

Cloud on Demand Print - Terms and Conditions

1. Definitions

The following terms used in this Agreement are defined as follows:

- 1.1 "Tenant" an on-line storage service area for administering users and temporarily storing data.
- 1.2 "User" refers to an individual designated by the Ordering Party as an user of the Services.
- 1.3 "Administrator" refers to someone designated by the Ordering Party to administer the Tenant, appointed in accordance with this Agreement.
- 1.4 "User ID" refers to an identity number issued by the Service Provider, and the Ordering Party is required to use the User ID to access the Services.
- 1.5 "FUJIFILM's Multifunction Device" refers to a multifunction device manufactured by FUJIFILM Business Innovation and/or its affiliates installed a Special Service Module, registered to the service by a predetermined method of Service Provider.
- 1.6 "Services" refer to the services specified in the Order Form.
- 1.7 "GST" means goods and services tax and has the same meaning given to it in any law imposing a GST including A New Tax System (Goods & Services Tax) Act 1999 (Cth).
- 1.8 "Non-Excludable Rights" has the meaning given in clause 8.1A.
- 1.9 "Service Provider" means FUJIFILM Business Innovation Australia Pty Ltd.
- 1.10 "Order Form" means the ordering mechanism (whether electronic or otherwise) stating the purchase of the Service agreed to between the parties in writing from time to time and which expressly cross-references and incorporates these terms and conditions. Such Order Form shall be deemed incorporated into and part of this Agreement.
- 1.11 "Commencement Date" means the date the Service Provider first provides the Ordering Party access to the Services.

2. Scope of Services

- 2.1 By submitting an Order Form, the Ordering Party irrevocably offers to acquire the Services from the Service Provider. During the term of this Agreement, Service

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Provider agrees to provide the following Services to Ordering Party: (a) via the Internet, an on-demand printing system created at a data center in Japan; (b) 1 Tenant; (c) document uploading function via following software and equipment: (i) Web browser; (ii) PC Driver tools for the service; and (iii) iOS/Android devices; (d) document downloading and printing function via FUJIFILM's Multifunction Devices registered to the service. Please visit <https://www-fbau.fujifilm.com/en/Products/AU-Software-Products/ApeosWiz-Cloud-ODP> for a complete list of FUJIFILM's Multifunction Devices and iOS/Android devices which are compatible with the Services.

3. Change Request Form

- 3.1 The number of Users allowed under this Agreement are expressly stated in the Order Form. If the Ordering Party wishes to vary the number of Users, it has to complete a Change Request Form or submit another Order Form and send it to the Service Provider.
- 3.2. The Ordering Party is only allowed to change the number of Users within the following situations:
 - (a) Number of Users: The number of Users may range from 10 to 1,000 individuals. Any variation to the number of Users shall be in multiples of 10s.
- 3.3. The Ordering Party shall appoint up to two (2) Administrators to administer the Tenant, and up to two (2) persons as their "Designated Contact Persons" who are authorized to make queries on behalf of the Ordering Party. The Ordering Party may appoint the same individual as the Administrator and Designated Contact Person.
- 3.4 For any subsequent changes to the Administrator and/or Designated Contact Person, the Ordering Party shall submit the names and contact details of the new Administrator and/or Designated Contact Person to the Service Provider within one (1) week of their appointment. The Service Provider has a reasonable time to update their records, and shall not be liable for any loss or damage incurred by the Ordering Party as a result of the out-dated records.
- 3.5 The Ordering Party's Administrator shall be solely responsible for appointing such persons as Users of the Services, and granting access to such Users.
- 3.6 The Service Provider shall allocate an User ID to the Administrator, who shall in turn allocate User IDs to the Users, up to the maximum limit allowed under this Agreement. For the avoidance of doubt, one (1) User ID can only be used by one (1) individual, and the sharing of User IDs constitutes a breach of the terms of this Agreement.

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- 3.7 The Ordering Party shall, at its own expense, apply and pay for its own telecommunication lines, internet connection services and all related services ("Third Party Services"), to ensure that it is able to use the Services. The Service Provider shall not be liable to the Ordering Party for the Third Party Services.
- 3.8 If the Ordering Party wishes to use the Services via a FUJIFILM's Multifunction Device, the Ordering Party must ensure that any such device is compatible to access the Services as specified in this Agreement or as otherwise directed by the Service Provider and it has to request the Service Provider to install a Special Service Module in such device at the Ordering Party's own cost.
- 3.9 The Ordering Party agrees that the Service Provider may maintain a log of the Ordering Party's usage of the Services, for purposes of enhancing the Services or Service level.

4. Term of Agreement

- 4.1 The initial term of this Agreement starts on the Commencement Date and continues (unless otherwise stated in the Order Form) for one (1) year ("Initial Term").
- 4.2 This Agreement will be renewed automatically for one (1) year each (each an "Extended Term"), unless either party gives at least one (1) month's prior written notice to the other party to terminate this Agreement.
- 4.3 In the event that the Ordering Party terminates this Agreement without cause during the Initial Term or during any Extended Term, the Ordering Party agrees to pay the Service Provider any unpaid Service Fees for the remaining period of the then current term (irrespective on the payment frequency for the Service Fees).

5. Agreement Service Fees

- 5.1 The Service Fees are stated in the Order Form.
- 5.2 The Service Fees are calculated on a monthly basis, from the Commencement Date to the date of termination or expiry of this Agreement, as the case may be.
- 5.3 The Service Provider may revise the Service Fees at any time, by giving sixty (60) days prior written notice to the Ordering Party.
- 5.4 All Service Fees payable by Ordering Party are exclusive of GST and other applicable taxes and duties.

6. Payment terms

- 6.1. The Service Fees and applicable taxes, including GST, (collectively referred to as “Invoiced Amount”) shall be stated in an invoice issued by the Service Provider to the Ordering Party every month, for the Services rendered.
- 6.2. The Invoiced Amount is due immediately and payable by the Ordering Party by the due date specified in the Order Form, or if not stated therein, within fifteen (15) days from the date of the invoice. Payment may be by way of electronic transfer or such other mode of payment as mutually agreed by both parties, with the Ordering Party bearing the relevant bank charges (if any).
- 6.3. In the event that the Ordering Party fails to pay the Invoiced Amount by the due date, the Ordering Party agrees to pay the Service Provider interest at a rate of 12% per annum (or the maximum rate of interest allowed under the relevant law) on the overdue amount, until the overdue amount is paid in full.

7. Ordering Party’s obligations

- 7.1. The Ordering Party shall be responsible for protecting its Data, including using commercially available anti-virus protection, making its own backup copies, at its own expense.
- 7.2. The Ordering Party shall be solely responsible for the use and protection of their Use IDs and passwords, and shall take the necessary precautions to ensure that unauthorized parties do not gain access to their Tenant or the Data therein. The Service Provider shall not be liable for any loss or damage incurred by Ordering Party due to a breach of this clause by the Ordering Party.

8. LIMITATION OF LIABILITY

- 8.1A Nothing in this Agreement shall be construed as limiting, excluding or modifying any warranty, guarantee or other right enjoyed by the Ordering Party which cannot lawfully be limited, excluded or modified, including any statutory guarantee provided to ‘consumers’ under the Competition and Consumer Act 2010 (Cth) (“Non-Excludable Rights”). Where permitted by law to do so, Service Provider limits its liability for any Non-Excludable Rights to, at Service Provider’s option: (a) in the case of goods, any one or more of the following: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and (b) in the case of services, any one or more of the following: supplying the services again; or the payment of the cost of having the services supplied again.

8.1. TO THE FULLEST EXTENT PERMITTED BY LAW AND SUBJECT TO ANY NON-EXCLUDABLE RIGHTS, THE SERVICE PROVIDER DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES (AND THEIR EQUIVALENTS UNDER THE RESPECTIVE APPLICABLE LAW) EXCEPT FOR THOSE WHICH ARE EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, IMPLIED WARRANTY OF MERCHANTABILITY OR SATISFACTORY QUALITY.

8.2 SUBJECT TO THE NON-EXCLUDABLE RIGHTS AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE SERVICE PROVIDER BE LIABLE FOR ANY DAMAGE OR LOSS INCURRED BY THE ORDERING PARTY DUE TO (A) ANY HACKERS, VIRUSES, MALWARE OR ILLEGAL ATTACKS; (B) ANY UNAUTHORISED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF THE CONTENT OR OTHER DATA; (C) ANY INABILITY TO USE THE SERVICES AS A RESULT OF TERMINATION OR SUSPENSION OF THIS AGREEMENT OR SERVICE PROVIDER'S DISCONTINUATION OF ANY OR ALL THE SERVICE OFFERINGS.

8.3 SUBJECT TO THE NON-EXCLUDABLE RIGHTS AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE SERVICE PROVIDER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES TO DATA LOSS OR CORRUPTION, LOST PROFITS, REVENUE, SAVINGS, GOODWILL, USE OR OPPORTUNITY OR BUSINESS INTERRUPTION, IN ANY WAY ARISING OUT OF OR RELATING TO THE SERVICES.

8.4 SUBJECT TO THE NON-EXCLUDABLE RIGHTS AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SERVICE PROVIDER AND ITS LICENSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER STATUTE OR OTHERWISE) WILL BE LIMITED TO THE AMOUNT WHICH THE ORDERING PARTY ACTUALLY PAY THE SERVICE PROVIDER UNDER THIS AGREEMENT FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM.

9. Change in or suspension of Services

The Service Provider may change or suspend any part of the Services without the Ordering Party's approval, to make functional improvements to the Services, or to respond to illegal attacks, viruses, or other threats as and when they arise. In such event, the Service Provider shall use commercially reasonable efforts to notify the Ordering Party in advance of such intended actions.

10. Force Majeure Events and interruptions to Services

- 10.1 The Service Provider shall not be liable to the Ordering Party for any failure to perform any of its obligations under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority ("Force Majeure Event"). In such event, the Service Provider shall, as far as possible, promptly provide the Ordering Party with written notice of the Force Majeure Event. The Service Provider will be excused from performing its obligations under this Agreement for the duration of the Force Majeure Event, but if the Force Majeure Event lasts longer than thirty (30) days, this Agreement may be terminated by either party with seven (7) days' prior written notice.
- 10.2. The Service Provider may suspend the Services in whole or part at any time, with prior notice to the Ordering Party (with the exception of emergency situations where no prior notice will be given) for purposes of maintenance, inspections, upgrading or repair work.
- 10.3 The Service Provider will not give any refund of the Service Fees if the Services are suspended under clauses 10.1 and 10.2 above.

11. Subcontract

The Service Provider may, from time to time, subcontract the performance of any of its obligations under this Agreement without the prior consent of, or notice to the Ordering Party, but the Service Provider shall remain solely liable to the Ordering Party.

12. Confidentiality

- 12.1 Either party to this Agreement ("Disclosing Party") may from time to time during the term of this Agreement disclose to the other party ("Receiving Party") certain confidential information, including but not limited to technical, marketing, financial, human resource, planning, and other confidential or proprietary information ("Confidential Information"). The Disclosing Party will mark the Confidential Information in a tangible form as "Confidential" or "Proprietary" or with a similar legend. The Receiving Party shall keep the Confidential Information in confidence and shall not disclose it to any third party without the Disclosing Party's written permission. The Receiving Party shall limit the access and disclosure of the Confidential Information to only its officers and employees on a need-to-know basis. Provided however that the Receiving Party's obligation herein shall not apply to any information which is:
- (a) already known by either party without an obligation of confidentiality other than pursuant to this Agreement;

- (b) now or in the future becomes known to the public without breach of this Agreement;
 - (c) lawfully received from a third party without breach of this Agreement;
 - (d) disclosed with the prior written approval of the Disclosing Party; and
 - (e) independently developed without the use of the Confidential Information.
 - (f) required to be disclosed, by applicable law, by any regulatory authority, or in a judicial or administrative proceeding.
- 12.2. The Service Provider agrees to use the Confidential Information provided by the Ordering Party solely for the purposes of this Agreement.
- 12.3 In the event that the Service Provider subcontracts all or part of the Services to a subcontractor, the Ordering Party hereby consents to the disclosure by the Service Provider of the Ordering Party's Confidential Information to such subcontractor. The Service Provider shall ensure that its subcontractor exercises the same degree of care in safeguarding the Ordering Party's Confidential Information as it does to its own confidential information.
- 12.4 Upon the expiry or termination of this Agreement, the Receiving Party shall return or destroy the Disclosing Party's Confidential Information in its possession within ten (10) days of such expiry or termination.
- 12.5 The confidentiality obligations set forth in this clause 12 shall survive for three (3) years after the termination or expiration of this Agreement.
13. Personal information
- 13.1 Each party agrees to comply with the relevant personal data laws and regulations in the country where the Services are provided.
- 13.2 The Ordering Party understands that there is a risk that any personal information that it sends over the internet may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.
- 14 Third party's right
- 14.1 The Ordering Party agrees not to post any materials infringing any third party's rights, including but not limited to copyright, trade secrets or portrait right, through the Services. The Ordering Party also agrees to be solely liable for any infringement claims (actual or alleged) by any owners of such rights.

14.2 Service Provider shall publish the name, appointment or designation, full address, telephone number, facsimiles number and e-mail address of its designated representatives on its website. The designated representative(s) shall receive any notice of infringement of third party's rights served on the Service Provider by owners of such rights, and handle all notices served under the relevant laws.

14.3 Upon receiving any notice of infringement of third party's rights (actual or alleged) from any owners of such rights, the Service Provider may take reasonable steps to remove or disable access to the allegedly infringing cached copies from its servers, without any notice to and without liability to the Ordering Party, in accordance with its internal policy.

15. Damages

15.1. If the Ordering Party is not able to use the Services for three (3) consecutive days as a result of a breach of any of the terms of this Agreement by the Service Provider, the Service Provider agrees to pay a rebate to the Ordering Party, up to the maximum limit of one (1) month's Service Fee.

15.2. Notwithstanding the foregoing, the Service Provider shall not be liable to the Ordering Party for any damages sustained by the Ordering Party in the following circumstances:

- (a) the Ordering Party is unable to use the Services due to a failure in the telecommunication services (including but not limited to telephone and internet connection) provided by third party service providers;
- (b) the Ordering Party is unable to use the Services due to any issues, problems or malfunction of devices, software or network infrastructures owned or operated by the Ordering party; or
- (c) the Ordering Party is unable to use the Services due to the willful act, omission or negligence of the Ordering Party, its contractors or agents.

16. No assignment of rights and obligations

The Ordering Party shall not assign this Agreement without the prior written consent of the Service Provider, which consent shall not be unreasonably withheld or delayed.

17. Termination

- 17.1 Either party may terminate this Agreement for breach of any clause of this Agreement, by giving thirty (30) days' prior written notice specifically identifying the breach and requiring it to be cured, unless the breach is cured within the said thirty (30) day period.
- 17.2 Either party may terminate this Agreement with immediate effect upon written notice, if the other party ceases or threatens to cease to carry on its business or if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other party; or if the other party makes any arrangement for the benefit of its creditors; or if the other party goes into liquidation (save for the purposes of a genuine amalgamation or reconstruction).
- 17.3 Either party may terminate this Agreement at any time without any reason, by giving the other party two (2) months' prior notice in writing.
- 17.4 Notwithstanding clauses 17.1, 17.2 and 17.3 above, the Service Provider may suspend or terminate the Ordering Party's access to and use of the Services at any time, where the Ordering Party is, in the Service Provider's sole opinion, in breach of the terms of this Agreement.

18. Effect of termination

- 18.1 Upon termination of this Agreement, the Ordering Party shall pay the Service Provider for all Services rendered, up to the last day of this Agreement.
- 18.2 Upon the termination of this Agreement, the Service Provider will:
- (a) invalidate the User IDs used by the Ordering Party for the Services;
 - (b) disable the Ordering Party's login to the Services; and
 - (c) delete the Data (if any) remaining in the Tenant.
- 18.3 The Ordering Party shall take all necessary steps to remove all the Data from the Tenant before the Service Provider takes such actions stated in clause 17.2. The Service Provider shall not be liable to the Ordering Party for any loss of Data, if the Ordering Party fails to take such necessary steps to remove the Data.

19. Privacy Policy

The Ordering Party hereby agrees that the acceptance of the terms of this Agreement includes acceptance of the Service Provider's privacy policy, the most current version of which is available at the following URL: https://www.fujifilm.com/fbglobal/eng/common/privacy_policy or by contacting the Service Provider's designated representative.

20. Governing law

This Agreement shall be governed by and construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

21. Miscellaneous

21.1 The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the full rights to require such performance at any time thereafter. The waiver by either party of a breach of any provision hereof shall not be taken, construed or held to be a waiver of the provision itself or a waiver of any breach thereafter or any other provision hereof.

21.2 Captions and headings used herein are for convenience only, are not a part of this Agreement, and shall not be used in construing it.

21.3 This Agreement shall be binding upon and shall inure to the benefit of each party, its successors and assigns.

21.4 A judicial determination that any provision of this Agreement is invalid in whole or in part shall not affect the enforceability of those provisions which are found to be valid.

21.5 This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject-matter hereof, superseding any and all previous proposals, representation or statements, oral or written. Any previous agreements between the parties pertaining to the subject-matter of this Agreement are hereby expressly cancelled and terminated. Any modifications of this Agreement must be in writing and signed by the authorized representatives of both parties hereto.

[End of Agreement]