

EXTENDED WARRANTY & SERVICE CONTRACT AGREEMENT

Rolling Contract: Scope, Terms & Conditions

THIS AGREEMENT IS DATED AND EFFECTIVE FROM: the date specified in Schedule 1.

BETWEEN:

- (1) **THE PARTY** detailed in Schedule 1 (“the Customer” or “Customer”), and
- (2) **CREATIVE PUBLISHING SOLUTIONS LIMITED** (Company Number: 2491267) whose registered office is at CPS House, St. James Place, Cheltenham, Gloucestershire, GL50 3QR (“CPS”).

WHEREAS:

- (A) CPS is an authorised provider of repair and maintenance services (“Services”);
- (B) The Customer wishes to purchase such Services from CPS subject to the terms and conditions of this Agreement.

This Agreement does not become effective, and CPS accepts no claims, until a fully executed copy of this Agreement is received by CPS.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

- 1.1 In these Conditions:
“Product” or “Products” means the products listed in Schedule 1 only; “Warranty Services” or “Services” means the services specified in Schedule 1; “Warranty” or “Warranty Cover” means an umbrella insurance product that provides protection against mechanical breakdown or failure and a remedy in the event of such breakdown or failure subject to the terms of this Agreement; “Warranty Period” or “Service Contract Period” means the period of time, defined in Schedule 1, during which CPS is obliged to provide the Warranty Services and Warranty Cover; “Minimum Period” means the minimum period of time, defined in Schedule 1, during which CPS is obliged to provide the Warranty Services and Warranty Cover; “Minimum Payments” means the minimum number of payments due under this Agreement.
- 1.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.

2. SCOPE OF WARRANTY COVER

- 2.1 Subject to the terms and conditions of this Agreement, the Services shall only be provided in respect of the Products listed in Schedule 1.
- 2.2 Should a fault occur during the Warranty Period or Service Contract Period, that is within the terms of this Agreement, CPS or its authorised service provider will make good by repair any defect and replace component parts as CPS deems necessary subject to the level of Services specified in Schedule 1.
- 2.3 Where specified, CPS will endeavour to supply like for like loan equipment but may, at CPS’s discretion, provide similar equipment or a similar alternative.
- 2.4 During the Warranty Period, any software modifications or updates provided free of charge by the manufacturer will be provided free of charge to the Customer by CPS. All other software upgrades will be chargeable.
- 2.5 With return-to-base warranty options, CPS or its authorised service provider may elect to make an on-site visit if CPS decides that this is the most economic solution for CPS. This option is discretionary and not obligatory.

3. PAYMENT

- 3.1 The minimum number of payments and value of payments due under this contract are Specified in Schedule 1.
- 3.2 In the case of any default in making any of the minimum number of payments due under this Agreement, all minimum payments shall become due and payable immediately. Any payment default is a breach of this Agreement and CPS will no longer be obliged to provide any Services from the date of the breach. Once payment in full has been received CPS will continue to provide Services for the remainder of the Warranty Cover or Service Contract period.
- 3.3 All payments due under this Agreement are subject to CPS’s standard Terms and Conditions of Sale.
- 3.4 All payments due under this Agreement exclude VAT. VAT is payable in addition.

4. DURATION AND TERMINATION

- 4.1 This Agreement will commence from the date specified in Schedule 1. and shall continue for the Minimum Period specified in Schedule 1. and thereafter until terminated by either party giving to the other not less than ninety (90) days notice in writing.
- 4.2 The customer may terminate this Agreement within the Minimum Period by giving CPS 90 days notice in writing and by paying in full the remaining number of Minimum Payments due.
- 4.3 CPS shall have no liability or obligation to the Customer whatsoever following the date of termination in respect of the provision of the Services.

5. WARRANTY LIMITATIONS

- 5.1 Any Product which is not purchased from CPS directly or indirectly via a CPS authorised reseller is not eligible for claims under CPS Warranty Cover unless CPS has agreed in writing to provide warranty cover or a Service Contract.
- 5.2 Any Product that has been damaged or rendered defective as a result of modification or service by the Customer or anyone other than CPS or a CPS authorised service provider is not eligible for claims under Warranty Cover.
- 5.3 Any Product that has been damaged or rendered defective as a result of fitting any spare part by the Customer or anyone other than CPS or a CPS authorised service provider is not eligible for claims under Warranty Cover.
- 5.4 CPS warrants only breakdowns or failures of mechanical or electrical components that result from the correct use of the Products. Items that are subject to wear and tear (such as base glass/transparency lid glass, transparency lid handle, casings, rubber feet, locking screws etc.) are specifically excluded from this Agreement. Any service or repair that is required as a result of the following is not covered under Warranty: damage resulting from acts of God (including without limitation, fires, riots, strikes, floods or explosions); interference from mains supplies or other equipment; use in environmental conditions outside those prescribed for the Products by the manufacturer; negligence, wilful damage, improper or abnormal use of the Products, failure to comply with instructions or procedures recommended by CPS or the manufacturer, fault or operator error caused by the Customer; use of the Product or Products with software or interfaces which were not supplied, recommended or supported by CPS or the manufacturer; the use of unsuitable scanning media or any consumable that does not conform with the manufacturer’s technical specifications; inadequate maintenance or preparation or of the place of installation; damage caused by unsuitable transportation or packing when returning the Product or Products to CPS or a CPS authorised service provider.
- 5.5 CPS DOES NOT WARRANT OR SUPPORT THE USE OF OXYGEN SOFTWARE WITH ANY OPERATING SYSTEM SOFTWARE LEVEL THAT IS INCOMPATIBLE WITH THE OXYGEN SOFTWARE VERSION BEING USED. THE CUSTOMER IS WHOLLY RESPONSIBLE AND LIABLE FOR ENSURING THAT CORRECT OXYGEN SOFTWARE VERSIONS ARE USED AT ALL TIMES.
- 5.6 CPS does not warrant the quality of spare parts used (see also 5.1).
- 5.7 With regard to the Services and any parts supplied by CPS under this Agreement, CPS does not grant any other express or implicit warranty, including, but not limited to any implied warranty or merchantability or fitness for a particular purpose.

6. WARRANTY SERVICES

- 6.1 DURING THE PROVISION OF THE SERVICES, CPS OR CPS’S SERVICE PROVIDER SHALL ONLY USE MANUFACTURER SUPPLIED SPARE PARTS OR OTHER SPARE PARTS RECOMMENDED BY THE MANUFACTURER.
- 6.2 DURING THE PROVISION OF THE SERVICES, CPS OR CPS’S SERVICE PROVIDER SHALL ONLY EMPLOY REPAIR TECHNIQUES & PROCEDURES THAT ARE RECOMMENDED BY THE MANUFACTURER AND THESE TECHNIQUES AND PROCEDURES WILL ONLY BE UNDERTAKEN BY PROFICIENT AND COMPETENT PERSONNEL WHO ARE TRAINED AND CERTIFIED BY THE MANUFACTURER TO CARRY OUT THESE DUTIES.
- 6.3 CPS shall provide the Services during normal working hours: 09:00 to 17:00, Monday to Friday, exclusive of public holidays only.

6. WARRANTY SERVICES (CONTINUED)

- 6.4 CPS or CPS's service provider will attempt to resolve Warranty issues over the telephone initially and may require assistance from the Customer in performing routine diagnostic procedures and checks. The Customer agrees to provide such assistance as appropriate. If the Customer is unwilling to provide adequate assistance CPS shall be entitled to charge for any additional costs that may be incurred by CPS to rectify a problem.
- 6.5 If telephone resolution is not possible, CPS will decide upon the next course of action and arrange for the return of the Product in question or arrange an on-site visit. In the case of a return-to-base repair, the defective product will be repaired and returned as detailed in 6.6, 6.7, 6.8 & 6.9.
- 6.6 Following acceptance of a failure or breakdown by CPS, the CPS returns authorisation procedure should be followed as instructed. A Return Materials Authorisation (RMA) Number will be issued as a means of identifying the Product returned (this number will be used as a reference and should appear on all subsequent correspondence). The Customer should then pack the defective Product into the original shipping and packing materials or use similar packaging that affords suitable protection of the Product. The RMA Number must be noted on the exterior of the packaging. CPS will then arrange to collect the defective Product and provide a loan unit. Once repaired, the defective product will be returned and exchanged for the loan unit.
- 6.7 CPS will cover all shipping costs involved in the swap-out procedure.
- 6.8 A best endeavour will be made to return a repaired Product within five to ten working days from receipt at CPS premises. The repaired Product will then be covered by the remainder of the Warranty Cover.
- 6.9 In the case of Products located outside of the United Kingdom, the Channel Islands and the Republic of Ireland, any goods alleged to be defective shall be returned at the Customer's risk and expense to a site within the United Kingdom nominated by CPS for repair.

7. THIRD PARTY LIABILITY

- 7.1 The customer shall indemnify and hold CPS harmless from and against all losses, claims, costs, expenses, damages and liabilities, including legal fees on a full indemnity basis, that CPS may suffer or be held liable to pay by any third party in respect of death or personal injury resulting from negligent use or operation or deliberate misuse of the Products by the customer or its employees, agents, licensees or invitees.
- 7.2 The customer shall indemnify and hold CPS harmless from and against all losses, claims, costs, expenses, damages and liabilities, including legal fees on a full indemnity basis, that CPS may suffer or be held liable to pay by any third party for the provision or non-provision of the Services pursuant to this Agreement.

8. LIMITATION OF LIABILITY

- 8.1 CPS has no obligation to the customer whether in contract or tort, for breach of statutory duty or otherwise beyond that of a duty to exercise reasonable skill and care in providing the Services.
- 8.2 CPS shall not be liable for any incidental, direct or indirect, special or consequential damages, including without limitations any lost profits arising out of or in connection with this Agreement whether in an action or contract or tort even if CPS had been advised of the possibility of such damages.
- 8.3 CPS shall not be liable in an action, contract or tort (including negligence or breach of statutory duty), misrepresentation or otherwise, and whatever the cause thereof for any increased costs or expenses even if CPS had been advised of the possibility of such damages.
- 8.4 CPS shall not be liable in an action, contract or tort (including negligence or breach of statutory duty), misrepresentation or otherwise, and whatever the cause thereof for any loss of business, contracts, revenues, or savings even if CPS had been advised of the possibility of such damages.
- 8.5 CPS shall not be liable in an action, contract or tort (including negligence or breach of statutory duty), misrepresentation or otherwise, and whatever the cause thereof for any special, direct, indirect or consequential damage of any nature whatsoever suffered by the customer or any third party arising from the provision of the Services even if CPS had been advised of the possibility of such damages.
- 8.6 Claims for compensation for idle time, loss of production, waste of material, or any other indirect damage claim are explicitly excluded.
- 8.7 The liability of CPS to the customer or any third party for physical property damage whether in contract, tort or otherwise caused by the breach or non-performance of any obligation or duty owed by CPS shall in respect of any one incident or series of connected incidents attributable to the same cause be limited to and shall not exceed in any circumstances the aggregate amount paid by the customer in respect of the Services provided.

9. FORCE MAJEURE

Without prejudice to the generality of this Agreement, CPS shall not be liable for any failure on its part to perform any of its obligations where such failure is due to circumstances beyond the direct control of CPS. Such circumstances include the Customer failing to furnish necessary instructions, documents or information, act of God, government action or legislation, lightning, fire, storm, flood, earthquake, war or civil commotion, terrorist act, sabotage, act of vandalism, interruption of transport, strike, lock out or other form of industrial action, accidents or stoppages to works, shortage of labour, materials, equipment, fuel or power, breakdown of machinery or any other cause whatsoever beyond the reasonable control of CPS or its sub-contractors, whether or not such cause exists at the date from when the Services are provided.

10. ASSIGNMENT

- 10.1 This Agreement may not be assigned, transferred, sublet or pledged by the Customer without the prior written consent of CPS.
- 10.2 CPS may assign, transfer, sublet or pledge this Agreement without the customer's prior consent but only to a competent and authorised third party.

11. GOVERNING LAW

This Agreement shall be governed and construed in accordance with English Law and CPS and the Customer submit to the exclusive jurisdiction of the English courts.

12. AMENDMENTS

This Agreement may be amended only in writing, signed by an authorised representative of CPS Ltd.

13. GENERAL

- 13.1 CPS may sub-contract some or all of its obligations and Services provided in whole or part under this Agreement.
- 13.2 If any provision of this agreement is held by any competent authority to be invalid or unenforceable in whole or part, the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected.
- 13.3 Failure by CPS to exercise any of its rights under this agreement shall not be a waiver or forfeiture of such rights.
- 13.4 The Customer shall not employ or offer employment to any person who is an employee of CPS, contracted to CPS or associated with CPS during the term of this Agreement or within one year of its termination for any reason without the prior written consent of CPS.

In Witness whereof, the parties have caused this Agreement to be executed through their duly authorised representatives, on the date set forth above.

Signed for and on behalf of **CPS**:

Name:

Position:

Date:

Signed for and on behalf of the **CUSTOMER**:

Signed:

Name:

Position:

Date:

If you have any questions about these Extended Warranty and Service Contract conditions, please call CPS directly on 01242 285100 or email info@cpsnet.co.uk.

SCHEDULE 1

CONTRACT TYPE: 12 MONTHS ROLLING COMPREHENSIVE SERVICE CONTRACT

EFFECTIVE FROM: x/x/xxxx

PERIOD OF COVER: From 9.00am on x/x/xxxx to 5.00pm on xx/x/xxxx

MINIMUM NUMBER OF PAYMENTS DUE: 12

MONTHLY PAYMENT VALUE: £xxx + VAT (£xxx.xx)

CUSTOMER NAME: JOHN SMITH PUBLICATIONS LIMITED

CUSTOMER ADDRESS: 123 Church Road, London WC1

CUSTOMER CONTACT: John Smith (telephone: 0207 123 4567)

PRODUCTS COVERED: 1 x IQSMART 3 A3 SCANNER

PRODUCT SERIAL NUMBER(S): 444123456

FEATURES OF COVER (SERVICES):

- All Mechanical & Electronic Components and Labour (including bulbs)
- Return to Base and/or On-Site repair (at CPS discretion)
- Loan Machine during repair periods if repair period is prolonged
- All shipping costs paid in both directions (if scanner is returned to CPS for repair)
- Repair coverage: Monday to Friday 9.00am to 5.00pm (excluding bank holidays)
- Telephone Diagnostic Support: Monday to Friday 9.00am to 5.00pm (excluding bank holidays)
- 1 x On-Site Preventative Maintenance Service Visit (includes travelling costs)

- Free Kodak Software Updates (where applicable)
- At least 30% discount available on chargeable Software Upgrades during contract period

- For all support issues please call 01242 285100

IMPORTANT NOTICE:

Please read the Guideline documents and Configuration documents provided with this contract carefully. Please ensure that the correct version of oXYgen scanning software is installed on your host computer. Do not upgrade computer Operating System software level without checking oXYgen compatibility first. Incompatibility between OS software and oXYgen software can cause a variety of operational problems and errors - CPS is not responsible for correcting any such faults under this contract or liable for any damages that may result from such incompatibility.

THE CUSTOMER IS WHOLLY RESPONSIBLE AND LIABLE FOR ENSURING THAT CORRECT OXYGEN SOFTWARE VERSIONS ARE USED AT ALL TIMES. USE OF INCORRECT OXYGEN VERSIONS INVALIDATES THIS CONTRACT.

SPECIAL CONDITIONS:

Annual review of monthly payment level.