

Please read the following terms carefully.

If You do not agree with these terms, kindly do not use any Onsite Service and Support or complete any registration process, and contact Canon or Your authorised reseller within 30 days for a refund. You agree to these terms by: (1) using or registering the Onsite Service and Support; or (2) failing to reject these terms within 30 days of the date You paid for the Onsite Service and Support.

1 Term

- 1.1 You must register Your OSS within 30 days of acquiring the Hardware and OSS from Canon or its authorised Canon Business Partner for it to be valid.
- 1.2 This Agreement begins 30 days after You acquire the Hardware and OSS, or when the Hardware is installed, whichever comes first, and continues for the Term.
- 1.3 At the expiry of the Term, OSS will end and You may request service and support on a time and materials basis at Canon's Current Rate.

2 Onsite Service and Support Inclusions

- 2.1 In consideration of You paying the Charge, Canon agrees to supply You the OSS at Your premises on the terms of this Agreement.
- 2.2 The benefits given to You in this Agreement are in addition to any other rights and remedies You may have under the *Competition and Consumer Act 2011* (Cth).
- 2.3 OSS includes:
 - (a) Remedial Service of spare parts for fair wear and tear;
 - (b) labour costs (except for Regional and Remote travel charges); and
 - (c) Help Desk support during Business Hours.
- 2.4 Canon warrants:
 - (a) any spare parts it uses while supplying OSS are genuine Canon spare parts;
 - (b) it will supply OSS with all due care and skill and in a professional manner consistent with generally accepted industry standards; and
 - (c) any warranty provided with the Third Party Hardware and Software or both will, to the extent permitted, be transferred to You subject to the terms stated in the manufacturer's warranty.
- 2.5 You agree OSS is subject to its fair and reasonable use and Canon may refuse to provide OSS or charge an Additional Charge for Your unfair and unreasonable use.

3 Both Parties' Obligations

- 3.1 Canon and You agree:
 - (a) they have full power and authority to enter into and perform this Agreement;
 - (b) to act reasonably in performing their obligations and exercising their rights under this Agreement; and
 - (c) that when communicating with each other, each party is responsible for conducting appropriate virus checks on any electronic media sent or received to or from the other party.
- 3.2 Subject to Your compliance with the terms of this Agreement, Canon agrees to procure for You a licence to use any Software and You agree to use that Software on the applicable licence terms provided by the manufacturer or licensor and, if required, will enter into a separate licence agreement with it.

4 Safety and WHS Laws

- 4.1 The parties must comply with all applicable laws and safety standards relating to the safe handling of the Hardware, including workplace health and safety laws (**WHS**).
- 4.2 You must ensure Your use of the Hardware during this Agreement does not place the public, community or environment at risk of injury, illness or damage.
- 4.3 You must grant Canon's personnel access to its locations and Customer Environment (including relevant passwords and/or data) Canon reasonably requires to perform its obligations under this Agreement. Canon will comply with Your reasonable security and WHS policies when You provides them to Canon in writing in advance.

5 Your Obligations

- 5.1 You agree to pay the Charge including GST and other taxes, duties, fees or other government levies that may be imposed on or in respect of the OSS.
- 5.2 You agree Canon may charge You a reasonable Additional Charge when You require Canon personnel to undertake security checks, clearances, induction or training of more than a nominal duration.
- 5.3 You warrant:
 - (a) You own the rights or has the right to use any software, hardware, systems, IP addresses, domain names and other items in Your Customer Environment;
 - (b) Your Customer Environment is in good working order and You have sole responsibility for its availability and integrity;
 - (c) to take all reasonable precautions to safeguard Your business and specifically Your Customer Environment, the Hardware and all software and data to minimise potential loss or disruption, including (as applicable) implementing effective audit control, working methods, firewalls, virus checking controls and data security measures including appropriate data and software back-ups;
 - (d) to follow Canon or the manufacturer's written instructions for the Hardware;
 - (e) You will only use the Hardware for the purposes it is commonly supplied for; and
 - (f) Your use of any third party Software constitutes Your acceptance of the applicable manufacturer's or licensor's licence terms.

5.4 You agree the Hardware is designed to work at its best using spare parts or other replaceable items (like consumables) Canon makes or recommends for use. If anything else is used, You may experience loss of quality or performance and Canon is not liable for any complaint concerning that poor performance. Also, using those other products may cause actual damage to the Hardware and in such an event Canon may refuse to repair it or charge an Additional Charge for those repairs and Canon may be obliged to withdraw OSS entirely without penalty.

5.5 As part of the OSS, You agree Canon may use refurbished spare parts.

5.6 You must:

- (a) purchase and install the consumables (such as rollers) necessary to operate the Hardware;
- (b) request OSS by logging a service request by telephoning 13 13 83 or emailing service@canon.com.au;
- (c) install any necessary User Changeable Parts;
- (d) let Canon know of any defect in the operation of the Hardware as soon as practicable after You become aware of the defect;
- (e) only use Canon or its authorised Canon Business Partner to install the Hardware and spare parts in the Hardware;
- (f) ensure only Canon or its authorised Canon Business Partner relocates the Hardware unless the parties agree otherwise; and
- (g) agree Canon may supply the OSS remotely where appropriate.

6 Onsite Service and Support Exclusions

6.1 Canon has no liability for, and is not required to provide OSS under this Agreement if it relates to:

- (a) preventative maintenance;
- (b) damage arising out of external causes outside Canon's control including accident, disaster, electrical fault, power surges, lightning, internet connection fault, vandalism or burglary;
- (c) You, or Your third party for whom You are liable, not following Canon or the manufacturer's written instructions for the Hardware;
- (d) You using incompatible materials in the Hardware;
- (e) unauthorised repairs or repair of damage caused by non-Canon or its authorised Canon Business Partner personnel installing or modifying the Hardware;
- (f) Your (or Your third party for whom You are liable) abnormal use, storage or handling of the Hardware (including failure to provide appropriate environmental conditions) and any repair or damage caused by such misuse;
- (g) any malfunction or specific requirement of any other item of hardware or software You have linked to the Hardware;
- (h) correction or errors in any non-Canon proprietary Software or other software not supplied by Canon;
- (i) Your data is lost or damaged;
- (j) You changing Your Customer Environment (other than as agreed in writing);

(k) where You have not installed or maintained any error correction, updates or new releases supplied or made generally available by Canon or other relevant third party manufacturers;

(l) Hardware re-installation, decommissioning, re-commissioning or relocations not performed by Canon or a Canon Business Partner; and

(m) subject to clause 5.6(b), where You request on-site Service and Canon reasonably determines that there is no fault, nor any necessity to install or replace print heads.

7 Additional Services

7.1 Canon is not obliged but may agree to provide the following Additional Services for an Additional Charge:

- (a) OSS outside of Business Hours;
- (b) repairs necessitated by a virus or denial-of-service attack (or similar) in Your Customer Environment; and
- (c) any other services not expressly included in OSS.

8 Your Regional and Remote Locations

8.1 You must reimburse Canon or its authorised Canon Business Partner (as applicable) for actual:

- (a) two-way travel costs for OSS provided to Your Regional locations that are more than 25 kilometres from the authorised Canon Business Partner's location;
- (b) costs including two-way travel and print head delivery for OSS provided to Your Remote locations.

9 GST

9.1 Where GST is payable on any supply under this Agreement, You must pay the GST amount as part of the Charge on receipt of Canon's tax invoice in accordance with the GST Law.

10 Confidentiality

10.1 Each party agrees to hold the other party's Confidential Information in confidence and not to use or disclose it other than in connection with this Agreement.

11 Privacy

11.1 Each party must not do any act or thing that causes either party to be in breach of the Privacy Act. Canon's Privacy Policy may be viewed at <http://www.canon.com.au/Privacy-Policy>.

11.2 Subject to relevant legislation, Canon may send You marketing materials

12 Liability and Indemnity

12.1 Each party (**Indemnifying Party**) must indemnify and keep the other party (**Indemnified Party**) indemnified from and against any direct loss, damage, costs and expenses (including reasonable legal expenses) or liability reasonably suffered or incurred by the Indemnified Party, in connection with:

- (a) bodily injury to or death of any person; or
- (b) physical damage to tangible property (excluding corruption of magnetic media and loss of data)

to the extent caused by the negligence or wilful misconduct of the Indemnifying Party or its personnel, in connection with this Agreement.

12.2 Subject to clause 12.1, Canon has no liability in relation to Your Customer Environment.

12.3 Any liability Canon may have for any failure to comply with a consumer guarantee imposed by the *Australian Consumer Law*, or any condition or warranty implied into this Agreement by legislation that cannot be excluded is not excluded, but to the extent permitted by law is limited to (at Canon's option):

- (a) re-supplying the OSS; or
- (b) paying the cost of re-supplying the OSS.

12.4 To the full extent permitted by law, neither party is liable for any of the other party's lost management or other staff time, any loss of actual or anticipated profit, savings, customers, contracts, revenue, interest or goodwill, or any consequential, indirect, incidental or special loss, damage or expense, even if it has been advised of its possible existence and even if such loss, damage or expense is caused by the negligence of the other party, its employees, agents or contractors.

12.5 To the full extent permitted by law, Canon is not liable for loss or damage due to Your negligent or improper use of the Hardware.

12.6 Except for an indemnity under clause 12.1(a) and liability under clause 10, to the full extent permitted by law, each party's liability, and a party's remedies under this Agreement whether in contract, tort (including negligence), under statute or otherwise is restricted in aggregate to the equivalent of the total Charges payable by You under this Agreement.

13 Termination

13.1 Either party may terminate this Agreement immediately by giving written notice to the other party if:

- (a) the other party breaches this Agreement; and
 - (i) the other party cannot remedy the breach;
 - (ii) if the breach can be remedied, the other party fails or refuses to do so within 30 days after receiving a notice specifying the breach and demanding it be remedied;
- (b) the other party suffers an Insolvency Event;
- (c) there is a change in control or ownership of a party where '**control**' includes the ability to determine the outcome of financial or operating policies of that party and the other party is not reasonably satisfied the new controller can meet the obligations under this Agreement; or
- (d) the other party loses, disposes of or destroys the Hardware.
- (e) the Hardware is relocated a significant distance from Your originally advised location where Your new location is Remote or outside an area Canon normally services or both.

13.2 On termination or expiry of this Agreement, Canon will stop providing OSS and Canon will be entitled to all outstanding amounts but not paid due under this Agreement.

14 Dispute Resolution

14.1 The parties agree to use reasonable commercial efforts to resolve by negotiation any problem arising between them under this Agreement. If, after 20 Business Days, the matter remains unresolved then an appropriate representative from each of the parties' senior management personnel will meet to discuss and attempt to resolve the disputed matter.

15 Force Majeure

15.1 Despite any other term of this Agreement, Canon is not liable for any delay or failure to perform its obligations under this Agreement if that failure or delay is due to a Force Majeure Event.

15.2 If the delay or failure to perform referred to in clause 15.1 exceeds 60 days, You may terminate this Agreement by written notice to Canon. If this occurs, clauses 13.1 applies.

15.3 Clause 15.2 does not relieve or suspend Your obligation to pay any amounts payable to Canon up until the termination date.

16 Notices

16.1 Any notice given under this Agreement must be in writing. A notice is taken to have been given if:

- (a) delivered by hand, on the date it is delivered;
- (b) sent by post, on the third day after the date of posting;
- (c) transmitted by email, only when the other party acknowledges receipt by any means.

17 General

17.1 A party may only assign this Agreement or any part of it if it first obtains the other party's written consent, consent not to be unreasonably withheld. You agree Canon may assign any of its rights and obligations under this Agreement to its related bodies corporate.

17.2 Canon may subcontract any of its obligations under this Agreement. Canon remains liable to You for its subcontractor's acts and defaults as if they were Canon's own acts and defaults.

17.3 This Agreement records the entire Agreement between the parties in relation to its subject matter and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing. No provision of this Agreement or a right conferred by it can be varied except in writing signed by the parties.

17.4 No delay or failure to exercise any rights under this Agreement constitutes a waiver, and any right may be exercised in the future. A waiver of any term of this Agreement must be in writing and is only effective to the extent set out in that written waiver.

17.5 Every provision of this Agreement is independent of every other provision. Any provision that is prohibited or unenforceable in any jurisdiction is, to the extent of the prohibition or unenforceability, deemed removed and severable without invalidating, so far as possible, the remaining provisions.

17.6 The covenants, conditions and provisions of this Agreement capable of surviving after it expires remain in full force and effect after its expiry or termination.

17.7 This Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of its courts.

18 Definitions and Interpretation

18.1 In this Agreement:

Additional Charge means a charge in accordance with Canon's Current Rate;

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Hardware is located and OSS is supplied;

Business Hours mean 8:30am to 5:00pm local time on a Business Day;

Canon means Canon Australia Pty Ltd (ABN 66 005 002 951);

Canon Business Partner means Canon's authorised subcontractor supplying OSS to Regional and Remote locations or Canon's authorised resellers (as applicable);

Charge means the charges and expenses payable by the Customer for OSS under this Agreement;

Confidential Information means all confidential or proprietary information disclosed verbally or in writing by one party to the other identified as confidential or whose confidential nature is reasonably apparent but excludes information that:

- (a) is or becomes a part of the public domain through no fault of the receiving party;
- (b) the receiving party lawfully possessed before the disclosure;
- (c) a third party lawfully disclosed to the receiving party without restriction on disclosure or any breach of confidence;
- (d) the receiving party independently developed; or
- (e) is required to be disclosed by law;

Current Rate means the current retail price Canon charges its retail customers when there is no negotiated contract rate;

Customer Environment means Customer's information technology, telecommunications, internet and other relevant infrastructure that interfaces with the Hardware or OSS;

Force Majeure Event means anything outside a party's reasonable control, including acts of God, strikes, lockouts, industrial disputes, civil disturbances, wars, fire, storm, flood, earthquake, act of terrorism and war and any act or omission of any government authority;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other law dealing with the imposition or administration of a goods and services tax in Australia. Applicable terms used in this Agreement have the meanings given in that law;

Hardware means a document scanner specified as being covered by the OSS pack You purchase from Canon or its authorised Canon Business Partner;

Insolvency Event means:

- (a) if the applicable party is a corporation, action is taken by it or another person on the basis that it is insolvent or unable to pay its debts when they are due;
- (b) any step taken to appoint a liquidator, provisional liquidator, receiver, receiver and manager, administrator or other like person to all or part of a party's assets or business;
- (c) a party suspends payments generally or ceases to carry on its business or a substantial part of it;
- (d) if, in Canon's reasonable opinion, You cease to be able to pay Your debts as they fall due;
- (e) any step taken by a party to enter into any arrangement with its creditors or any class of creditors;
- (f) if You are a partnership, the partnership is dissolved or an application is made to a court to do so; or
- (g) the holder of any security given at any time over any of Your assets becomes entitled to exercise any powers arising on default under that security or otherwise to take action to enforce it;

Metropolitan means a location within a 50km radius of the GPO of Sydney, Melbourne, Perth, Adelaide, Canberra and Brisbane, as applicable;

Onsite Service and Support (OSS) means maintenance services for the Hardware You register;

Personal Information means information or opinion about a person whose identity is apparent or reasonably ascertainable from that information or opinion;

Privacy Act means the *Privacy Act 1998* (Cth);

Regional means a location not defined as Metropolitan or Remote;

Remedial Service means unscheduled maintenance required to restore Hardware so it conforms to Specifications, is safe to use and is in good working order;

Remote means a location that is:

- (a) identified as having a geographic zoning of 'remote' or 'very remote' based on the Australian Bureau of Statistics' 'Australian standard geographical classification' structure published on its website <http://www.abs.gov.au/geography>; or
- (b) outside a 100km radius from a Canon Business Partner;
- (c) or both (a) and (b).

Software means any software Canon supplies with the Hardware purchased from Canon or its authorised Canon Business Partner;

Software Support means support for the Software (if any);

Specifications means technical or descriptive specifications of functional, operational, performance or other characteristics required of the Hardware;

Term means the period of OSS You purchase with the Hardware that Canon will supply the OSS for;

Third Party Hardware means non-Canon hardware comprising of a scanner, touchscreen monitor and computer;

User Changeable Parts means items designed to be replaced by You without Canon's intervention that do not require special tools;

You means the person specified in the OSS registration acquiring the OSS from Canon.

END