



## Terms and Conditions





**PART A STANDARD TERMS**

Applies to all Orders and the Contract between You and Us

**PART A STANDARD TERMS**

**1. DEFINITIONS**

1.1 The following terms shall apply to the Contract:

Additional Software Licences/Modules	The additional Software licences or Software Modules which You may procure from Us from time to time during the Contract;
Advanced Solutions Specification	A document which, if applicable to the Contract, forms part of the Order;
Charges	The cost of the Products as detailed in an Order;
Conditions	These terms and Conditions;
Consultancy	The various types of professional services which We can supply to You and which can include general consultancy, scoping and design, discovery print audits, training, implementation and integration services and project management;
Contract	As defined in clause 4.2;
Customer Environment	Your information technology infrastructure pertinent to the supply and operation of the Products;
Equipment	The hardware equipment which is supplied by Us;
Force Majeure	Any event which is outside of the control of the affected party including: acts of God, fire, floods, natural disasters, acts of terrorism, strikes, lock-outs, labour disputes, civil commotion, riots and acts of war;
Impression	Each and any copy or print taken and may also include scans if so specified in the Order. For the avoidance of doubt, a double sided copy or print will be counted as two Impressions;
Impression Charge	The Charge for each Impression which is calculated monthly or Quarterly by reference to the agreed Charges multiplied by the number of Impressions utilised taken by You in that month or Quarter;
Intellectual Property Rights or IPR -	(i) rights in patents, registered designs, designs rights, trade marks, copyright, databases, moral rights, topography rights, trade and business names (including domain names) including the benefit of all registrations and applications to register any of these and all rights in the nature of any of these  (ii) all trade secrets, confidentiality and other proprietary rights including all rights to know-how and other technical information;
Licensor:	The third party licensor and developer of third party Software and its Modifications;
Maintenance Release	A release of Software which the Licensor may, from time to time, make available, which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Full Release;
Maintenance Services	Are the Services detailed in Part D hereof and in respect of which You pay the Impression Charges;
New Full Releases:	Any new version of the Software which the Licensor may, from time to time, release to Canon for the purposes of Our obligations pursuant to the Contract, which contains such significant differences from the previous

versions as to be generally accepted in the marketplace as constituting a new product.;

Order	The individual purchase order signed by You and which details the Products and the Charges and which can be a Client Agreement, Equipment order form & Maintenance Agreement or another form of purchase order as agreed by Us;
Products	The Equipment, Software and Services;
Quarter or Quarterly	Each 3 month period starting on the first day of the month following activation of the Contract in Our system;
Rental/Rented	The rental by Us to You under an in-house rental scheme but not any third party rental, leasing or other finance scheme;
Services	The services specified in the Order and which can include Consultancy, Maintenance Services, delivery, installation and pre installation services and (where applicable) Software Support.
Software	Either the software incorporated into any Equipment or other software which is supplied separately by Us under the Contract. Where applicable this definition shall also include Maintenance Releases and New Full Releases to the Software;
Software Support	Support offered in relation to Software and is provided by Us as either Rolling Software Support, Fixed Term Software Support or Basic Software Support (as specified in the Order) and further defined in Part E;
Third Party Support Contract	Means any third party support or 'care' package which We supply to You in accordance with clause 19;
We, Us, Our	Genesis Group UK (Southern) Ltd;
Working Day	9 am to 5.30 pm Monday to Friday excluding Bank Holidays;
You, Your, Yours	The individual, company or organisation entering into the Contract with Us.

**2. PURPOSE OF THE AGREEMENT**

These Terms and Conditions ("Conditions") and any addendum signed in accordance with clause 21.1 set out the Conditions that will apply to any contract between You and Us for the provision of Products ("Contract").

### 3. ENTIRE AGREEMENT

This Contract constitutes the entire agreement between the parties in connection with its subject matter, and supersedes any conditions which may appear on Your documentation and all prior understandings, representations or communications. Both parties acknowledge that neither have relied on any representations except as expressly set out in this Contract. Neither party shall have any liability for misrepresentation other than

- (i) misrepresentation as to a fundamental matter which shall be subject to the limits set out in clause 14.3; and/or
- (ii) liability for any fraudulent misrepresentation.

### 4. CONTRACT TERMS

- 4.1 Contracts are only formed and become binding when You place an Order with Us and We expressly confirm Our acceptance of Your Order or deliver the Products.
- 4.2 The Contract between us shall be made up of these Conditions and any addendum signed in accordance with clause 21.1 below and the Order and any attached Appendix.
- 4.3 In the event of any conflict between these documents, the order of precedence shall be as listed above.
- 4.4 The Contract constitutes the entire agreement between the parties in connection with its subject matter, and supersedes any conditions which may appear on Your documentation and all prior understandings, representations or communications. Both parties acknowledge that neither have relied on any representations except as expressly set out in the Contract.
- 4.5 Neither party shall have any liability for misrepresentation other than misrepresentation as to a fundamental matter which shall be subject to the limits set out in clause 14.5; and/or liability for any fraudulent misrepresentation.
- 4.6 The Order will set out the Charges payable for the Products.

### 5. OUR PERFORMANCE

Once a Contract has been entered into, and subject to clause 12 and payment of the Charges due, We will provide You with the Products in accordance with the Contract.

### 6. BILLING

- 6.1 We will invoice You for any Equipment and Software supplied upon delivery unless:
  - a) an Advanced Solutions Specification applies to the Order in which case clause 25 applies; or
  - b) it is a supply only Contract in which case You will be invoiced in advance unless otherwise agreed in the Order.
- 6.2 We will invoice You for the Maintenance Services in arrears each Quarter unless We have agreed to provide Fixed Billing in respect of some or all of the Equipment in which case the provisions of clause 6.4 shall apply.

- 6.3 In order to calculate the Impressions Charges due each Quarter, We will obtain meter readings from either You (by phone, email, fax or e- services), Our technicians when they provide Maintenance Services, or eMaintenance (if this has been installed). You therefore agree:
  - a) to provide Us with all necessary meter readings at least 10 Working Days prior to the end of each month;
  - b) if no meter readings are received We will estimate the amount which is payable based on previous readings taken or other information available to Us. Any difference between estimated and actual readings will be reconciled at a later date. In this case You agree that will not be able to dispute or delay payment of an invoice because it is issued on estimated figures.

- 6.4 On termination of the Maintenance Services (as provided herein), You agree that:
  - a) You will pay any invoice which is raised and becomes due within the notice period;
  - b) At the end of the notice period, We will invoice You the fixed Charges due pro rated from the date of last invoice to the date of termination; and
- 6.5 Delivery and Installation Charges will be invoiced on delivery of the Equipment and/or Software. All other Services will be invoiced in arrears unless otherwise specified in the Order.

### 7. PAYMENT

- 7.1 You agree to pay Our invoices in full immediately upon the due date without any deduction or withholding on any account. You agree to pay Our invoice by BACS or direct debit within 30 days of the date of Our invoice. If payment is not made by BACS or direct debit, You agree that We will not be obliged to carry out any further obligations or duties under any Contract. You acknowledge that all charges and fees stated exclude VAT unless otherwise specified in writing.
- 7.2 Additional clauses may apply in respect of payments for Services and these are detailed in the Services Terms section below or a separate addendum. Clause 7.6 applies to these clauses in addition to any other specific provision.
- 7.3 Where You dispute that the invoice or any part of it is payable by You, You shall notify Us within 10 Working Days of the date of the invoice, providing details of the dispute; The invoice or the disputed part shall be put on hold and the provisions of clause 21.12 shall come into effect; Where applicable, You agree to pay that part of the invoice which is not disputed in accordance with the terms of clause 7.1.
- 7.4 If no dispute has been raised within 10 Working Days of the date of the invoice then You are deemed to have accepted the accuracy of the invoice.
- 7.5 If payment is not made as specified in clause 7.1 above and the provision of clause 7.3 do not apply then You agree that We will not be required to carry out any further obligations or duties under

any contract which We have entered into with You until such time as all outstanding payments are made; and

- a) We can attend at Your premises and collect any unused toner and other items which have been supplied to You as part of the Maintenance Services;
- b) Where You have not paid Us for Equipment supplied then We can attend at Your premises and collect such Equipment; and/or
- c) We reserve the right to enforce the statutory provisions laid down in the Late Payment of Commercial Debts (Interest) Act 1998 and supporting regulations (as amended).

- 7.6 If payment is not received in full when due, We reserve the right to enforce the statutory provisions laid down in the Late Payment of Commercial Debts (Interest) Act 1998 and supporting regulations (as amended).
- 7.7 Unless agreed otherwise in writing, We can increase the charges payable under any Contract, by giving you 60 days written notice. We agree that if the charges are increased by more than either 8% or the RPI over the last 12 month period, whichever is the greater, You will be entitled, on 30 days notice, to terminate the Contract from the date the new price is introduced. However, You agree that where the additional increase can be shown to be required to cover increased costs in materials, consumables or labour, Your right to terminate the Contract will be in accordance with Clause 17 below.

### 8. DELIVERY AND INSTALLATION

- 8.1 Unless otherwise agreed in an Order, all delivery and, where applicable, installation dates are estimates and We are not liable for any loss, costs, expense, liability, or damages You or someone else suffers because We did not meet these estimated dates.
- 8.2 Where We have agreed with You in writing delivery or installation dates and if We have been delayed or impeded in Our performance by any act or omission by You or by another supplier/contractor employed by You, or any circumstances beyond either of our reasonable control, You shall grant Us a reasonable extension of time to comply with Our obligations.
- 8.3 We reserve the right to charge You for any additional expenses reasonably incurred by Us, in respect of clause 8.2 above, unless the delay was caused by Our default or was the result of circumstances outside of either of our reasonable control.
- 8.4 We are not liable for shortages in the quantity of Products delivered. You will only be liable to pay for the Products You have received. The remaining Products due to You will be delivered by Us as soon as possible.
- 8.5 We will only be responsible for supplying the consumable items listed in clause 29 or the Order. Spare parts will be supplied if We are providing You with Maintenance Services.



- 8.6 You agree that an authorized person on Your behalf will sign and date the delivery note that comes with the Products, to confirm that they have been delivered and that there is no visible damage. If, subsequent to delivery, You request further evidence of delivery, then We reserve the right to charge an administration fee.
- 8.7 Other than where Part C applies to the Contract, You will be deemed to have accepted the Products on delivery unless You notify Us within 3 Working Days.
- 8.8 Where as part of the Order, We agree to remove Your existing equipment, You agree
- a) to ensure that title in that equipment has passed to Us prior to removal;
  - b) that (if applicable) We are authorised to disconnect/remove the network cable from the old equipment;
  - c) You have taken all necessary actions to delete any personal data from the equipment/destroy the equipment hard drive; and
  - d) that subject to all applicable laws and regulations, We may dispose of such equipment as We wish.
- 8.9 When We have delivered the Equipment to You, You are liable for the risk of any loss or damage to it. This will remain Your risk unless We take the Equipment back so You should insure Yourself against such loss or damage.
- 8.10 We will not accept claims for shortages. Other than in respect of Products supplied under Part C below, You must notify Us within 10 working days if there is a fault in the Products.

## 9. LOAN/TRIAL EQUIPMENT

We may provide You with Equipment on a loan or trial basis. If We do so, You agree the title in any such Equipment shall remain with Us and You will not do or allow anything to be done which is inconsistent with Our ownership of it. In particular You agree not to allow any one else to service or modify the Equipment or to take it away, unless agreed by Us in writing beforehand. The risk in such Equipment will pass to You on delivery and will stay Your risk until We take it back. You agree to insure such Equipment for the full replacement value. You agree to store and use such Equipment in a safe and secure manner and to allow Us access at Our request during Your normal business hours to inspect and/or service the Equipment or repossess it at the end of the loan/trial period or at any time if You breach these Conditions. We will agree with You in writing the scope and additional terms of such loan/ trial and any charges due.

## 10. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 10.1 You accept that all copyright and other IPR's in Specifications, computer programs, manuals and other materials written or provided by Us for or in connection with the Products supplied shall remain vested in Us or Our licensors. You agree that You shall not disclose any documents containing Our or

- Our licensors IPR's to third parties without Our prior written consent.
- 10.2 You agree that You will not remove, alter or obliterate any IPR or proprietary notice or other notice required by national or European legislation or regulation on any Product supplied to You by Us.

- 10.3
- a) Subject always to Your compliance with Your obligations under this Contract, We grant to You a nonexclusive licence to use the Software on the terms set out in Clauses 10.3 and 10.4 and on any additional terms notified to You on supply of the Software. You agree not to copy, reproduce, export or deal in the Software or any part thereof in any way except as expressly permitted by the Contract and save to the extent and in the circumstances expressly permitted by law.
  - b) Subject to 10.3 (c) You may: (1) use one copy of the Software ("use" shall mean storing, loading, installing, executing or displaying the software) for Your own internal purposes; (2) make a reasonable number of backup copies of the Software in support of the permitted use, provided that all such copies include the Canon copyright notice as it appears in the original copy of the Software provided to You; (3) on written notice to Us, transfer the Software and the benefit of this licence of the Software to another person, provided that this person shall have agreed to accept the terms of this licence of the Software and You cease all use of the Software, transfer all copies of the Software You have made to that person or destroy all copies not transferred. If any transferee does not accept such terms then this licence of the Software automatically terminates.
  - c) Any third party Software supplied by Us may be sub-licensed to You in accordance with the terms of the agreement between Us and the licensor and any terms and conditions stipulated by the relevant licensor. If required by the licensor of the third party Software You shall enter into a separate licence agreement with it for licence of that Software. The terms of such licence shall prevail to the extent of any inconsistency with this Contract.

- 10.4 You agree not to decompile, reverse engineer, disassemble or otherwise reduce any part of the Software to human-readable form nor permit any third party to do so. The interface information necessary to achieve interoperability of the Software with independently created computer programs will be provided by Us (other than third party Software supplied by Us) on request and on payment of Our reasonable costs and expenses for procuring and supplying such information.
- 10.5 Notwithstanding any other provision of this Contract, nothing in this Contract shall affect the ownership of IPR's existing prior to the date the parties entered into this Contract. We

acknowledge that Your data is Your property and that You hold all IPR's which may subsist in it.

- 10.6 We shall not delete or vary any copyright notices contained within or relating to Your data without Your prior consent.

## 11. OUR WARRANTY AND EXCLUSIONS

- 11.1 Unless alternative warranty terms are offered in the applicable Equipment literature, We warrant that:
- a) the media on which the Software is delivered will be free from material defects and virus at the time of delivery; and
  - b) that any manufactured Equipment will be free from manufacturer's defects for a period of 30 days from installation
- You must notify Us in writing of a claim under this Warranty within 10 Working Days of the defect occurring.
- 11.2 For the avoidance of doubt the Warranty given at Clause 11.1 shall not apply:
- a) to defects which are caused by either Your use of the Equipment or by 'fair wear and tear' in respect of which We will provide You with the Maintenance Services; or
  - b) if the defect is caused by one (or more) of the matters listed in 28.5 and/or 41.
- 11.3 Your sole remedy for a breach of Our warranty is to require Us to either repair the Equipment so that it does work to the manufacturers specifications or to replace the Equipment with a new device of equal or higher specification (at our option), within a reasonable time at no charge to You provided that You notify Us of any alleged breach within 5 working days of it coming to Your attention.
- 11.4 Any warranty provided to Us in respect of any third party Equipment and/ or Software shall, to the extent permitted, be transferred to You subject to the terms specified by the manufacturer.
- 11.5 We warrant that the Services provided under this Contract will be performed in accordance with industry standard practices and with reasonable skill and care.
- 11.6 Save as otherwise agreed in the Contract Specification, We take no responsibility for and give no warranty that:
- a) the provision of a Product (whether installed in the Customer Environment or otherwise) will be uninterrupted or bug or error free. In particular You accept that the Services will be limited as provided for in Clause 28.5 of this contract;
  - b) any Products will operate in hardware and/or software combinations selected by You or any third party instructed by You; and
  - c) any faults in or interruptions to the Customer Environment will always be successfully diagnosed or rectified by Us.
- 11.7 Save as set out in Clause 11 and 14.3, these Conditions are in lieu of all other conditions, warranties or other terms concerning the supply, purported supply,

failure to supply or delay in supplying the Products and any Services which might but for this Clause have effect between both parties or would otherwise be implied into or incorporated into these Conditions or any collateral contract, whether by statute, common law or otherwise, all of which are hereby excluded.

- 11.8 If We are unable to remedy any such breach notified to Us, We will refund the charges payable in respect of any Products which have breached Our warranty given above and in respect of any Services for which payment in advance has been made. This is subject to any defective Equipment and/or Software being promptly returned to Us.

## 12. YOUR WARRANTIES AND RESPONSIBILITIES

- 12.1 You warrant that:

- a) You have full power and authority to enter into and perform this Contract on these terms;
- b) You own the rights or have the right to use any software, hardware, systems, IP addresses, domain names and other items within the Customer Environment;
- c) Our entry into and performance of Our obligations under this Contract will not infringe the rights of any third party or cause You to be in breach of any obligations to a third party;
- d) You have complied and will continue to comply with all applicable statutes, regulations, by-laws and third party contracts and licences and that You have obtained or will obtain any consents or licences necessary for the intended use of the Products or other software used by You, prior to delivery or commencement of the Services and that copies of any such licences or consents will be available on request;
- e) Your Customer Environment complies with all relevant industry standards (for example IEEE);
- f) any information, verbal or written, (including without limitation any IP or email address or any domain name) provided to Us both before and subsequent to the date of this Contract, is accurate and complete; and
- g) You have supplied Us in writing with all information in relation to any existing and previous issues that could reasonably be considered relevant to the performance by Us of the Contract.

- 12.2 You acknowledge that Our ability to perform the Contract is dependent upon Your co-operation. You accept the Customer Responsibilities stipulated in the Contract Specification (if applicable) and in addition accept that:

- a) You agree to take all reasonable precautions to safeguard Your business and specifically Your Customer Environment, the Products and all software and data to minimise potential loss or disruption, including

(where applicable) implementing effective audit controls, working methods, firewalls, virus checking controls and data security measures.

In particular You agree to take useable copies and/or full back ups of all Your software and data at all reasonable times, including prior to Us conducting any work on Your systems;

- b) You agree to follow the applicable manufacturer's instructions for the Products and to ensure that those authorised to use the Products are adequately trained;
- c) You agree to make available to Us free of charge all information and access to Your Customer Environment (e.g. relevant passwords) and any equipment, personnel, materials, premises and other facilities and resources which We reasonably require to allow Us to carry out Our obligations;
- d) You agree to follow any reasonable instructions We give to You prior to and during installation and in respect of Tests, or any subsequent post implementation Services that We provide to You;
- e) Save as expressly provided for in the Contract Specification (if any) You agree to ensure that Your Customer Environment is in good working order prior to Our conducting any work for You;
- f) Save as expressly provided for in the Contract, You acknowledge that the disposal of Your existing hardware, operating system, or network operating system will be Your responsibility;
- g) You agree that during the term of this Contract and for a period of one (1) year following its termination You will not actively solicit any of Our employees to terminate their employment with Us.
- h) Where We have agreed to provide Services by way of the world wide web, Internet or other electronic medium, You agree to ensure a working connection enabling both inward and outbound communication (including email). You agree to be responsible for maintaining all software and hardware required for ensuring the connection and associated communications. You agree that We do not have nor shall We have any liability for any problem related to a poor, faulty or nonexistent internet connection immaterial of how such a problem has arisen.
- i) Where We have agreed to provide Services by way of the world wide web, Internet or other electronic medium, such as e-Maintenance, You agree that we may use the information, including any personal information You provide Us, for the purpose of providing the Services. You agree to the transfer of such data to other Canon companies, including Canon Inc. in Japan, or to third party companies, for the purpose of processing that information in order to provide the Services. We will

take reasonable steps to ensure that appropriate security measures are put in place to protect any personal information You provide to Us.

## 13. BOTH PARTIES RESPONSIBILITIES

- 13.1 It is agreed that both parties will endeavour to implement virus checks on outgoing electronic data. Both parties acknowledge that in the course of our communications with each other, it is both parties' responsibility to conduct sufficient and adequate virus checks on any email, email attachments, diskettes or other electronic media sent prior to opening, formatting or forwarding of them.
- 13.2 You agree that, subject to the relevant regulations, We may send You marketing emails.
- 13.3 You acknowledge that ordinary email is not a very secure environment in which to send confidential messages. We believe that Our system is reasonably secure and We have various security procedures to protect Our system. However, We recommend that You do not use ordinary email as a means of sending Us information of a confidential nature.
- 13.4 Except as may be required by law and other than as necessary for the performance of rights and obligations under this Contract, both parties agree during and after the termination of any Contract to keep confidential all information obtained or received as a result of entering into the Contract including, without limitation any business, business methodology or know how, financial or technical information. This clause shall not apply to the extent that the information is already in the public domain, is in Your or Our possession other than as a result of a breach of this clause or, in respect of information provided by You to Us, is technical information which is already under development by Us or any other Canon company. Both parties agree that if they breach this clause injunctive relief may be sought in addition to damages (such damages being subject to clauses 14.5 to 14.7).

## 14. LIABILITY

- 14.1 "Liability" shall mean liability in or for breach of contract, negligence, misrepresentation, restitution, tort, breach of statutory duty or any other cause of action and howsoever arising under or in connection with the Contract, including without limitation liability expressly provided for under this Contract or arising by reason of the invalidity or unenforceability of any term of the Contract.
- 14.2 This clause sets out Our entire financial liability (including any Liability for the acts or omissions of Our respective employees, agents and subcontractors) to You in respect of:
- a) any breach of this Contract;
  - b) defects in the Products;
  - c) any use made of the Products by You;



- and
- d) any representation, statement or tortious act or omission (including negligence or breach of statutory duty) arising under or in connection with this Contract.
- 14.3 Subject to clauses 14.4 and 14.5, Our total Liability arising under or in connection with the Contract whether in tort (including negligence or breach of statutory duty) contract, misrepresentation restitution or otherwise shall be limited as follows:
- a) for tangible property damaged, two million pounds sterling (£2,000,000). Neither corruption of magnetic media or loss of data shall constitute physical damage to tangible property for the purposes of this clause;
- b) for Equipment and/or Software 125% of the charges payable by You for the Equipment and/or the Software; and
- c) for Services, 125% of the charges payable by You for the Services in the preceding 12 months.
- 14.4 Nothing in this Contract shall exclude or limit either party's Liability for:
- a) Fraud;
- b) Death or personal injury caused by the negligence of the party, its servants or agent;
- c) any breach of the obligations implied by s.12 Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982;
- d) any other Liability which cannot be excluded or limited by applicable law.
- 14.5 Subject to clause 14.4, We will not be liable to You whether in tort (including negligence or breach of statutory duty), contract, misrepresentation or otherwise for the following:
- a) loss of profit
- b) loss of goodwill;
- c) loss of business;
- d) loss of business opportunity;
- e) loss of anticipated savings;
- f) waste expenditure;
- g) loss of or corruption of data or information; or
- h) any special, indirect or consequential loss suffered by You
- and We recommend that You consider taking insurance to cover any such losses.
- 14.6 You will fully indemnify Us in respect of any and all claims, costs, fees or expenses (including legal fees) which We incur as a consequence of any individual's employment being transferred to Us (or claiming to be transferred to Us) under the Transfer of Undertakings Regulations 2004 and as a consequence of Us entering into the Contract.
- 14.7 You agree to indemnify Us and keep Us indemnified against any claim or legal proceedings brought against Us as a result of You breaching this Agreement or in respect of any third party claims which arise from Our performance of Services carried out on the instructions of You or Your authorised representatives.

## 15. DATA PROTECTION

- 15.1 Subject to clause 15.4, it is agreed that We shall only use the information We obtain as a result of this Contract, including any personal data, for the purpose of providing the Services.
- 15.2 You agree (and will procure any necessary consents) to the transfer of any such information to any third party companies (including those based outside of Europe), for the purpose of processing the information and in order to provide the Services.
- 15.3 We will take all reasonable steps to ensure that appropriate security measures are put in place to protect the information You provide to Us and We will comply with the relevant Data Protection laws.
- 15.4 You agree that, subject to the relevant regulations, We may contact You from time to time with marketing communications.

## 16. CONFIDENTIALITY

- 16.1 Except as may be required by law and other than as necessary for the performance of rights and obligations under this Contract, both of us agree that during and for 2 years after the termination of the Contract, to keep confidential all written information obtained or received as a result of entering into the Contract including the Order and any appendices, any documents created under or in connection with the Contract, any business methodology or know how, financial or technical information.
- 16.2 This clause 16 shall not apply to the extent that the information is already in the public domain, is in Your or Our possession other than as a result of a breach of this clause or, in respect of information provided by You to Us is technical information which is already under development by Us or any third party company.
- 16.3 Both of us agree that if this clause is breached injunctive relief may be sought in addition to damages (such damages being subject to clause 14.3).
- 16.4 You agree that during the term of this Contract and for a period of one (1) year following its termination You will not actively solicit any of Our employees to terminate their employment with Us.

## 17. TERMINATION

- 17.1 Subject to clause 17.3, the initial term ("Initial Term") of the Contract for Services (excluding Rolling Term Software Services) will be fixed for either:
- 17.1.1 The period specified in the Order; or
- 17.1.2 The period of the third party lease or Lease which You have entered into for the Equipment (as applicable) and in respect of which We are providing the Services which ever is the longer provided always that the period cannot be for longer than 5 years.
- 17.2 At the end of the Initial Term and to the extent that the Services are ongoing, the

Contract for Services will automatically continue unless and until either party gives the other 90 days written notice of termination.

- 17.3 Should You wish to terminate the Contract for Services prior to the expiry of the Initial Term then:
- 17.3.1 You must give Us 90 days written notice;
- 17.3.2 At the end of the 90 day period we reserve the right to charge You 365 days Impression Charges calculated using the ADIV of the Equipment measured over the expired Contract period. If less than 12 months of the initial term remains then We shall charge You on the same basis but only for the unexpired number of full calendar months; and
- 17.3.3 You agree that the calculation referred to in this sub clause will provide a genuine pre estimate of the loss which We will incur due to Your early cancellation.
- 17.4 Either party can terminate a Contract without notice if the other:
- 17.4.1 commits an act of bankruptcy or an application is made for an administrator or receiver to manage all or part of the other's assets;
- 17.4.2 is in material breach of the Contract and, where such breach is capable of remedy, it is not put right within 30 Working Days of receiving written notice from the other detailing the breach.
- 17.5 Where You have terminated for Our proven breach of Contract, then We agree that You do not have to pay the early cancellation charge at clause 16.3 above.
- 17.6 We may terminate the Contract without notice if:
- 17.6.1 You do not pay any amount You owe after You have been given 10 Working Days written notice;
- 17.6.2 clauses 21.4, 28.2 or 18.1 applies; or
- 17.6.3 We can show that You have sold to third parties the toner which has been supplied to You as part of the Maintenance Services and in all cases the provisions of clause 17.3 shall apply (if applicable).

## 18. CONSEQUENCES OF TERMINATION

- 18.1 The termination or expiry of any Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 18.2 Any terms of this Contract which by their nature extend beyond the termination of the Contract shall remain in effect until fulfilled.

## 19. THIRD PARTY PROVIDERS

- 19.1 We may from time to time deliver Equipment, Software and/or Services to You which You obtain on a third party lease. We may also facilitate the placing of orders for third party products between You and third party suppliers and/or contractors.

- 19.2 You acknowledge that We are not the agent of any leasing company or other third parties, and that We have no liability in respect of such third party products or for the acts or omissions of any third party, including any finance or leasing company.
- 19.3 Our liability with respect to any Equipment, Software and/or Services provided under a third party lease, and Our delivery of the same (if applicable) is as stated in these Conditions.
- 19.4 If We deliver to You Equipment and/or Software on the basis that some or all of these items will be the subject of a third party lease and You subsequently fail to obtain such leasing and this is not due to:
- solely Our delay in delivering or installing the Equipment and/or Software (including the completion of any Tests where applicable under clause 25); or
  - the Equipment not working to manufacturers specification,
- then You agree that You will be deemed to have placed an Order to purchase such Equipment and/or Software and You will be liable to pay Us for the Equipment and/or Software at the purchase price which We had agreed with the third party lease company in accordance with these Conditions.
- ## 20. MISCELLANEOUS
- 20.1 We may from time to time deliver Products to You which You obtain on lease. We may also facilitate the placing of orders for Products between You and third party suppliers and/or contractors. You acknowledge that We are not the agent of any leasing company or other third parties, and that We have no liability in respect of such orders or for the acts or omissions of any third party, including any finance or leasing company.
- 20.2 We are not liable for delaying, or not carrying out, any of Our duties if caused by circumstances beyond Our control. If such a delay continues for more than 30 days either party can choose to cancel part or all of the Contract or delay carrying out any duty under it. For the avoidance of doubt nothing in this clause shall excuse You from any payment obligations under this Contract.
- 20.3 Both parties are independent contractors under any Contract and acknowledge that neither is an agent or partner of the other for any purpose.
- 20.4 A person who is not a party to any Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Conditions.
- 20.5 All contracts are governed by English law and come under the exclusive jurisdiction of the English courts, except where any Contract is made in Scotland, in which case it will be governed by Scottish law.
- 20.6 You agree not to export outside the UK any Equipment and/or Software (including relevant documentation) supplied by Us which is covered by the Export of Goods (Control) Order 1987 (or any re-enactment thereof) or the Export Administration Act 1979 (as amended) without obtaining all necessary licences thereunder and agree not to sell the Equipment and/or Software within the UK if You know or have reasonable grounds to suspect that the person buying the Equipment and/or Software intends to export it without obtaining the necessary licences. You agree to impose on persons purchasing such Equipment and/or Software obligations corresponding to those set out above.
- 20.7 When We have delivered the Equipment to You, You are liable for the risk of any loss or damage to it. This will remain Your risk unless We take the Equipment back so You should insure Yourself against loss or damage.
- ## 21. GENERAL TERMS
- 21.1 These Conditions cannot be changed unless agreed by You and one of Our Directors in writing.
- 21.2 Any Contract will apply to each of the Products provided under it individually. If there is a dispute about one or some of the Products, it will not affect the operation of the Contract or either parties obligations under it, with respect to any of the other Products provided under it.
- 21.3 A Notice of termination in accordance with clauses 17 and 46 must be sent by prepaid recorded delivery. Any other notices, including those of a price increase shall be sent by ordinary first class post. We will send notices to the address of the property where the Equipment or Software is installed or Services provided unless You tell Us otherwise in writing. You must send all notices to Our registered office. Notices will be deemed to have been received 2 working days after despatch.
- 21.4 Your rights and our rights under any Contract will not be affected if either of us does not enforce, or delays enforcing, any of these terms.
- 21.5 We may assign Our side of any Contract in whole or in part . If We do so, We will inform You in writing.
- 21.6 You agree that Our provision of Products under this Contract may include the use of sub-contractors. To the extent that we sub contract any of Our rights or obligations, We acknowledge that We remain fully responsible for the proper and complete discharge of all such obligations.
- 21.7 You may assign or sub-contract Your interest in any Contract to a subsidiary or associated company of Yours based in the United Kingdom if You have Our written permission, which We will not unreasonably withhold.
- 21.8 If (and to the extent that) a Condition shall be determined to be invalid, unlawful or unenforceable, it shall (to that extent) be severed from the remaining Conditions which shall continue to be valid to the fullest extent permitted by law. Both of us will negotiate in good faith with a view to substituting the affected Condition (or part) with a valid and enforceable condition which achieves, to the greatest extent possible, the economic legal and commercial objectives of the affected Condition.
- 21.9 If Force Majeure occurs then the affected party shall be excused from performing its obligation under the Contract provided that it has given notice to the other as soon as reasonably practicable. During the Force Majeure, both of us will take reasonable efforts and enter into discussions to seek to provide for the continued provision of the Services. To the extent that We have continued to provide you with Services, You will pay any Charges due.
- 21.10 Both of us are independent contractors under any Contract and acknowledge that neither is an agent or partner of the other for any purpose.
- 21.11 A person who is not a party to any Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Conditions.
- 21.12 Both of us shall attempt in good faith to negotiate a settlement of any dispute arising out of or in connection with the Contract. In the first instance, our respective managers shall meet to attempt to resolve the dispute. If after 20 working days the matter remains unresolved then an appropriate representative from each of our management teams shall meet to discuss and attempt to resolve the disputed matter.
- 21.13 All contracts are governed by English law and come under the exclusive jurisdiction of the English courts.
- 21.14 We have agreed to supply you with Products for use in the United Kingdom. You agree that if you export outside of the United Kingdom any Equipment and/or Software (including relevant documentation) supplied by Us then the Contract for Services will terminate immediately. Further you are responsible for ensuring that all necessary licences and authorisations for export have been obtained.
- 21.15 In this Contract unless the context otherwise requires, the masculine gender shall be deemed to include the feminine and neuter and vice versa and the singular number shall be deemed to include the plural and vice versa;
- 21.16 Headings do not form part of the Contract and are for reference purposes only;
- 21.17 Any use of the word "including" shall be treated as "including without limitation";
- 21.18 References to any statute or statutory provision or law or regulation shall include references to such statute or statutory provision or law or regulation as from time to time amended, extended or consolidated and shall include all statutory instruments or orders from time to time made pursuant thereto; references to a person include an individual, a body corporate and an unincorporated association of persons; and references to a party in these Conditions include references to the successors or assigns (immediate or otherwise) of that party in accordance with these Conditions.



## PART B SALE TERMS

*Clauses 22 to 23 apply to any Contract for the sale of Equipment and/or other items by Us to You.*

## PART B SALE TERMS

### 22. TITLE

- 22.1 We retain the title in the Equipment and any media on which any Software is supplied until We have received payment for it in full. You have not paid in full until the amount has been credited to Our bank account. You accept that the title in the Software will not pass to You at any time.
- 22.2 Until title has passed in the Equipment You must not do, or allow anything to be done, which is inconsistent with Our ownership of it. In particular, You must not alter or sell it or otherwise dispose of it. You must ensure it can be identified as belonging to Us.
- 22.3 If before title has passed in the Equipment, You commit any act of bankruptcy, go into liquidation, have a receiver appointed to manage all or part of Your assets or become insolvent then We may enter Your property without giving notice, to take the Equipment and/or Software back and demand any money You owe Us under the Contract.
- 22.4 If You do not make Your payments when they are due, or if before title has passed in the Equipment, You commit any act of bankruptcy, go into liquidation, have a receiver appointed to manage all or part of Your assets or become insolvent then We may enter Your property without giving notice, to take the Equipment and/or Software back and demand any money You owe Us under the Contract.
- 22.5 When there is a shortage of Equipment and/or Software for reasons beyond Our control, We will distribute as much as We can to Our customers depending on availability.
- 22.6 We will not accept orders for the sale of Print Charge multifunctional device Equipment unless Your order is accompanied by a request for maintenance service for the Equipment as well, unless the Equipment is covered by a manufacturer's warranty.

### 23. SUPPLY ONLY CONTRACT

- 23.1 We may agree to supply You with Equipment, Software and/or Third Party Support Contract on a supply only basis. You agree that in respect of such supply (and other than as provided for in clause 11 as applicable) We have no responsibility to provide You with any ongoing Services. In particular You agree that We have not been contracted to unpack, install, or check the product(s). This is Your responsibility.
- 23.2 Any Third Party Support Contract supplied is not a Service and You agree that it is subject to the terms specified in any supporting documentation the third party provides You.

## PART C CONTRACT SPECIFICATION TERMS

*Clauses 24 to 26 apply where we sell, or otherwise provide Services in relation to Products which may be linked to a network or network peripheral device, or otherwise where We provide Managed Services, consultancy or training Services.*

## PART C ADVANCED SOLUTIONS SPECIFICATIONS TERMS

### 24. ADVANCED SOLUTIONS SPECIFICATIONS

- 24.1 When Advanced Solutions Specifications are included in the Order, they shall record:
- Your agreed technical and consultancy requirements ("Technical Requirements");
  - the appropriate acceptance tests and timescales for them ("Tests");
  - Your responsibilities to enable Us to carry out Our obligations under the Contract; and
  - assumptions and qualifications upon which We have based the Contract .
- 24.2 We will determine when an Advanced Solutions Specification is required dependent upon the Products to be supplied.
- 24.3 You accept that We give no warranty in respect of, and that You are responsible for the accuracy and/or completeness of the Technical Requirements, and their suitability for Your business requirements.

### 25. TESTS

- 25.1 We will perform the Tests either upon completion of the entire installation, or upon completion of any agreed phase. These will demonstrate that the Product performs substantially to Your Technical Requirements.
- 25.2 We will notify You when the Tests will take place and Your duly authorised representative should attend and sign the certificate once the Tests have been successfully completed. Once signed, the Tests certificate is evidence of successful completion of all, or part of, the Contract (as applicable). If Your authorised representative does not attend or if You unreasonably withhold or delay Your acceptance, We will provide You with documentary evidence that the Tests have been successfully completed and acceptance will be deemed to have taken place. Acceptance will also be deemed to have taken place if You refuse to allow Us access to install and/or carry out the Tests. Unless otherwise agreed by Us, You agree not to use the Products prior to Your acceptance, other than to complete the Tests. If You do so use the Products, acceptance of the Tests will be deemed to have taken place.
- 25.3 If the Tests are not successfully completed and provided that this not due to a reason listed in clauses 28.5 or 42 You agree to allow Us, with both parties bearing their own costs, and within a reasonable time, to:
- remedy any fault in the Products so

that the Technical Requirements are met or to substitute alternative equipment, software or other items of the same or similar specification in order to do so; or

- If We are still unable to successfully complete the Tests We will work with You to facilitate the purchase by You of any required additional products in order to achieve successful completion of the Tests; or
  - If the Tests are still not successfully completed then You agree to consider any reasonable alternative which We propose (which may include a review of the Advanced Solutions Specification as provided for in clause 26). Alternatively, if an item of Equipment and/or Software fails a Test but the Product Specification does perform substantially to Your Technical Requirements, You may cancel the Contract for the Equipment and Software which solely relate to the individual Technical Requirement which We have failed to meet, as evidenced by the Test failure. In this event, we will reimburse You for any undamaged Equipment and/or Software returned to Us. This clause states Our entire responsibility for failure to meet the Technical Requirements.
- 25.4 If the Tests cannot be successfully completed due to a reason listed in clauses 28.5 or 42 you accept that successful completion is deemed to have taken place and payment will be due in accordance with the agreed terms. We may at our discretion provide services in accordance with the terms specified in Part D below.
- 25.5 On successful completion of the Tests, subject to clause 11.1, We shall be released from any and all obligations and liability arising out of the supply and installation of the Products (other than any agreed on going Services); and We will invoice You for the Products supplied.

### 26 CHANGE CONTROL

- 26.1 Either of us can, at any stage request in writing, a review meeting which will be held as soon as possible.
- 26.2 Either of us may request (in writing) an alteration to any aspect of the Advanced Solutions Specification. This will not be binding upon either of us until:
- both have reviewed the request and proposed any other alterations necessary to the Contract as a consequence; and
  - all changes and consequent pricing variations have been agreed in writing as required in clause 21.1.
- If the alteration cannot be agreed then the Contract will remain as originally agreed.
- 26.3 We reserve the right to make a reasonable charge for investigating any proposed change requested by You under clause 26.1 above, whether or not subsequently implemented and at Our standard consultancy rate from time to time.
- 26.4 Unless agreed in accordance with this clause, We do not represent that the Products supplied will continue to meet





Your Technical Requirements should Your Customer Environment change, or be different from that which was made known to Us at the time of preparing the Advanced Solutions Specification.

- 26.5 If You do not sign the Contract Specification or for any reason it is disappplied to Our Contract with You, You agree that We may at Our discretion cancel the Contract without liability. If We agree to supply the Products without a Contract Specification, You agree that Our sole warranty and obligation will be:
- a) that the Equipment and/or Software supplied will perform in accordance with the functions described in Our, or any applicable third party, then published technical specification for the product within the UK, when operated properly and in the manner specified; and
  - b) that any Services provided will be performed with reasonable skill and care.

## PART D SERVICES TERMS

*Clauses 27 to 33 apply to any Contract for the provision of Services.*

## PART D SERVICES TERMS SCOPE OF SERVICES

*We will provide the Services specified in the Contract. Different Services have different terms applying to them and these are detailed below or otherwise may be detailed in the Order.*

### 28. ALL SERVICES

- 28.1 Where required as part of the Service, You agree to let Our service technician or authorised representative into the property where the Equipment and/or Software is installed in Your normal working hours (or as needed to allow Us to meet Our obligations) to inspect, repair and service the Equipment, take meter readings and a copy of the service log (if appropriate). We will follow any reasonable health and safety rules which may apply at Your premises. You agree to be responsible for providing any personal protective equipment for our staff which is appropriate to Your working environment. You agree that We may suspend Services without liability, if in Our reasonable opinion Our staff are at risk.
- 28.2 You agree to tell Us in writing if You intend to move the Equipment and/ or Software in order that We may update Our service records. If the Equipment or Software is moved, We reserve the right to immediately alter Our charges or to terminate the Contract.
- 28.3 You agree to follow any procedures for problem determination, and any requests that We reasonably make.
- 28.4 Provision of Service for and installation of non Canon manufactured Products are subject to the availability to Us of the necessary parts and third party support services.
- 28.5 Unless agreed otherwise in writing by Us, We will have no liability for, and Services do not cover work needed;
- a) because You have not used, stored (including failure to provide correct environmental conditions) or handled the Equipment and/or Software properly;
  - b) because You are in breach of the terms of any Contract or have not followed Our written instructions for the Equipment and/or Software, or those of the manufacturer;
  - c) because of any disconnection and reconnection of the Equipment, including any preparation necessary for safe transit;
  - d) on a bank or public holiday;
  - e) before 9am or after 5.30pm Monday to Friday or other working hours agreed by Us in writing;
  - f) because of the installation of, damage to, or modification of the Equipment and/or Software by someone else other than Our representatives or because of changes required by You or a third party;
  - g) because You connected other fittings or accessories to the Equipment and/ or Software which We have not approved;
  - h) because of external causes outside Our control which shall include accident, disaster, electrical fault, fault within the internet connection or burglary;
  - i) because of any malfunction or specific requirement of any other item of hardware or software which You have linked to the Equipment and/or Software;
  - j) in respect of items not included in the Contract;
  - k) to correct errors in any non Canon proprietary software or other software not supplied by Us;
  - l) because data is lost or damaged;
  - m) because You have made changes to Your Customer Environment including, Equipment or Software, operating or network operating system, client application software, other software application utilities or other items of hardware (other than as agreed under the provisions of Clause 26);
  - n) because You have altered Your Technical Requirements (where relevant) other than as agreed under the provisions of Clause 26;
  - o) because You have not installed or maintained any error correction, current software upgrades or new releases supplied or made generally available by Us or other relevant third party suppliers or have otherwise not followed Our, or third party supplier's instructions or advice;
  - p) because You have not complied with the Contract terms, specifically clause 12;
  - q) because of a repair necessitated by a virus (or similar) in Your system;
  - r) because the Product demonstrates a fault for which the third party manufacturer has not/does not intend to release a correction either at all or free of charge;

- s) because a third party manufacturer no longer provides the necessary spare parts.

We may in Our discretion provide services in the above circumstances at Our then current hourly and materials charges.

- 28.6 The Products supplied are designed to work at their best using spare parts or other replaceable items (such as consumables) made or recommended for use, by Us (or the third party manufacturer). If anything else is used, You may experience loss of quality or performance to the Products. If this were to occur, We cannot be held liable for any complaint concerning this poor performance. Furthermore there could be instances where the use of such other products may cause actual damage to the Product and in such an event We reserve the right to refuse to carry out repairs or charge for such repairs and all associated costs and We may be obliged to withdraw Service entirely.

## 29. MAINTENANCE SERVICES

- 29.1 The Maintenance Services consist of:
- a) fault repair;
  - b) upon attending a service call, We may provide other maintenance to the Equipment as may be required;
  - c) helpdesk support during the Working Day;
  - d) parts and labour;
  - e) black toner only unless clause 29.2 applies; and
  - f) where available, automated meter reading collection using eMaintenance if You have elected to use it.
- 29.2 Colour toner and clear toner are charged separately (as detailed in the Order) unless the Order specifies that these toners are included in the Impression Charges.
- 29.3 Toner is supplied for use in the Equipment only.
- 29.4 At Our option We will either repair the faulty Equipment and/or part exchange it with one in good working order (including use of appropriate second hand products). Replaced parts of a repairable or reusable nature become Our property.
- 29.5 We may agree separate service levels with You in writing. These may specify response times, helpline support and other specific service details.

## 30. INSTALLATION AND PRE INSTALLATION SERVICES

- 30.1 Some of the Equipment We supply can require a site and/or technical Survey to be conducted prior to installation or You placing an Order. In such circumstances:
- a) You agree to ensure that any necessary actions notified in the survey report, have been implemented prior to delivery; and
  - b) We reserve the right to charge You for additional delivery and storage costs if, at the time of delivery and installation You have not taken the necessary actions.



- 30.2 During installation and if requested by Us, You agree to ensure that a member of Your staff is available and has necessary knowledge of, and authority to access, Your Customer Environment.

### 31. TRAINING AND CONSULTANCY SERVICES

- 31.1 We will provide the Consultancy Services which have been specified in the Order. You agree that some Consultancy Services may not be carried out at Your premises.
- 31.2 On the installation of the Equipment We will supply You with basic user training on the Equipment. If You require additional training from Us We will charge You at our standard rates (prevailing from time to time) which shall include any reasonable travelling and subsistence properly incurred in the course of providing such Services. Depending on the scope of training provided, personnel may not be based locally to You.
- 31.3 Where in the Order, We have agreed to provide additional training You are responsible for ensuring that We have a detailed, comprehensive and accurate briefing document which accurately details Your requirements and to make available all relevant information, resources and documents to enable Us to provide these Services.
- 31.4. In the event that You cancel a booking for Consultancy, We reserve the right to charge cancellation fees according to the following scale:
- a) if cancellation occurs 14 or more days prior to the scheduled attendance date, no cancellation charge shall be payable; or
  - b) if cancellation occurs 13 or less days prior to the scheduled attendance date, 100% of the cost of the booking shall be payable.
- 31.5 Where the Order specifies a number of days of Consultancy which You can call off from time to time, You agree that:
- a) We will invoice You in accordance with the Order;
  - b) the dates on which the Consultancy will take place will need to be pre agreed with Us;
  - c) if the Consultancy takes longer than the time specified in the Order and this is due to delays caused by You, Your employees, agents or subcontractors then You agree to pay such additional charges as may be due; and
  - d) You have to use all of the Consultancy days within 12 months of the date of the Order. If You do not do so, or You do not use any or all of the Consultancy days You agree that no refund shall be due from Us.
- 31.6 Where We agree to provide training and consultancy advice You are responsible for ensuring that We have a detailed, comprehensive and accurate briefing document which accurately details Your requirements and to make available all relevant information,

resources and documents to enable Us to provide the Services.

- 31.7 If agreed by Us, Your agreement will include an agreed training and/or consultancy schedule that is incorporated into the charges. If no such schedule is agreed, or if You require additional training and/or consultancy then We will charge You at our standard rates (prevailing from time to time) which shall include any reasonable travelling and subsistence properly incurred in the course of providing such Services. Depending on the scope of Services provided, personnel may not be based locally to You.

### 32. MANAGED SERVICES

If We contract to provide Managed Services these may vary in scope and content but will be specified and agreed by both parties in writing in the Contract.

### 33. CHARGES

- 33.1 Unless stated otherwise in the Order, the Impression Charges will be based on A4 prints. We reserve the right to charge for A3 size Impressions at a rate which is one and a half times that for A4 Impressions
- 33.2 Where specified in Your service agreement, toner for Your colour Equipment is included free of charge provided always that if Your usage over any 6 month period exceeds the equivalent of what would be expected at 50% A4 document coverage We reserve the right to charge You for the additional toner provided. Details of how We calculate expected percentage coverage are available from Us on request.
- 33.3 You agree to pay Us a call out fee in accordance with Our then current charges for any on-site visit not covered under the Contract.
- 33.4 If We arrange, at Your request, for the provision of a Third Party Support and/ or Maintenance contract then We may, at Our discretion, arrange to pay the sums due under that Third party Contract, on Your behalf. You will remain liable to refund Us for any such payment made. However, We may allow You to repay Us by way of periodical payments over the length of the Third party Contract. In such case, the payment schedule will be agreed with You and the following will apply:
- a) You agree that the sum repaid to Us will include an administration charge; and
  - b) You accept that You will continue to be contractually liable for the full amount payable under the Third Party Contract. If You cancel Your Service including the Third Party Contract prior to the agreed termination date, You must immediately pay Us the full amount outstanding including the administration charge referred to in sub-clause a) above.
- 33.5 We will determine the type of payment schedule that will apply to Your Products. Unless otherwise specified in Your Service Agreement, one of the

following provisions (Clauses 33.6, 33.7 or 33.8) will apply.

- 33.6 If Clauses 33.7 or 33.8 below do not apply, You agree to provide Us with meter readings for the Equipment in the format specified by Us, as and when requested. If We do not receive these We will either:
- a) arrange for one of Our service technicians to take the meterreading when they have serviced the Equipment; or
  - b) use Our records of Your previous readings to estimate the amount if We have not got an actual reading.
- Any difference between estimated and actual readings will be reconciled when We receive the next actual meter reading.
- 33.7 We may at Our discretion, agree with You the provision of a flat payment plan which will on commencement, allow You to pay some or all of Your Service charges for the next 12 months, quarterly in advance or arrears (at Our discretion) by direct debit. In such cases the payment schedule will be agreed with You and the following will apply:
- a) The payment schedule will be calculated on the estimated number of copies both parties agree will be made by You in the next 12 month period.
  - b) If the charges are increased in accordance with Clause 7.7 above, such increases will not apply to Your existing 12 month period for the flat payment plan but will automatically apply to the next 12 month period.
  - c) At the end of each 12 month period, Your account will be reconciled. If You have used less copies than estimated we will credit Your account accordingly. If You have used more copies than estimated, You will have to pay for the additional copies at the agreed rate within 30 days of written notification.
  - d) In addition to Our contractual right to increase charges, You agree that every 12 month period, We will review Your usage and Our Service costs. Thereafter, We will either notify You of any adjustment required to the fixed quarterly fee or suggest an alternative payment scheme to You.
  - e) We will require You to submit one meter reading per machine 7 days prior to the end of each 12 month period for the purposes of reconciliation. If You fail to provide this any subsequent reconciliation will be at the rate prevailing at the time of reconciliation, not the rate agreed in the 12 month period to which the reconciliation relates.
  - f) If You cancel the Direct debit during the course of a 12-month period, we reserve the right to charge you an additional charge (not exceeding 2% of the annual figure) to cover Our administration costs.



## PART E SOFTWARE SUPPORT SERVICES

Clauses 34 to 43 applies where We are providing You with Software Support Services

## PART E SOFTWARE SUPPORT SERVICES

### 34. TYPES OF SOFTWARE SUPPORT

The Order will specify which type of Software Support You have purchased from Us and can be either

- a) Rolling Software Support;
- b) Fixed Software Support; or
- c) Basic Software Support (in which case We recommend that You separately purchase the Licensor's separate maintenance agreement or software assurance agreement).

All of which are further detailed below.

### 35. ROLLING SOFTWARE SUPPORT

Software Support will be provided until terminated in accordance with clause 40 and includes:

- a) the Software identified in the Order;
- b) the supply of any Maintenance Releases or New Full Releases made available by the Licensor; and
- c) any Additional Software Licences/ Modules purchased by You.

### 36. FIXED TERM SOFTWARE SUPPORT

Software Support will be provided for the period of time specified in the Order and includes:

- a) the Software identified in the Order;
- b) the supply of any Maintenance Releases or New Full Releases made available by the Licensor; and
- c) any Additional Software Licences/ Modules purchased by You.

### 37. BASIC SOFTWARE SUPPORT

Software Support will be provided for the period of time specified in the Order and will cover the Software identified in the Order and any Additional Software Licences/ Modules purchased by You.

### 38. SCOPE OF SOFTWARE SUPPORT

- 38.1 All types of Software Support shall include:
- a) Email and/or telephone access during the Working Day to Our Software Support centre in order to register a service call;
  - b) Provision of first line technical support via telephone; and
  - c) Remote diagnosis and, where possible correction of problems using system management tools.
- 38.2 We shall use our reasonable endeavours to ensure that the Software Support meets the levels of performance set out in the applicable appendix to the Order.
- 38.3 On-site support is not included in any type of Software Support. In the event that telephone and remote diagnostics and support fails to resolve a reported problem. We may at Our option, agree to provide on-site support during the

Working Day at Our then current standard rates.

- 38.4 Additional Software Licences/Modules can be obtained and added to the applicable Software Support upon Our written agreement and payment of the relevant Charges. You agree that :
- a) These Conditions will apply to all such Additional Software Licences/Modules;
  - b) Where applicable, Software Support for the Additional Software Licences/ Modules will terminate at the same time as the Software Support for the original Software supplied.

### 39. MAINTENANCE RELEASES FOR ROLLING SOFTWARE SUPPORT AND FIXED TERM SOFTWARE SUPPORT

- 39.1 For the period of the Software Support, We will make available Maintenance Releases to You as and when they are made available to Us by the relevant Licensor.
- 39.2 Maintenance Releases will be supplied to You and installed remotely (where possible) subject to the Conditions.
- 39.3 On-site installation of Maintenance Releases is not included in the Contract and You acknowledge that it may not be possible at all times to install Maintenance Releases remotely. At Your request We may install Maintenance Releases at Your premises and We reserve the right, at Our sole discretion, to charge You separately in accordance with Our then current Consultancy standard rates.

### 40. NEW FULL RELEASES FOR ROLLING SOFTWARE SUPPORT AND FIXED TERM SOFTWARE SUPPORT

- 40.1 For the period of the Software Support, We shall make available to You New Full Releases, including any accompanying documentation, as and when made available by the relevant Licensor.
- 40.2 Such New Full Releases will be supplied to You and installed remotely (where possible) subject to the Conditions.
- 40.3 On-site installation and configuration of any New Full Releases is not included in the Contract but may be provided by Us on Your request at Our then Consultancy current standard rates.

### 41. SOFTWARE SUPPORT CHARGES

- 41.1 With respect to Rolling Software Support, We shall:
- a) Invoice You at the anniversary of Software Support for the next 12 months support;
  - b) e entitled to increase the Charges annually and We shall notify You of any such increases from time to time. If You do not accept the increase then You may give Us notice to terminate the Contract for Rolling Software Support in which case the support will not automatically renew at the end of the then current 12 month period.
- 41.2 With respect to Fixed Period Software Support and Basic Software Support,

Charges will be fixed for the period specified in the Order. We may agree with You to extend the period of the Software Support and this will be liable to additional Charges.

- 41.3 Charges for Additional Software Licences or Modules will be specified by Us from time to time.

### 42. SOFTWARE SUPPORT EXCLUSIONS

- 42.1 In addition to the items listed at clause 28.5, We will have no liability for, and Software Support will not cover work or costs needed:
- a) to evaluate, recover and repair the underlying server and/or database structure infrastructure and its associated data;
  - b) to replace lost, stolen or damaged licensing certificates or media;
  - c) for the provision of replacement hardware components of the Software solution;
  - d) improvements, enhancements for modification to any other software;
  - e) changes required to Your Customer Environment in order to install the Software, any Maintenance Releases or New Full Releases;
  - f) on site visits unless agreed in writing by Canon and which will be subject to payment of Our then current standard rates; or
  - g) a fault which cannot be fixed because You have not allowed Us to install (or in the case of Basic Software Support, You have not arranged for the installation of) a Maintenance Release or New Full Version.
- 42.2 You acknowledge that We may not successfully diagnose or correct all faults or errors.

### 43. REMOTE ACCESS

- 43.1 On Our request, You agree to allow secure remote access to the Software installed within Your Customer Environment to enable Us to provide the Software Support.
- 43.2 You acknowledge that this remote access may necessitate a complete or partial shut down of Your network in certain circumstances. We will give You as much notice as is possible (depending on the particular need for access at that time) and You agree that You will have taken a full back up of all data prior to such access taking place.

### 44. TERMINATION OF SOFTWARE SUPPORT

- 44.1 In addition to the other provisions of these Conditions, it is agreed that: a) We can terminate Software Support on giving You 2 months written notice.
- a) In such case, You will be refunded a pro rata amount for the unexpired period of Software Support paid by You.
  - b) You can terminate Software Support on giving Us 2 months notice. In such case no refund will be payable.



## PART F IN-HOUSE RENTAL

*Clauses 45 to 47 applies where We rent Equipment or Software to You rather than through a third party leasing company.*

## PART F IN-HOUSE RENTAL

### 45. RENTAL PERIOD

- 45.1 The Order will specify:
- the Products being Rented to You;
  - the Rental Charges and invoicing periods;
  - the minimum period for the Rental.
- 45.2 On expiry of the minimum period, the Rental will continue on the same terms and at the same Rental Charge until either of us provides 90 days written notice of termination.

### 46. TERMINATION OF RENTAL

- 46.1 You cannot terminate a Rental without cancelling the associated Services. You cannot terminate Services on Rented Equipment without cancelling the Rental
- 46.2 If you terminate the Rental prior to the end of the minimum period, You must give Us 90 days written notice. If You so terminate and this is not due to our proven breach of Contract, they You agree to pay:
- all Rental Charges and any other amounts already due to Us; and
  - all future Rental Charges You would have been obliged to pay had the

- Rental continued for the remainder of the minimum period, less an amount determined by Us to reflect early payment;
- 46.3 We may terminate the Rental and associated Services during the minimum period if:
- You do not pay the Rental Charges when due;
  - We have reason to terminate the Contract under clause 17; or
  - you allow a third party (not approved by Us) to service the Equipment and/or Software.
- 46.4 If We terminate in accordance with clause 46.3 You will have to pay Us:
- All Rental Charges and any other amounts already due to Us; and
  - All future Rental Charges You would have been obliged to pay had the Rental continued for the remainder of the minimum period, less an amount determined by Us to reflect early payment and after taking into account any monies We receive from selling the Equipment and/or Services after deduction of any agreed residual value for the Equipment at the time of entering the Rental and Our reasonable expenses; and
- 46.5 If We have a right to terminate under clause 46.3 then We can stop providing You with any Services under any contract between Us.

- 46.6 Upon termination of the Rental howsoever effected, You agree that We may enter into Your premises to collect the Rented Equipment and/or Software and You will provide Us with all necessary access to Your premises and Customer Environment to enable Us to do this.

### 47. TITLE AND RISK

- 47.1 Title in the Rental Equipment and/ or Software will remain with Us throughout the Rental. You agree not to make any alteration to the Equipment and/or Software which We have not authorised in writing or permit anything else to be done which is inconsistent with Our ownership of it.
- 47.2 You must not use replaceable items or connect other fittings or accessories to the Equipment which We have not authorised. You must not allow anyone apart from Us to service the Equipment without Our agreement.
- 47.3 You must insure the Rental Equipment and/or Software to its full replacement value. We may from time to time ask You to provide Us with evidence of this insurance and if it is not forthcoming We shall arrange necessary insurance and charge You for the costs we have incurred.

