



HARVEST TECHNOLOGY PTY LIMITED

HIRE TERMS

Revision Date 28.07.2022



These Hire Terms, together with our General Terms, apply to all hired Hardware provided to you, our customer (**You, Your**) by any of **Harvest Technology Pty Ltd** (ABN 52 601 194 138) of 7 Turner Avenue, Technology Park, Bentley Western Australia, Australia, **Harvest Technology (UK) Ltd** (Company Number 14032351) of 71-75 Shelton Street, Covent Garden, London WC2H 9JQ, United Kingdom, **Opsivity, Inc.** of 1155 SW Morrison St, Portland, Oregon, USA, and **Harvest Infinity Pty Ltd** (ABN 57 620 773 060) of 7 Turner Avenue, Technology Park, Bentley Western Australia, Australia (**Harvest, we, us, our**) . These Hire Terms are Product-Specific Terms and, together with our General Terms, form part of the Agreement between You and Us.

1. Definitions

1.1. Capitalised terms are defined below or in our General Terms:

Collection Point means the collection point for the Hardware notified by us to You by invoice, email and/or packing slip.

Defect has the meaning given to it in clause 7.2.

Defect Notice has the meaning given to it in clause 7.3.

Equipment Bond mean the bond payable to us by You in respect of any Hardware as specified in a Quote.

Help Desk Support means the support described in clause 11.

Hire or Hired means lease(d), leasing, rent(ed), renting, rental, and charter(ed).

Operation Guides means the documentation and materials provided by us to You which contain information relating to how to install, operate and/or maintain the Hardware.

Premium Support means the support described in clause 12.1.

Related Assets has the meaning given to it in clause 9.1, including the Operation Guides.

Temporary Replacement has the meaning given to it in clause 10.4.

Term means the period for which the Hardware is hired to You, and the Embedded Software is licensed to You, on the terms of the Agreement as specified in a Purchase Order. The Term will be a period of 12-months unless stated otherwise on the Quote.

Third-Party Hardware Special Conditions means the terms found [here](#), as amended by us from time to time.

2. Delivery and collection of Hardware

2.1. You can order Hardware for hire by submitting a Purchase Order to us. Subject to clause 2.2, we will notify You when the Hardware the subject of a Purchase Order is ready for collection at the Collection Point whether by You or Your carrier.

2.2. Subject to clause 2.3, You, or Your carrier, must take delivery of the Hardware from the date notified by us under clause 2.1 or as otherwise agreed by the parties in writing.

2.3. If requested by You and agreed by us, we will arrange carriage of the Hardware on Your behalf at Your cost.

3. Risk

3.1. Subject to clause 3.2, risk of loss or damage to the Hardware passes to You on the earlier of the date on which:



- (a) the Hardware is collected by You or Your carrier from the Collection Point; or
- (b) the Hardware is available for collection at the Collection Point as notified to You under clause 2.1.

3.2. If we have agreed to arrange carriage on Your behalf in accordance with clause 2.3, risk of loss or damage to the Hardware passes to You when the Hardware has been delivered to the carrier at the Collection Point.

4. Hire of Hardware

- 4.1. Subject to the terms of the Agreement, we hire the Hardware to You solely for the purpose of allowing You to use the Hardware for Your internal business purposes for the Term.
- 4.2. You must not, and must not permit anyone to, reverse engineer, or disassemble or tamper with the Hardware.

5. Software Licence

- 5.1. You acknowledge that:
 - (a) the Hardware cannot operate without the Embedded Software; and
 - (b) Your ongoing right to use the Embedded Software is subject to You paying the ongoing monthly licence fees as set forth in and agreed pursuant to the Agreement.
- 5.2. Subject to the payment of the Fees and all other amounts due under the Agreement, we grant to You a non-exclusive, non-transferable, non-sub-licensable, revocable right to use the Embedded Software solely in connection with the Hardware for Your internal business purposes for the Term in accordance with the terms of the Agreement.
- 5.3. You must notify Us at least 30 days before the end of the Term of Your intent to terminate Your access to the Embedded Software. If you fail to notify Us in accordance with this clause 5.3, the Term will automatically renew for the same Term and We will continue to use the initial Purchase Order until such time as You supply a new or revised Purchase Order for the new Term.
- 5.4. If You terminate the Agreement during the term, You must do so in writing with a minimum of 30 days' notice. You may be subject to payment for the remaining term unless otherwise agreed by Us in writing.
- 5.5. You must not, and must not permit anyone to, reverse engineer, or disassemble or tamper with the software or firmware embodied in or loaded onto the Hardware, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Embedded Software.

6. Installation and configuration

- 6.1. We may supply Operation Guides for the Hardware.
- 6.2. You are responsible for installation, configuration, and use of the Hardware by You and on Your behalf in accordance with the Operation Guides and our reasonable directions, including all associated costs.
- 6.3. You and Your end users must comply with the Operation Guides and any directions, instructions, training and manuals issued or provided by us in relation to the use of the Hardware.



7. Warranties, Inspection and Defects

- 7.1. In addition to Your rights under the applicable law, we warrant that, as of the date the Hardware is collected from the Collection Point, the Hardware will be of acceptable quality and operate in accordance with the Operation Guides.
- 7.2. Unless otherwise agreed, within 7 days of collection of the Hardware, You must test the Hardware in accordance with the Operation Guides and notify us in accordance with clause 7.3. if any of the Hardware which is not fit for its purpose or is not of acceptable quality (**Defects**). If You do not notify us in accordance with this clause 7.2, the Hardware is deemed to have been accepted by You.
- 7.3. If there are any Defects, You must send to us a written report prepared by You, using our template which we will provide to You, containing photographic and other evidence of the Hardware Defect (**Defect Notice**).
- 7.4. Following receipt of a Defect Notice, we may, on providing reasonable notice to You, to the extent practical, inspect the Hardware the subject of the Defect Notice. You will provide us with all reasonable assistance and access to Your premises to enable us to carry out that inspection.
- 7.5. If we determine, after receipt of a Defect Notice (whether or not there has been inspection in accordance with clause 7.4), in our sole and absolute discretion, that the Hardware is not fit for purpose or of acceptable quality due to an issue that arose during shipping or transport, You will be responsible for the costs of replacement or repair. In all other cases, we will arrange for repair or replacement of the Hardware the subject of the Defect Notice at our own cost.
- 7.6. You must return to us any broken, defective, or damaged Hardware that is to be replaced by us pursuant to this clause 7.

8. Requirements

- 8.1. You must:
 - (a) use the Hardware and Related Assets only in the conduct of Your routine business operations;
 - (b) use the Hardware in accordance with all relevant health and safety laws;
 - (c) not sell, transfer, assign, create any interest over, part with the benefit of or otherwise dispose of or part with possession of the Hardware or Related Assets;
 - (d) cease operating any Hardware if it has become defective, damaged or unsafe;
 - (e) maintain the Hardware in accordance with the Operation Guides and in the same manner as a responsible owner would, including protecting them from loss, theft, damage, abuse and deterioration, other than normal wear and tear;
 - (f) keep the Hardware in good operating condition and repair;
 - (g) keep the Hardware and the Related Assets secure; and
 - (h) take out appropriate insurance in respect of the Hardware covering, at a minimum, the full replacement cost of the Hardware.

9. Title to Hardware etc

- 9.1. The Hardware and the Operation Guides, user manuals, supplies, and other materials (**Related Assets**), provided by us under the Agreement are and shall at all times remain our property. You agree that the Hardware is hired to you, not sold. No right, title or interest in the Hardware or the Related Assets will pass



to You other than the right to maintain possession of and use of Hardware and the Related Assets during the Term, subject to Your ongoing compliance with the Agreement.

- 9.2. You must not cause the Hardware to become an accession or fixture or take any other action with respect to the Hardware that would create an interest in the Hardware for any other person. You must not mortgage, charge, encumber or otherwise grant a security interest in the Hardware.
- 9.3. You must not remove or obscure any sign, tag, tamper evident seal or other form of notice affixed to the Hardware by us:
- (a) indicating our ownership of the Hardware; or
 - (b) to provide safety information.

10. Maintenance and Repairs

- 10.1. Subject to clauses 10.2 and 10.3 and at Your request, we will repair, and provide replacements parts for, the Hardware.
- 10.2. You:
- (a) must return any Hardware You wish to be repaired to an address nominated by us; and
 - (b) are responsible for all costs (including transport and delivery costs) associated with the return of the Hardware to us for repair, the return of the Hardware back to You following repair and the delivery and return of any Temporary Replacements (defined below) in accordance with clause 10.4.
- 10.3. Subject to Your rights under the applicable law, we will carry out the repairs and invoice You for any repairs, maintenance and replacement parts for the Hardware and for any modifications of the Hardware You request, at our then-current rates plus reasonable expenses.
- 10.4. Subject to clause 10.4, to the extent possible and subject to availability, we may provide You replacement(s) for the Hardware undergoing repair with the same or similar functionality on a temporary basis (**Temporary Replacement**). You must immediately return any Temporary Replacement(s) to us following the return of the repaired Hardware to You.
- 10.5. You must not use any third party to repair, service or maintain the Hardware or use any replacement parts not supplied or approved by us.

11. Help Desk Support

- 11.1. Subject to clause 11.2, we will use reasonable commercial efforts to:
- (a) provide a help desk support service to You to resolve any issues that You may have in relation to the Hardware and the Embedded Software under clause 8 in accordance with this clause 11, primarily by e-mail and telephone (**Help Desk**), operating during normal business hours of 9am to 5pm Australian Western Standard Time (GMT +8), Monday to Friday, excluding public holidays and excepting for unavailability due to:
 - (i) any circumstance beyond our reasonable control, including delays caused by systems outside our control (e.g., internet service providers, satellite link providers); and
 - (ii) us or our third-party service providers carrying out scheduled and unscheduled maintenance, upgrades, back-ups, testing or repairs on our systems; and



- (b) prioritise issue resolution in accordance with the level of severity, as assessed by us, set out in the table below:

Severity	Description
High	The Hardware or the Embedded Software, or an essential component of them/it, is offline and seriously affecting the processing of business. No acceptable workaround exists for the problem.
Medium	The Hardware or the Embedded Software, or an essential component of them/it, is not working correctly, or is working with limited functionality. Business processing is not seriously affected because there is an acceptable workaround.
Low	A non-essential function of the Hardware or the Embedded Software, is not working or is working in a very restricted manner. Effect on the business process is minimal.
Minor	A minor problem exists in the Hardware or the Embedded Software. No effect on the dependent process.

- 11.2. You will provide us with all reasonable assistance and access to Your premises, personnel, facilities, systems, and information as we reasonably request to allow us to provide the Help Desk Support and otherwise comply with our obligations under the Agreement.
- 11.3. Help Desk Support commences on the start date set out in the Quote and will continue for the Term.
- 11.4. We will provide You with the Help Desk Support capped at a total 2.5 hours per 3-month period per Good.
- 11.5. If you exceed Your Help Desk Support hours in any 3-month period, we will charge You for any additional hours at our then current hourly rate.
- 11.6. You are not entitled to carry forward any remaining or unused entitlement to Help Desk Support from previous periods.

12. Premium Support

- 12.1. If you subscribe to Premium Support, we will use best endeavours to provide You with the services of the Help Desk Support on a 24 hour, 7 day per week basis with a response provided within 30 minutes of a support request being made through support@harvest-tech.com.au.
- 12.2. You may purchase Premium Support from us in advance, at the time of submitting your Purchase Order.
- 12.3. Premium Support must be purchased in packages of between 5 and 200 hours, which must be used over a 12-month period.
- 12.4. Premium Support commences on the start date set out in the Purchase Order and expires 12 months from the start date.
- 12.5. If you exceed Your Premium Support hours, we will add an additional 5 hour package to Your Premium Support hours and charge You at our then current hourly rate. If you exceed Your Premium Support by more than 5 hours, will we add additional hours to Your Premium Support hours to the nearest 5-hour increment and charge You at our then current hourly rate.

13. Third-Party Hardware Special Conditions



- 13.1. If the Hardware You are hiring from us includes Third-Party Hardware, the additional Third-Party Hardware Special Conditions (current as at the date of our acceptance of Your Purchase Order) will also apply.

14. Termination

- 14.1. On termination of the Agreement or expiry of the Term whichever is earlier:
- (a) You must:
 - (i) immediately pay all amounts owing to us;
 - (ii) return the Hardware to us in accordance with clause 14.2 and in the manner specified by us at Your cost by the following date (as the case may be):
 - A. if the Agreement is terminated, within 7 days of the date of termination; or
 - B. if the Agreement is not terminated before the end of the Term, on or before the last day of the Term;
 - (iii) return to us our Confidential Information, and all materials recording or containing the foregoing and the Related Assets;
 - (iv) permanently delete from all computer systems under Your control all of our Confidential Information and Related Assets which are in electronic form; and
 - (b) Your licence to use the software or firmware embodied in or loaded onto the Hardware immediately ceases.
- 14.2. You must return the Hardware to us in good working condition, fair wear and tear excepted.
- 14.3. Within 14 days following the return of any Hardware by You to us in accordance with clause 14.1(a)(ii), or repossession in accordance with clause 14.6(b), we will refund the relevant Equipment Bond to You subject to the deduction of an amount equal to:
- (a) any cost required to repair or replace any damaged component(s) or part(s) of the Hardware, except where that damage is due to fair wear and tear; and
 - (b) any costs and expenses incurred by us and/or our agents in exercising our rights under clause 14.6(b).
- 14.4. If the Equipment Bond does not cover the amount specified in clause 14.3, we have the right to pursue You for the difference.
- 14.5. If You fail to return the Hardware to us by the date specified in clauses 14.1(a)(ii)A or 14.1(a)(ii)B (as the case may be), we will charge You for each additional day that the Hardware is not returned to us, calculated at a daily rate based on the Fees.
- 14.6. If You fail to return the Hardware to us within 30 days of the date specified in clauses 14.1(a)(ii)A or 14.1(a)(ii)B (as the case may be), we are entitled to, at our option:
- (a) retain the Equipment Bond in full; or
 - (b) without further notice to You, repossess the Hardware and the Related Assets, for this purpose, You expressly authorise and grant us and our agents an irrevocable licence to enter Your premises (or any other premises under Your control) where the Hardware is believed by us to be located to repossess the Hardware.



- 14.7. We are not liable for any losses, damages, costs or expenses suffered or incurred by You or a third party as a result of exercising our rights under clause 14.6(b).