

# **Terms and conditions for HD*Advantage*<sup>®</sup>**

**Hastings Deering (Australia) Limited  
ABN 49 054 094 647**



**Hastings Deering**



# HDAdvantage® TERMS AND CONDITIONS

## 1. Scope of Services

- 1.1 HDAdvantage® is the supply of asset management tools and condition monitoring services (“**the Services**”) on eligible new and used Cat Equipment (“**the Asset**”) which include Services outlined in Annexure 1.

## 2. Terms Governing the Supply of Services

- 2.1 The Services and licence to utilise HDAdvantage® will be provided in accordance with:

- a) these HDAdvantage® Terms and Conditions; and
- b) the HDAdvantage® Customer Authorisation Form; and

to the extent there are any further agreed terms and conditions relevant to the provision of the Services and licence that does not conflict with these Terms and Conditions, those terms in any Equivalent Contract

(together, **Agreement**).

- 2.2 The Customer agrees to review and accept all license terms specified by HDAL and Caterpillar regarding the use of HD360 (mobile application and web application), Cat VisionLink ([www.vl.cat.com](http://www.vl.cat.com)), Oil Commander ([www.sos.hastingsdeering.com.au](http://www.sos.hastingsdeering.com.au)), HEI – Health Equipment Insights ([www.healthequipmentinsights.cat.com](http://www.healthequipmentinsights.cat.com)), RFV - Remote Fleet Vision ([www.remotefleetvision.com](http://www.remotefleetvision.com)) & RAM - Remote Asset Monitoring ([www.ram.cat.com](http://www.ram.cat.com)), otherwise HDAdvantage® may not be able to be accessed or utilised.

- 2.3 The Customer acknowledges that access to VisionLink and HEI – Health Equipment Insights (and any other Caterpillar supplied software and services utilised by the Customer or HDAL as part of the Services) are governed by the Caterpillar user or end user terms and conditions set by Caterpillar from time to time and the sharing of the Customer's data on HDAdvantage® will be governed by Caterpillar's Data Governance Statement and its Digital Authority Form as well as the HDAL Privacy Policy. HDAL is not responsible for the Customer's use of VisionLink or HEI – Health Equipment Insights or Caterpillar's direct use of the Customer's data through these systems. The Customer releases HDAL from any loss it may suffer via the use of VisionLink and HEI – Health Equipment Insights and any other Caterpillar services utilised by the Customer as part of the Services.

- 2.4 HDAL will not be bound by any terms other than those contained in this Agreement. Any terms or conditions contained in, issued with or printed on any purchase order, letter of acceptance, notice of intention to proceed or similar document or communication issued by the Customer, or its agent, do not form part of the Agreement and are of no effect whatsoever.

## 3. Access and Supply of Services

- 3.1 The supply of the Services shall be:

- a) Free of charge for the Initial Term on new, used and existing Assets registered under the HDAdvantage® Inform solution.
- b) Subject to the Subscription Fee(s) for each Asset serial number registered with HDAdvantage® Advise or Partner solutions for the amount listed in the Customer Authorisation Form, paid in advance on an annual basis. Subscription Fees may vary in price based on the Customer's chosen solution subject to the additional services and not limited to, Cat VisionLink, HEI and /or other condition monitoring HDAdvantage® solutions.

- c) Subject to receipt of a copy of the signed Customer Authorisation Form (or Equivalent Contract) from the Customer; and

- d) Subject to the Customer complying with its obligations under these Terms and Conditions.

- 3.2 The Customer must at their own cost, ensure that the Asset is installed with the necessary telematic technology and network connectivity for that Asset to provide HDAL with Asset Connectivity. A new Asset purchased may include the supply and installation of a suitable device by HDAL. HDAL shall provide advice to the Customer about the suitable device as required.

- 3.3 Any add-ons, plug-ins and additional services available through and not limited to, Cat VisionLink or additional condition monitoring may require a further subscription and incur additional costs, for which the Customer must pay to HDAL to receive those additional Services (if applicable).

- 3.4 The Customer may request HDAL to apply a combination of HDAdvantage® Inform, Advise and Partner solutions for individual Asset serial numbers within a Customer's fleet.

## 4. Expiry and Renewal

- 4.1 Subject to clause 4.2, where the Customer's Assets are registered on the HDAdvantage® Inform solution and the Customer meets their obligations under these HDAdvantage® Terms and Conditions, on expiry of the Initial Term, or any subsequent term, the Agreement will renew for additional periods of 12 months (Additional Term) unless either party notifies the other party, prior to the expiry of the term, that it does not wish for the Agreement to renew for an Additional Term.

- 4.2 Notwithstanding clause 4.1 of these HDAdvantage® Terms and Conditions, HDAL, in its absolute discretion, may introduce a Subscription Fee for the renewal of the HDAdvantage® Inform solution and will notify the Customer in writing no less than 30 days before the expiry of the current Term. Where the Customer does not provide its acceptance of the renewal and the applicable Subscription Fee, this Agreement will expire at the end of the current Term.

- 4.3 Where the Customer's Assets are registered on the HDAdvantage® Advise or Partner solution:

- a) HDAL will notify the Customer of the option to renew the Agreement at the end of the Initial Term, by providing at least 30 days written notice to the Customer's email address listed on the Customer Authorisation Form.

- b) If the Customer does not notify HDAL of its intention to end the Agreement, HDAL will register the Assets for the HDAdvantage® Inform solution. Subject to clause 4.2 of these HD Advantage® Terms and Conditions, the Agreement will automatically continue for the Assets for additional periods of 12 months (**Additional Term**) on the HDAdvantage® Inform solution.

- c) The Customer may elect, at any time, to migrate to the complimentary HDAdvantage® Inform solution. Where the Customer elects to migrate to the HDAdvantage® Inform solution, the Customer will not be entitled to a refund of any Subscription Fees paid. If the Customer elects to migrate to the complimentary HDAdvantage® inform solution during the Initial Term, the Customer will not be obligated to pay any additional Subscription Fees other than those already paid up to the date of the election to migrate to the HDAdvantage® Inform solution.

## 5. Customer Obligations

### 5.1 To receive the Services, the Customer undertakes to:

- a) not use the HDAdvantage® solution directly or indirectly for any activity or upload, store or transmit any data, information or material unlawfully or which prevents any other user from accessing, using or enjoying the HDAdvantage® solution;
- b) not attempt to gain unauthorised access to the HDAdvantage® solution or any part thereof, or use another person's name, registration account, token, log in identification or password;
- c) ensure that there is one user account per Permitted User and that Permitted Users do not share tokens, log in identifications or passwords with other Permitted Users or other persons;
- d) not tamper with, hinder the operation of or make unauthorised modifications to the HDAdvantage® solution;
- e) not knowingly introduce or transmit any Malicious Code or other disabling feature to or from the HDAdvantage® solution;
- f) not remove, disable or modify any security, anti-Virus or other software on the HDAdvantage® solution;
- g) ensure that all customer equipment used to access the HDAdvantage® solution have up to date anti-virus software installed and operating;
- h) not attempt to gain access to any data or information within or through the HDAdvantage® solution, other than the Customer Data; and
- i) keep all passwords, account names, tokens or log in identifications required to access the HDAdvantage® solution secure and confidential.
- j) maintain, at its cost, the installed telematic devices and associated components in working order to enable ongoing Asset Connectivity;
- k) provide HDAL, in a timely manner, with all necessary information and make arrangements for access to the Asset which may be reasonably required for HDAL to perform the Services;
- l) purchase Cat preventative maintenance parts as required for the Equipment as specified in the Operation and Maintenance Manual from HDAL;
- m) register and keep an active account on the HDAL HD360 customer platform to receive all relevant machine related alerts as outlined in these Terms.
- n) register to join the HDAdvantage® Inform, Advise or Partner solutions by signing the Customer Authorisation Form and paying the annual subscription fee where applicable.

### 5.2 The Customer must:

- a) undertake one (1) TA1 inspection on the Asset using Cat® Inspect at least once per year until the expiry of the Term to determine the condition of the Asset; or
- b) provide required scheduled fluid sampling for analysis for the Asset (as specified in the Operation and Maintenance Manual) to HDAL. The Customer is responsible for procurement of necessary kits and collection of oil samples. HDAL may provide instruction on appropriate sampling protocol.

### 5.3 If the Customer does not meet the obligations set out in this clause 5, HDAL may work with the Customer to help meet its obligations or terminate the Services at HDAL's discretion.

## 6. Usage monitoring and reporting

### 6.1 Subject to this clause 10, the Customer acknowledges and agrees that HDAL may at any time during the Term:

- a) monitor and measure access to and use of the Services by the Customer and its Permitted Users for the purposes of ensuring compliance with the terms of this Agreement and technical efficiency of the Services; and
- b) report to its Third Party Providers on usage levels and metrics, provided such reports are on an aggregated and de-identified basis.

### 6.2 The reporting of usage metrics by the Supplier pursuant to clause 10(a)(ii) will be limited to aggregated usage data and will not identify the Customer or disclose the Customer Data.

### 6.3 The Customer undertakes to notify each Permitted User that the Supplier may monitor their use of the Services or otherwise conduct computer surveillance of the Customer's (and the Permitted User's) use of the Services.

## 7. Failures

### 7.1 If the Asset stops providing data, either party may contact the other to diagnose the fault by troubleshooting the Asset in accordance with the applicable Operation and Maintenance Manual.

### 7.2 If the failure is determined to be the fault of the Customer, if requested by the Customer, HDAL will conduct any required repairs at the cost of the Customer (upon receipt of a purchase order from the Customer).

### 7.3 HDAL reserves the right to terminate the Services (including the licence) and subscription portion of the Agreement where the Customer's Asset remains unconnected after a period of three (3) months or where the Asset data has not been transmitted.

## 8. Product Support

### 8.1 For the duration of the Initial and any Additional Term, HDAL's Technology Support Desk (TSD) shall provide technical support for general issues and troubleshooting relating to the Services.

## 9. Termination

### 9.1 Either party may terminate the Agreement by providing the other party with at least seven (7) days' written notice.

### 9.2 If the Agreement is terminated by the Customer, the Customer will not be entitled to a refund of any Subscription Fees paid in relation to the Services, up to and including the date of termination, including for any Services not yet provided under the Initial Term or any Additional Terms.

### 9.3 If the Agreement is terminated by HDAL following a breach of the Agreement by the Customer, then the Customer will not be entitled to a refund of any Subscription Fees paid up to and including the date of termination, including for any Services not yet provided under the Initial Term or any Additional Terms.

### 9.4 If the Agreement is terminated by HDAL for a reason other than the breach of the Agreement by the Customer, then the Customer will be entitled to a refund of the Subscription Fees on a pro-rated basis.

## 10. Exclusions

### 10.1 To the extent permitted by law and except as outlined in these terms:

- a) all express and implied warranties, guarantees and conditions however arising relating to the Services are excluded;

- b) the Customer releases HDAL from all claims arising in connection with the Services;
- c) the Customer acknowledges that it has not relied upon any representation made by HDAL in electing to procure the Services;
- d) HDAL shall not be liable for any loss of production, loss of actual or anticipated profit, loss of overhead, loss of contract, loss of revenue, loss of opportunity or loss of use, loss or corruption of data howsoever caused, including but not limited to negligence or any other consequential, indirect or special loss, damage or injury of any kind whatsoever arising directly or indirectly from the Customer's use of the Services.

## 11. Data Governance & Privacy

- 11.1 When collecting, using, disclosing or otherwise handling a Customer's personal information and data from the Services, HDAL will comply with its Privacy Policy.
- 11.2 The Customer agrees and acknowledges that HDAL may obtain and use its personal information (as defined by the Privacy Act 1988 (Cth) and data from the Services in accordance with its Privacy Policy.
- 11.3 The Customer consents to HDAL having the access to Asset and Customer data for the purpose of supplying the Services (and for use in any other reason set out in HDAL's Privacy Policy).
- 11.4 For the purpose of collecting and utilising Customer data in accordance with the delivery of the Services, the Customer agrees that it must have read and executed the Caterpillar Data Governance Consent Form. Failing to do so may result in some or all of the Services being unavailable to the Customer. Where HEI – Health Equipment Insights apply the customer must consent to a subscription purchasing agreement.

## 12. Confidentiality

- 12.1 Each party must keep secret, and confidential, and must not divulge or disclose any of the other party's confidential information, trade secrets, know how, scientific, technical, product, market or pricing information relating to the Services (Confidential Information). The restrictions in this clause do not apply where the relevant Confidential Information:
  - a) is public knowledge (other than as a result of a breach of the Contract);
  - b) is required by law to be disclosed, provided the disclosing party has notified the other party of such requirement as soon as possible after becoming aware of such requirement; or
  - c) is disclosed to either party's directors, officers, employees, advisers, analysts and legal representatives for the purpose of exercising rights under and performing the Contract.

## 13. Intellectual Property

- 13.1 To the extent that the Customer has ownership over any data the Customer held prior to the commencement of the Agreement or generated or created by their use of the Services, the Customer grants HDAL a royalty free, irrevocable, non-exclusive, worldwide license to use the Customer's data to provide the Services and any other use set out in the Privacy Policy.
- 13.2 The Customer acknowledges and agrees that, as between the parties, HDAL owns and retains all right, title and interest, including all Intellectual Property Rights in and to the HDAdvantage® platform, the Services and any other modifications, derivatives and developments created by HDAL as a result of the Services.

- 13.3 The Customer must not, and must not authorise its Permitted Users or other Personnel to, infringe the Intellectual Property Rights of HDAL or any Third Party Provider in HDAdvantage® or any part thereof, and will not modify, copy, republish, frame, distribute or communicate any part of the platform or the Services or any information contained therein or otherwise use the platform in a way which will infringe the Intellectual Property Rights or other rights of HDAL or any Third Party Provider in the platform or any part thereof.

## 14. Miscellaneous

- 14.1 Any person executing the Customer Authorisation Form or any other form relating to these terms and conditions and accepting these terms and conditions on behalf of the Customer as an authorised representative declares that he or she is duly authorised to execute this document and agree to these terms and conditions on behalf of the Customer and is not aware of any fact or circumstance that might affect his or her authority to do so.
- 14.2 HDAL may transfer, assign, novate or sub-contract any of its rights or obligations under these terms and conditions without the prior written consent of the Customer. The Customer's rights and obligations arising out of or under these terms and conditions are not assignable by the Customer without HDAL's prior written consent.
- 14.3 These terms and conditions are not intended to create a partnership, joint venture or agency relationship between the parties.
- 14.4 A provision of, or the application of a provision of, these terms and conditions which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of:
  - a) that provision in any other jurisdiction; or
  - b) the remaining provision in that or any other jurisdiction.
- 14.5 Where a clause in these terms and conditions is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in these terms and conditions.
- 14.6 HDAL may, in its absolute discretion, vary these terms and conditions at any time by notice to the Customer by any of the following methods:
  - a) by email notice to the email address listed in the Customer Authorisation Form; or
  - b) by uploading the varied terms and conditions onto the public website of HDAL.
- 14.7 Where HDAL elects to vary these terms and conditions the Customer's only remedy is to terminate the Services in accordance with clause 9.

## 15. Jurisdiction

These terms and conditions are governed by and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

## 16. Definitions

In these terms and conditions, the following terms have the following meanings:

**Additional Term** has the meaning given in clause 4.

**Asset** means Caterpillar equipment listed in the Customer Authorisation Form.

**Asset Connectivity** mean those Assets that have the necessary telematic technology and network connectivity and have signed the Caterpillar Data Governance Form.

**Caterpillar** means Caterpillar Inc. (and any of its related parties).

HDAdvantage® (including Caterpillar).

**Critical Alert** means an alert or series of alerts which have the potential to impact the performance of the Asset and or cause damage to the Asset or persons.. They are information based only and should not be used as specific advice in respect of any particular events. Advice from a qualified professional should be sought in respect of any particular events and HDAL makes no warranty regarding the critical alert and accepts no responsibility for any loss or damage occasioned by a party using this feature.

**CMA** means Condition Monitoring Analyst

**Customer** means the person specified in the Customer Authorisation Form

**Customer Authorisation Form** means the HDAdvantage Customer Authorisation Form and Conditions and the Caterpillar Digital Authority form as provided with the Customer Authorisation Form or as previously provided by and agreed with Caterpillar.

**Equivalent Contract** is a contract issued by HDAL that includes the agreement for the use of HDAdvantage® in accordance with these HDAdvantage Terms and Conditions.

**HDAL** means Hastings Deering (Australia) Limited.

**HD360** means HDAL's Customer Portal either mobile application and web application.

**Initial Term** means period from the commencement date on the acceptance of HDAL of the Customer Authorisation form or Equivalent Contract.

**Intellectual Property Rights** means any and all intellectual property rights throughout the world, including:

- (a) any patent, copyright (including future copyright), trade mark (whether registered or unregistered), software, design, circuit layout right, trade, business or company name or other proprietary right, or any right to register such rights; and
- (b) all present and future rights in an invention, discovery, trade secret, know-how, concept, idea, data or formula and rights in information, including any serendipitous discoveries, granted by law from time to time under the Law of any jurisdiction.

**Permitted Users** means those persons nominated by the Customer to access and use HDAdvantage® in accordance with the terms of this Agreement, up to the maximum number set out in each relevant Customer Authorisation Form (as applicable).

**Privacy Policy** means HDAL's Privacy Policy, as updated from time to time, a copy of which is available at <https://www.hastingsdeering.com.au/legal/privacy>.

**Services** means the services outlined in Clause 1 of these terms and conditions.

**Subscription Fee** means the fees payable by the Customer for the Services in accordance with clause 3.

**Telematic Technology** means the Cat® Product Link devices specified in clause 3.3 of these Terms and Conditions.

**Term** means the date as **renewed** from the Initial Term and ending on date until these HDAdvantage® Terms and Conditions are terminated.

**Third Party Providers** means HDAL's licensors and other third parties providing services, applications or systems that support



## ANNEXURE 1 | Scope of Services

The following table illustrates the Services provided for each HD*Advantage* solution:

HD <i>Advantage</i> Solution	Inclusions	Option Extras
<p><b>Inform</b></p> <p>Designed to increase the reliability and profit-making potential of Cat Assets by screening electronic event fault code data to provide expert advice from HDAL Condition Monitoring knowledge database.</p> <p><b>Contract term</b> – Auto-renewed</p> <p><b>Condition Monitoring Methodology</b>- Automated Critical Alert alerts on selected event fault codes</p> <p><b>Fluid Analysis</b> - Lab interpretation (Fluid Analysis via HD Laboratory services)</p>	<ul style="list-style-type: none"> <li>Automated critical alert notifications for selected event fault codes delivered via HD360</li> <li>Fleet and asset location data easily available via HD360</li> <li>Preventive maintenance alerts delivered via HD360</li> <li>Access to expert CMA (Condition Monitoring Analyst) advice on request</li> <li>Primary SOS interpretation (Fluid Analysis via HD laboratory services)</li> <li>VisionLink Connect subscription (Complimentary)</li> <li>Visibility of Equipment in VisionLink</li> <li>Fleet Benchmarking report (Reporting on similar customer usage profiles)</li> <li>Cat Daily reporting</li> <li>Access to HD360 (mobile application and web application), Cat VisionLink (vl.cat.com), Oil Commander (sos.hastingsdeering.com.au)</li> </ul>	<ul style="list-style-type: none"> <li>Visionlink API</li> <li>Visionlink Essentials (4 hour, hour or 10min)</li> </ul>
<p><b>Advise</b></p> <p>Pro-active condition monitoring through a dedicated CMA evaluating oil sample and electronic health and event fault code data to provide maintenance, component replacement, application, fluid analysis and repair recommendations to help improve reliability, safety and reduce warranty costs.</p> <p><b>Contract term</b>   36 months</p> <p><b>Condition Monitoring Methodology</b>   Reactive CMA advice &amp; recommendations</p> <p><b>Fluid Analysis</b>   Lab interpretation plus in-depth CMA interpretation cross referencing fault code asset health data (Fluid Analysis via HD Laboratory services)</p> <p><b>Operating hours</b>   7 am to 5 pm / Monday to Friday</p>	<p>HD<i>Advantage</i> Inform inclusions, PLUS:</p> <ul style="list-style-type: none"> <li>Dedicated Condition Monitoring Analyst (CMA) providing in-depth data-driven insights into the overall health and utilisation of your assets through timely information, expert advice, and Condition Monitoring alerts</li> <li>CMA condition monitoring on all fault codes (Diagnostic &amp; Events)</li> <li>Advanced SOS oil interpretation on all samples (Lab interpretation plus in-depth CMA cross referencing fault code asset health data)</li> </ul>	<ul style="list-style-type: none"> <li>VisionLink API</li> <li>VisionLink Essentials (4 hour, hour or 10min)</li> </ul>

HDAdvantage Solution	Inclusions	Option Extras
<p><b>Partner</b></p> <p>Designed to provide a complete overview of individual Asset and fleet performance and production trends, using predictive analytics and smart baselining to detect abnormalities in Assets to maximise productivity and efficiency, essential for managing and optimizing jobsites.</p> <p><b>Contract term</b>   12 to 36 months</p> <p><b>Condition Monitoring Methodology</b>   Pro-active CMA advice &amp; recommendations</p> <p><b>Fluid Analysis</b>   Lab interpretation plus in-depth CMA interpretation cross referencing fault code asset health data (Fluid Analysis via HD Laboratory services)</p> <p><b>Operating hours</b>   6 am to 6 pm / 7 days a week</p>	<p>HDAdvantage Advise inclusions, PLUS:</p> <ul style="list-style-type: none"> <li>• Proactive monitoring of assets including electronic data (VIMS data) analysis</li> <li>• Analysis of trends in Equipment telemetry data</li> <li>• Advance predictive analysis identifying faults before they trigger an events/diagnostic codes</li> <li>• Monitoring Equipment parameters against historical data from your Equipment to identify any developing faults</li> <li>• Equipment parameter limit setting to identify damage to the Equipment before onboard systems trigger an event</li> <li>• Rate of change predictive analytics models to identify rapid change in parameters that may have not breached a Equipment parameter limit</li> <li>• Customer access to applicable portal modules to close loop on all recommendations</li> <li>• Access to Cat VisionLink (vl.cat.com), Oil Commander (sos.hastingsdeering.com.au)</li> <li>• Access to HEI (or RFV/RAM for E&amp;T)</li> </ul>	<ul style="list-style-type: none"> <li>• VisionLink API</li> <li>• VisionLink Essentials (4 hour, hour or 10min)</li> <li>• Remote Start &amp; Stop on generators for scheduled testing (engines only)</li> </ul>