:** LAST YARD may determine the method of meter readings which may include the use of LAST YARD Tools. If LAST YARD Equipment meter readings are not provided for any reason (including Customer's failure to provide sufficient power to the LAST YARD Equipment to allow a final meter read upon removal of the LAST YARD Equipment), LAST YARD may issue system generated invoices for the Support Service Charges based upon, at LAST YARD's option, historical usage or the LAST YARD Equipment's average capacity, which will be reconciled at a later Billing Period when actual meter readings are next made available (except in respect of a final estimate in which case no reconciliation will be performed). **(e) Variation:** Unless otherwise stated in this Agreement, LAST YARD may vary the Charges immediately by notifying Customer. **(f) GST:** All Charges are GST exclusive and (if taxable supplies) Customer must pay GST at the then current rate of GST when the Charges are invoiced. **(g) Interest:** Customer must pay interest calculated on a daily basis on Charges not paid by the due date at a per annum rate of 6% above the cash rate last published by the Reserve Bank of Australia. **(h) Legal and collection costs and expenses:** Customer must pay LAST YARD all costs and expenses, including legal costs and collection agency costs, which LAST YARD incurs in exercising any of its rights under the Agreement (on a full indemnity basis), including any amounts which LAST YARD pays to remedy any breach of Customer's obligations under the Agreement.

## 7 Termination

**(a) Express termination rights:** Subject to any Non Excludable Rights, the Agreement cannot be cancelled or terminated except as expressly provided for in the Agreement. **(b) Suspension:** If Customer is in breach of the Agreement or another agreement with LAST YARD which LAST YARD reasonably considers is related to this Agreement, or if LAST YARD considers there may be a risk to the health or safety of its personnel, LAST YARD may suspend the provision of Services. Any suspension of the Services in such circumstances is without prejudice to Customer's obligations to comply with the Agreement, including the continued payment of all Charges. **(c) Termination by LAST YARD:** LAST YARD may immediately terminate the Agreement in whole or in part for cause by notice to Customer if: (i) Customer breaches any term, provision, warranty or condition of the Agreement (including an Essential

Term); which Customer fails to remedy within a period of 7 days of being given notice, specifying the breach and the intention by LAST YARD to terminate the Agreement if the breach is not remedied

Customer becomes subject to an Insolvency Event; (iii) a form of guarantee or security arranged by Customer and given to LAST YARD in relation to performance of Customer's obligations or potential liability under the Agreement lapses, becomes unenforceable or the guarantor or security provider dies or becomes subject to an Insolvency Event; or (iv) any Equipment is lost, stolen, destroyed or damaged to an extent LAST YARD considers unrepairable. **(d) Consequences of termination:** Without limiting Customer's obligations under the remainder of clause 8, if the Agreement is terminated under clause 7(c), or otherwise in accordance with the express terms of this Agreement, Customer must pay LAST YARD the Recoverable Amount. **(e) Rights not affected:** Unless otherwise specified, early termination of the Agreement for any reason does not affect LAST YARD's rights to seek damages for any breach of the Agreement and does not entitle Customer to a refund of any prepaid Charges. **(f) Obligations on Agreement ending:** Once the Agreement has ended for any reason, Customer must: (i) at LAST YARD's option, remove or permit LAST YARD to remove LAST YARD Tools from Customer's systems as directed by LAST YARD; and (ii) return or destroy copies of the Specifications in its possession or control as directed by LAST YARD. **(g) LAST YARD's Rights:** If Customer fails to comply with clause 7(f) within 5 Business Days of being requested to do so by LAST YARD, LAST YARD or its nominee may, immediately on notice, enter upon the Site at which the Products were last known to be located and, where Products are supplied by LAST YARD under the Agreement and to the extent title remains with LAST YARD, repossess or destroy the Products (as required) and Customer indemnifies LAST YARD and its nominee for any claims, costs, losses, damages, liabilities and expenses suffered or incurred as a result. **(h) Survival:** Clauses 6, 7(g) to 7(h), 8(d) to 8(h), 9(c) to 9(d), 10(a) to 10(g), 11 and 12 survive the end of the Agreement along with any clause which is intended by its nature to survive.

## 8 Liabilities

**(a) Implied rights:** Nothing in the Agreement excludes, restricts or modifies any condition, warranty, right or liability implied in the Agreement or protected by law to the extent such exclusion, restriction or modification would render the Agreement or any provision of the Agreement void, illegal or unenforceable (Non Excludable Right). Subject to any Non Excludable Right, any condition, warranty, right or liability which would otherwise be implied in the Agreement or protected by law is excluded. **(b) Customer warranties:** Customer represents and warrants that: (i) it has acquired the Services for business and/or investment purposes and not for resale or personal, domestic or household use or consumption; (ii) it has the right and authority to enter into and perform its obligations under the Agreement; and (iii) it has received and carefully read each document which forms the Agreement prior to entering into the Agreement. **(c) Liability:** The total liability of LAST YARD for any and all Claims is limited in the aggregate as follows: (i) for Claims in relation to Non Excludable Rights to: (1) in the case of goods, any one or more of the following: the replacement of goods or supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and (2) in the case of services, any one or more of the following: supplying the services again; or payment of the cost of having the services supplied again; and (ii) for all other Claims, to an amount equivalent to the Charges paid by Customer under the Agreement during the first 12 months of the Minimum Term (or during such shorter period in the event the Claim arises in the first 12 months of the Minimum Term). Subject to Non Excludable Rights, LAST YARD may make any election contemplated by clause 8 (c)(i). **(d) Excluded loss:** Subject to Non Excludable Rights, LAST YARD will not be liable for any Consequential Loss.

## 9 Miscellaneous

**(a) IPR:** Nothing in the Agreement affects the IPR ownership of each party. **(b) Confidentiality:** Customer and LAST YARD agree not to disclose information about the terms of the Agreement (including any payment terms), information regarding LAST YARD Tools, information designated by LAST YARD as confidential, except: (i) to its officers, employees, legal and other advisers and auditors; (ii) with the other party's consent;

in LAST YARD's case, in accordance with its ordinary course of business; or (iv) if the disclosure is necessary to comply with an order of a court, or otherwise required by law or regulation and in the case of a disclosure by Customer, as long as Customer

has given LAST YARD reasonable notice of its intention to make that disclosure. **(c) Privacy notification:** Customer acknowledges and agrees (and will ensure that its representatives are notified or made aware) that LAST YARD may collect, use, hold and disclose personal information collected from Customer or its representatives in relation to the Agreement in accordance with the Australian Privacy Principles and LAST YARD's Privacy Policy. **(d) Force majeure:** LAST YARD will not be liable to Customer for any delay or non-performance of its obligations, to the extent such delay or non-performance arises from a Force Majeure Event. **(e) Assignment:** Customer must not assign or transfer the Agreement or any benefit or right under it without prior written consent from LAST YARD. LAST YARD may without notice assign the Agreement or any benefit or right under it. **(f) Governing law and jurisdiction:** The Agreement and all matters arising out of or relating to it are governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales. **(g) Severability:** If the whole or any clause or part of any clause of the Agreement is illegal, void or unenforceable in a jurisdiction then this Agreement shall be interpreted as if that clause is varied to the extent necessary to render the clause no longer illegal, void or unenforceable and is if necessary omitted for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. **(h) Entire understanding:** The Agreement contains the entire understanding between the parties as to the subject matter of the Agreement. Subject to Non Excludable Rights, all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of the Agreement are superseded by the Agreement and are of no effect. Customer agrees that it has not relied on any representation by LAST YARD or any of its personnel not expressly set out in the Agreement.

**(i) Variation:** Except where otherwise permitted under the Agreement, any variations to the Agreement must be in writing and signed by the authorised representative of each party. **(j) Waiver:** No waiver by LAST YARD of any provision of the Agreement is effective unless it is in writing on letterhead and signed by a duly authorised representative of LAST YARD. **(k) Third Party rights:** Unless specified in the Last Yard Order Form, Customer enters into the Agreement on its own behalf and not as agent or trustee for an undisclosed Third Party. Where Customer is acting as an agent for a disclosed Third Party, it must ensure that all claims in any manner related to the Agreement are brought only by Customer and not by any Third Party. Where Customer is acting as a trustee: it will be liable under the Agreement in its own capacity and in its capacity as a trustee; it warrants that it is entitled to enter the Agreement; and it warrants that the assets of the trust are and will remain sufficient to satisfy its obligations and potential liabilities under the Agreement. **(l) SBC provision:** If this Agreement is considered a SBC: (i) LAST YARD will act reasonably in respect of matters the subject of clauses 4(a)(viii), 4(a)(ix), 5(h), 6 (a),6(d),6(e),7, 8 and 9 (e); (ii) if LAST YARD varies the Support Service Charges under clause 6(e) by more than 5% per annum, the Customer may notify LAST YARD that they dispute such increase within 30 days of receiving notice, in which case the parties will seek to resolve the dispute. If such dispute cannot be resolved within 30 days of LAST YARD's receipt of the notice advising of the dispute, and LAST YARD then

confirms in writing to Customer it intends to increase the Support Service Charges by greater than 5 percent, Customer may cancel Support Services within 30 days by providing LAST YARD with 30 days' notice. In such circumstances, Customer must ensure that the Equipment is thereafter well maintained in accordance with the Specifications; LAST YARD will offer to provide some support on a time and materials basis at its then current Charges; and the cancellation of Support Services will not affect the remainder of the Agreement; and (iii) Customer may immediately terminate the Agreement for cause by notice to LAST YARD if: (1) LAST YARD is in material breach of the Agreement and LAST YARD fails to remedy the breach within a period of 30 days of being given notice by Customer; or (2) LAST YARD becomes subject to an Insolvency Event. **(m) Notices:** Any notice in relation to the Agreement: (i) subject to paragraph (ii), must be in writing and be left at or sent by prepaid post to a party's address specified in the Agreement or sent by fax or email to a party's fax or email details specified in the Agreement (as updated from time to time); (ii) may not be sent by email if it is a notice in relation to a breach of the Agreement by LAST YARD; and (iii) will be taken to have been received: in respect of any notice sent by post, 3 days after the date of posting; in respect of any notice sent by fax, when the transmitting machine records that a successful transmission has been made; and in respect of any notice sent by email, at the time the email is sent unless the sender receives either a system generated message indicating the email has not been sent or received or an out of office reply which advises that the recipient is out of the office. Customer must advise as soon as practicable if it changes its address, fax or email details.

## 10 Definitions

If not defined below, capitalised words have the meaning assigned to them in the Schedule. Unless the context requires otherwise, in the Agreement: **Additional Service** means any additional good or service provided by LAST YARD, including: (i) anything LAST YARD does in response to Customer not doing something required of it under the Agreement (for example, if LAST YARD Equipment meter readings are not captured by LAST YARD Tools for any reason or LAST YARD is required to undertake additional administration due to the method meter readings are obtained); (ii) providing more of something which is included in the Agreement (for example, provision of Excess Consumables or provision and delivery of paper in addition to the Included Paper);

(iii) attempting to do something but being unable to complete (for example, if a scheduled delivery or pick up does not take place and LAST YARD is not at fault); (iv) for Equipment which has not been maintained by LAST YARD immediately prior to the Commencement Date, LAST YARD inspecting and bringing such Equipment to a level of serviceable quality (if it is not already at that level); and (v) doing something at Customer's request. **Agreement** means each of (i) these terms and conditions; (ii) the Last Yard Order Form; (iii) the Last Yard Customer and License Agreement; and (iv) the Last Yard Product Specific Terms. **AMPV** means the manufacturer's recommended average monthly print volume for LAST YARD Equipment as specified in the CED. **Australian Consumer Law** means the Australian consumer law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth). **Australian Privacy Principles** means the Australian Privacy Principles set out in Schedule 1 of the Privacy Act 1988 (Cth). **Base Support Charge** means the minimum support charge payable by Customer every Billing Period for the Support Services as specified in the Last Yard Order Form or imposed by the LAST YARD under clause 6 (c). The Base Support Charge applies in addition to the other Support Service Charges. **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in the state or territory where the obligation is to be performed. **Business Hours** means 8.30am to 5pm on a Business Day. **CED** means any LAST YARD customer expectation documents applicable to Products or Services supplied under the Agreement and available at [www.fujixerox.com.au/products/CED](http://www.fujixerox.com.au/products/CED), as amended from time to time without notice, or from such other location advised by LAST YARD. The CED sets out expected

performance characteristics and ongoing environmental and end user conditions, assumptions and recommendations important to Customer's use, consumption and assessment of suitability of Products, Services and Document Supplies. In respect of high volume LAST YARD Equipment, CED includes any associated business validation document supplied by LAST YARD. **Charges** means the charges, fees and other amounts payable by Customer under the Agreement, including the Support Service Charges, Establishment Fee and charges for Additional Services. **Claim** means any and all claims arising from or in relation to the Agreement howsoever caused, whether willfully or otherwise (including repudiation), and whether for fundamental or non-fundamental breach of contract (including for breach of an Essential Term), in tort (including negligence) or for breach of any statutory provision. **Commencement Date** means the commencement date specified in the Last Yard Order Form (which will be the date determined by LAST YARD based on LAST YARD's delivery and billing cycle) or if no such date is specified, the date agreed by the parties in writing. **Consequential Loss** means any Claim for any: consequential, incidental, special or indirect cost, loss or liability; loss of business, opportunity, revenue, goodwill, profit or savings; or loss, corruption or delay of data. **Consumables** means ink, toner, fuser, drums and waste toner containers (and any other consumables specified in the Last Yard Order Form) used by Equipment in the ordinary course of operation, excluding Document Supplies. **Customer** means the legal person specified as such in the Last Yard Order Form. **Document Supplies** includes paper, transparencies, staples and other through put materials, excluding Consumables. **Essential Term** means Customer's obligations under clauses 4, 5(d), 6, 8 (b), 9 (b), 9 (c) and 9 (e). **Establishment Fee** means a one-off charge of \$250 for contract processing. **Excess Consumables** means Consumables used by Customer in excess of the rate of usage included under the Support Services as specified in clause 5(b)(v). **Equipment** means Equipment specified in the Last Yard Order Form which is not Third Party Equipment. **Force Majeure Event** means any: circumstances beyond LAST YARD's control; acts of God or nature; actions of the government or a regulatory authority (including the change or introduction of any law or regulation); fire; flood; strike or other labour dispute; war; civil disturbance; terrorism; denial of service or distributed denial of service attack; power, air-conditioning, communication or network failure; or failure of Third Party suppliers. **GST** has the meaning given to the expression "tax" as appears in the A New Tax System (Goods and Services Tax) Act 1999 (Cth). **Impression** means the production of a one sided (Simplex) print or copy on A4 (or smaller) size paper or A4 equivalent. A two sided (**Duplex**) print or copy on A4 (or smaller) size paper; or a Simplex print or copy on A3 size paper, shall be considered 2 Impressions unless there is a separate charge for A3 in the Last Yard Order Form. A Duplex print or copy on A3 size paper shall be considered 4 Impressions unless there is a separate charge for A3 in the Last Yard Order Form. LAST YARD will determine (acting reasonably) how any separate charge for A3 in the Last Yard Order Form applies towards any committed billing volumes under this Agreement. **Impression Calculation** means an estimate by LAST YARD of the amount of Included Paper for the forthcoming delivery (at a frequency indicated in the Last Yard Order Form) based on: (i) historical meter readings; and (ii) an assumption that 80 (eighty) per cent of prints or copies will be Simplex and 20 (twenty) per cent will be Duplex. **Included Paper** means paper supplied by LAST YARD, based on the latest Impression Calculation, of A4 and A3 size paper (or equivalent) of the type indicated in the Last Yard Order Form to be delivered to the Sites and at the frequency indicated in the Last Yard Order Form. LAST YARD may at any time substitute the Included Paper with paper of the same quality as the Included Paper. **Insolvency Event** includes in relation to a person: the person becomes bankrupt or insolvent under laws binding on that person; the person is unable to or states that it may be unable to pay its debts as and when they fall due; the person suspends or threatens to suspend payment of its debts; the person is wound up or dissolved or a meeting is called to consider a resolution to wind up or dissolve the person (other than where the resolution is frivolous); the passing of any resolution, for the winding up, dissolution, liquidation or bankruptcy of the person; the appointment of a provisional liquidator, liquidator, receiver or a receiver and manager or other insolvency official to the person or to the whole or a substantial part

of the property or assets of the person; the appointment of an administrator to the person; or the entry by a person into any compromise or arrangement with creditors. **IPR** means all current and future intellectual property rights registered and unregistered. **Mandatory Retrofit** means a modification to LAST YARD Equipment determined by LAST YARD to be necessary for safety. **Minimum Term** means the minimum term specified in the Last Yard Order Form. **National Credit Code** means Schedule 1 of the National Consumer Credit Protection Act 2009 (Cth). **Normal Wear and Tear** means the inherent and natural wear of Parts when used within and in accordance with the usage guidelines set out in the Specifications. **Parts** means physical parts delivered by LAST YARD in the Equipment as part of Support Services. **Last Yard Privacy Policy** means LAST YARD's privacy policy available <https://www.lastyard.com/copy-of-press>, as amended from time to time without notice. **Products** means the Equipment, Base Software, Consumables and Parts. **Recoverable Amount** means an amount reasonably determined by LAST YARD, equal to the sum of the following: (i) any charges billed, but not yet paid; (ii) any other amounts due and payable under the Agreement; and (iii) any other resource costs, including break costs, LAST YARD will incur as a result of termination. **Related Body Corporate** has the meaning given in the Corporations Act 2001 (Cth). **Schedule** means the schedule setting out, among other things, the Equipment upon which Support Services are to be provided to Customer under the Agreement. **Services** means the Support Services and any Additional Services. **Small Business Contract (SBC)** means a contract considered as such for the purposes of the Australian Consumer Law. **SOW** means any relevant statement of work signed by the parties (if any) in respect of the Products or Services. **Specifications** in relation to Products and Services, means the CED or (where none is available) any end user documentation, manual or specification published by the manufacturer. **Support Services** means the support services to be provided by LAST YARD to Customer as set out in clause 5 of the Agreement, excluding Additional Services. **Third Party** means a person other than Customer or LAST YARD. **Third Party Equipment** means Equipment that is not manufactured by LAST YARD, its Related Body Corporate or Xerox Corporation.

## 11 Interpretation

Unless the context requires otherwise, the following rules of interpretation apply to the Terms and Conditions: **(a)** a reference to: **(i)** 'include' or 'for example' means 'including' or 'for example' without limitation; and **(ii)** 'invoice' means a proper tax invoice within the meaning of the GST law; **(b)** if Customer consists of more than one person, each of those persons shall be jointly and severally liable for Customer's obligations under the Agreement; **(c)** LAST YARD's obligations will be performed during Business Hours; and **(d)** if the date on or by which any act must be done under the Agreement is not a Business Day, the act must be done on or by the end of the next Business Day. **(e)** whenever a clause of this Agreement specifies that LAST YARD's consent or approval is required or that LAST YARD may direct or require you to do or not do some act or thing, or that LAST YARD will determine whether an event has occurred or not occurred, then LAST YARD will, except to the extent that this Agreement otherwise provides, act reasonably in determining whether or not to give that consent or approval, determining whether that event has occurred or directing Customer to take some action or satisfy a requirement of LAST YARD.