

SPARE-IN-THE-AIRSM AND EXTENDED CARESM TERMS AND CONDITIONS

A. Epson's Responsibilities

During the term of this Agreement, Epson America, Inc. ("Epson"), its designees, or Epson Customer Care Centers will provide Service, as defined below, of the products listed on the registration form included with the Epson Service Pak (the "Products"). Customer must return the registration form directly to Epson to activate service. If Service requires replacement of the Product or parts, Epson will supply these on an exchange basis. Exchanged products/parts become Epson's property. The replacement Product or parts may be new or refurbished to the Epson standard of quality.

B. Services Included

1. Spare-In-The-Air: "Service" includes whole-unit Product exchange of a replacement unit for defective Product as a supplement to the limited warranty provided with the Product at the time of purchase. Products must be used under normal conditions as specified by the manufacturer. Products provided as replacement units will be Epson standard configurations with factory-set switches and jumpers. Service includes express shipping charges to and regular shipping charges from Customer's locations. Spare-In-The-Air Service is available only for Products located in the United States and Canada.
2. ExtendedCare: "Service" means the provision of replacement parts and labor, except as excluded below, necessary to service and repair the Product for normal use as specified by the manufacturer. Customer is responsible for shipping Product to and from the service location. ExtendedCare Service is available for purchase only in the United States and Canada.

C. Eligibility

Customer must submit its registration form to Epson within ninety (90) days of first Product purchase to be eligible for enrollment. Epson reserves the right to require an inspection of the Product(s) at Customer's expense prior to acceptance of this Agreement and any renewal thereof to verify that each Product is in unaltered, operable condition and in good working order suitable for normal use.

D. Fee

The fee for the initial term of Service is payable in full at the time of purchase. The fee for any renewal term shall be due prior to expiration of the current term and payable on or before the Expiration Date.

E. How To Obtain Service

Customer may obtain Service by following the procedures issued by Epson from time to time.

F. Services Limited

1. This Agreement does not modify the terms and conditions of the limited warranty included with the Product at the time of purchase.
2. Spare-In-The-Air Customers agree to pay Epson's standard rates if excluded services are necessary to restore exchanged units to working condition and to pay such charges upon receipt of invoice. If ExtendedCare Customers authorize the repair of excluded services, they agree that they will pay the usual and customary fees for such work. Services excluded from this Agreement are:
 - a. On-site or in-house service and repair of the Product(s).
 - b. Service made necessary by misuse, abuse, neglect, improper installation, or improper maintenance.
 - c. Installation or removal of non-Epson accessory retrofits, peripheral equipment or computer systems of which the Product may be a part.
 - d. Service on covers, lids or other stationary parts, consumables such as ribbons, batteries, magnetic media, or appearance parts such as interior or exterior finishes or trim.
 - e. Service made necessary by any external cause, including disasters such as fire, flood, lightning, theft, alteration, problems arising from software or hardware not supplied or approved by Epson, power failures or shortages, or repairs or services done by persons other than those authorized by Epson to service the Product.
 - f. Service on Product purchased and/or used outside the United States and Canada.
 - g. Service on third party products not manufactured or sold by Epson which may be installed in or used in connection with the Product.
 - h. Service on Product on which the EPSON label or logo or the rating label or serial number have been defaced or removed.
 - i. Service made necessary by use of incompatible third party products
3. If a Spare-In-The-Air Customer is authorized by Epson to return defective Product and Epson does not receive the returned Product within seven (7) days of shipment of the exchange Product, Customer will be invoiced for each unit not returned at MSRP less 10%. Customer agrees to pay Epson that amount upon receipt of invoice.
4. If a claimed problem cannot be identified or reproduced at the service location, Customer will pay service its usual and customary fee for defects not found.

G. Term and Renewal

1. Spare-In-The-Air: The term shall be for a period of no less than one year and shall begin on the date of purchase and end on the Expiration Date shown on the Enrollment Confirmation Form issued by Epson.
2. ExtendedCare: The term shall be for a period of no less than one year and shall begin on the date of purchase and end on the Expiration Date shown on the Enrollment Confirmation Form issued by Epson.
3. Renewal of Spare-In-The Air or ExtendedCare with the specific "1 year Anytime" service program (up to a maximum coverage period of 5 years) may be made any time prior to its expiration, for an additional period upon written agreement by the parties and payment of the renewal fee. Epson reserves the right not to agree to renewals, modify the terms and conditions applicable to any renewal, and to increase the renewal fee without prior notice.
4. Agreement purchases must be made immediately prior to activation of Service. Purchase of multiple Agreements dated consecutively is prohibited due to changes in Service plans and pricing.

H. Arbitration

ANY DISPUTE, CLAIM, OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE BREACH, TERMINATION, ENFORCEMENT, INTERPRETATION, OR VALIDITY THEREOF, INCLUDING THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE DETERMINED BY ARBITRATION IN ORANGE COUNTY, CALIFORNIA, BEFORE ONE ARBITRATOR. THE ARBITRATION SHALL BE ADMINISTERED BY JAMS PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES OR PURSUANT TO JAMS' STREAMLINED ARBITRATION RULES AND PROCEDURES, AS APPLICABLE. THE ARBITRATOR SHALL FOLLOW ANY APPLICABLE FEDERAL LAW AND CALIFORNIA STATE LAW IN RENDERING AN AWARD. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THIS CLAUSE SHALL NOT PRECLUDE PARTIES FROM SEEKING PROVISIONAL REMEDIES IN AID OF ARBITRATION FROM A COURT OF APPROPRIATE JURISDICTION.

I. REMEDIES; DISCLAIMER OF WARRANTIES

EPSON'S SOLE AND EXCLUSIVE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR EPSON'S FAILURE TO PERFORM IS THAT EPSON WILL, AT EPSON'S OPTION, REPERFORM THE SERVICE. THE WARRANTY AND REMEDY PROVIDED ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESSED OR IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SOME LAWS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES. IF THESE LAWS APPLY, THEN ALL EXPRESS AND IMPLIED WARRANTIES ARE LIMITED TO THE TERM OF THIS AGREEMENT. UNLESS STATED HEREIN, ANY STATEMENTS OR REPRESENTATION MADE BY ANY OTHER PERSON OR FIRM ARE VOID. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG IMPLIED WARRANTIES LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

J. EXCLUSION OF DAMAGES; EPSON'S MAXIMUM LIABILITY

IN NO EVENT SHALL EPSON OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOST PROFITS OR REVENUE, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME, DIMINUTION OF VALUE, LOST DATA, CLAIMS OF THIRD PARTIES, INCLUDING END USERS OR CUSTOMERS, OR INJURY TO PROPERTY, RESULTING FROM THE USE OR INABILITY TO USE THE EPSON PRODUCT OR OBTAIN SERVICE UNDER THIS AGREEMENT, WHETHER RESULTING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT EPSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EPSON OR ITS AFFILIATES BE LIABLE FOR DAMAGES OF ANY KIND IN EXCESS OF THE ORIGINAL RETAIL PURCHASE PRICE OF THE PLAN. SOME STATES DO NOT ALLOW EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

K. Other Provisions

1. Force Majeure: No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including, without limitation, the following force majeure events: (a) acts of God; (b) flood, fire, earthquake, or other potential disasters or catastrophes, such as epidemics, pandemics, quarantines, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) any other similar events or circumstances beyond the reasonable control of the Impacted Party.
2. Other Rights You May Have: The Plan gives you specific legal rights, and you may also have other rights, which vary from jurisdiction to jurisdiction. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.
3. Choice of Law: This Agreement and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of California including its statutes of limitations and Cal. Civ. Code § 1646.5, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California.