

# FULL SERVICE MAINTENANCE AGREEMENT TERMS AND CONDITIONS

## 1. SCOPE OF COVERAGE

For purposes of this Maintenance Agreement "Equipment" includes the equipment listed on page one (1) of this Agreement. "Equipment" means one or more copy machine(s). "Supplies" include but is not limited to toner and developer for the Equipment. **"Supplies" do not include staples or paper.** This Maintenance Agreement ("Agreement") covers labor and material for adjustments, repairs and replacement of parts as necessitated by normal use of the Equipment. Hilliard Office Solutions ("HOS") reserves the right at any time to change any of the terms and conditions herein, and will communicate material changes to Customer. Customer's continued use of HOS's services thereafter will be deemed acceptance thereof.

## 2. METER READING INFORMATION

Customer shall provide HOS an accurate count from the copy meter during the last three (3) business days of the last day of each month, or within 2 business days of any request from HOS. Such reading may be provided by fax, email, or telephone as noted on Page 1, or through our website, <http://www.hilliardos.com>. If Customer fails to provide such reading, HOS may: (i) send a representative to the Equipment Location to retrieve such reading, in which event Customer will incur an additional service charge; and/or (ii) charge Customer an average based on prior months' usage; and/ or (iii) charge Customer based on previous service history records, in which event Customer will incur an additional convenience charge.

## 3. SERVICE CALLS

Service calls under this Agreement will normally be performed between the hours of 8:00 A.M. to 5:00 P.M. Central Time Monday-Friday ("Normal Hours") at the address listed herein for Customer.

## 4. TWILIGHT SERVICE (24 hrs/day; 7 days/week)

Service after Normal Hours, or on weekends or holidays is available on selected products at special after-hours rates ("Twilight Service") which will be invoiced at our then published rates.

## 5. LABOR & REPAIR SERVICES, REPLACEMENT PARTS, AND SUPPLIES

Labor performed during a service call, including lubrication and cleaning of the Equipment and adjustments, repair or replacement of parts necessary to the normal operation of the Equipment, will be covered by Customer's Base Rate. Where the Equipment is interfaced to a computer or computer network, this Agreement covers only the labor, parts, software and updates provided by the Equipment manufacturer. This Agreement does not cover services associated with application software updates on equipment not sold in conjunction with the connected Equipment, hardware or software reconfiguration, modification to files, or program and network expansions. If customer has declined Digital Support Services, computer support will be invoiced on a per-call basis at HOS's current published rates. Title and ownership of all property delivered to Customer under the terms herein is and shall remain vested in HOS, notwithstanding delivery and possession, until the entire invoiced amount is paid in full, and Customer hereby grants HOS a security interest in said property, as well as the right to take all steps necessary to protect such security interest, including but not limited to the right to file a UCC financing statement. It is HOS's intent to work with Customer to ensure Customer has adequate, but not excessive inventory at the Equipment location. HOS reserves the right to determine the appropriate inventory level and to collect excessive inventory.

## 6. ALLOWANCE AND OVERAGE

As used herein, "Allowance" shall mean the number of copies included in Customer's monthly Base Rate. "Overage" shall mean the number of copies over and above Customer's monthly Allowance.

## 7. TERM

The effective date of this Agreement is the date of Customer's signature ("Start Date" or "Anniversary Date"). The Agreement shall continue for either 365 days, or the maximum number of copies shown on the reverse side, whichever occurs first. HOS reserves the right to inspect all Equipment to be covered by this Agreement to determine that it is in good mechanical condition throughout the term of this Agreement. In the event the Equipment requires repair or reconditioning prior to the Start Date of this Agreement, then such services will be charged at HOS's current published rates. This Agreement may be automatically renewed for successive similar periods, provided that Customer is not in Default.

## 8. CHARGES

The initial monthly maintenance charge under this Agreement (the "Base Rate") is set forth on Page 1 hereof. The Base Rate is billed one month in advance. State or local taxes will be added and indicated on each invoice. Any renewal term will include HOS's published rates in effect within ninety (90) days prior to, or thirty (30) days after Customer's Anniversary Date. Customer agrees to pay to HOS the total amount of such charges within fifteen (15) days of the HOS Invoice Date for such charges. Customer understands that alterations, attachments, specification changes or cost of parts, supplies or services may require an increase in maintenance charges and agrees to pay such charges promptly when due. HOS reserves the right to bill surcharges to Customer for excessive costs incurred in providing service under this Agreement, which may include but are not limited to, excessive fuel cost, excessive freight-in or freight-out costs, and excessive parts and/or supplies costs affected by unusual market conditions. If the Agreement includes consumable operating supplies, such as toner, developer, drums, and/or feed rollers, HOS reserves the right to bill a surcharge if average toner coverage exceeds five percent (5%) fill per page. Customer will be invoiced on the basis selected on Page 1: monthly or quarterly. Any invoice not disputed in writing by Customer within fifteen (15) days of the HOS Invoice Date shall be deemed accepted and properly payable. **A Trip Charge will be incurred for all service calls to any Equipment location that exceeds 60 miles round-trip from the nearest HOS office. Each mile in excess of the 60-mile round-trip radius will be charged at the IRS-approved rate at the time of service.**

## 9. OUTDATED MACHINES

"Outdated Machine" means any Equipment that has been out of production for five (5) or more years. When servicing an Outdated Machine, HOS can only provide labor for repair, and those parts and supplies which are reasonably available. If it is determined that parts are not available from any reasonable source, Customer or HOS may terminate this agreement in accordance with the terms hereof.

## 10. RECONDITIONING

When HOS, in its sole discretion, determines that a shop reconditioning is necessary to keep the Equipment within manufacturer's written specifications, HOS will give Customer a written Reconditioning Estimate, itemizing the needed repairs and their cost. Reconditioning charges are not covered by this Agreement. If Customer does not authorize such reconditioning, HOS may discontinue service of the Equipment under this Agreement, and/or may refuse to renew this Agreement at the Anniversary Date. Any service provided thereafter will be on a "per call" basis at HOS's current published rates.

## 11. TERMINATION

Customer may terminate this Agreement by giving written notice to HOS at least three (3) months prior to the Anniversary Date. If Customer terminates the Agreement during the first six (6) months after the Start/Anniversary Date, Customer will pay HOS a fee equal to the greater of either: (A) six (6) times the Customer's monthly Base Charge or (B) the total of the invoices presented to Customer over the previous six (6) months, whichever is greater. If Customer terminates the Agreement at any time thereafter, Customer will pay HOS a fee equal to four (4) times Customer's average monthly

billing of the previous six (6) months HOS reserves the right to collect Customer's remaining Supplies after termination of this Agreement. HOS may terminate this Agreement by giving Customer written notice at least thirty (30) days prior to the Anniversary Date or as provided below.

## 12. BREACH OR DEFAULT

If Customer fails to perform its obligation hereunder or if it does not pay all charges invoiced for maintenance or parts as provided hereunder promptly when due:

- (a) HOS may exercise all available legal rights, including but not limited to any or all of the following: (i) refuse to service the Equipment; (ii) terminate this Agreement and re-invoice Customer for any service calls, including parts, labor, mileage and travel time at prevailing rates for any and all calls placed from the Start/Anniversary Date to the termination date; (iii) furnish any future service on a C.O.D. "per call" basis at published rates; and/or (iv) enter and retake any supplies or Equipment owned by HOS and/or provided under this Agreement;
- (b) Customer agrees to pay a late fee equal to the greater of 10% of the unpaid amount or \$50.00, plus interest of 1.5% per month (or the maximum rate allowed by law, whichever is greater) on the unpaid amount from the due date to the date paid; and
- (c) Customer agrees to pay HOS's cost and expense of collecting any amounts due and owing under this Agreement, including the maximum attorney's fees permitted by law.

## 13. RELOCATION OF EQUIPMENT

Customer agrees to provide HOS with thirty (30) day advanced notice prior to moving the Equipment. If, at Customer's request, HOS moves the Equipment to a different location from that specified in the Agreement, HOS will charge Customer its current published rates for Equipment moving. If the Equipment is moved by anyone not employed or authorized by HOS, then HOS may, at its sole option, terminate this Agreement or may charge, and Customer agrees to pay, an inspection fee of \$150.00 plus the cost of any item that was damaged as a result of the Customer moving the Equipment. Additionally, HOS shall have the right to charge, and Customer agrees to pay, any difference in maintenance charges between the original location and the new location. If Equipment is moved beyond HOS's service area, HOS reserves the right to increase its rates and fees for continued service under this Agreement, taking into account the distance to Customer's new location and HOS's current published rates for service on a "per call" basis.

## 14. UNAPPROVED SUPPLIES

Customer shall only use Supplies which are supplied by HOS to Customer. Customer agrees to purchase staples for the Equipment from HOS. HOS may, at its sole option, terminate this Agreement if the Customer does not use HOS supplied Supplies or staples.

## 15. REPLACEMENT PARTS

In the maintenance of any product, HOS may use used, new, or equivalent to new, parts or assemblies for equal or improved quality. All defective parts and assemblies become the property of HOS. HOS, at its option, may request the return of these parts.

## 16. TELEPHONE SUPPORT AND REMOTE DIAGNOSIS

To ensure that the product is repaired as quickly and efficiently as possible, Customer must first work cooperatively with telephone support to try to repair the product. If the product contains features that enable HOS to diagnose and repair problems with the product remotely, HOS may request that Customer allow such remote access to the product.

## 17. LIMITATIONS.

- (a) This Maintenance Agreement (“Agreement”) covers labor and material for adjustments, repairs and replacement of parts as necessitated by normal use of the Equipment. HOS shall not be obligated under this Agreement to:
- 1) Repair damage resulting from attempts by personnel other than a HOS representative to install, repair or service the product unless directed by a HOS representative;
  - 2) Repair any damage, malfunction, or degradation of performance resulting from improper use or connection to incompatible equipment or memory;
  - 3) Provide any application software support or service involving application hardware;
  - 4) Repair any damage, malfunction, or degradation of performance caused by the use of non-HOS supplied supplies or consumables, or HOS supplies not specified for use with the particular product.
  - 5) Perform user maintenance or cleaning or to repair damage, malfunction, or degradation of performance resulting from failure to perform user maintenance and cleaning as prescribed in published product materials.
  - 6) Repair damage, malfunction, or degradation of performance resulting from use of the product in an environment not meeting the operating specifications set forth in the user manual;
  - 7) Repair misuse, abuse, negligence or causes beyond the control of HOS, including electrical surges, acts of God and natural disasters.
  - 8) Repair any accessories; or
  - 9) Service any product after the limit of its duty cycle has been reached, if applicable.
- (b) Any service identified in the preceding section and provided by HOS at Customer’s request shall be invoiced to Customer at HOS’s then current rates for parts, labor and travel.

#### 18. ENHANCEMENTS OR UPGRADES

Software or firmware enhancements or upgrades are not provided under this Agreement, but may be purchased separately upon their release.

#### 19. SOFTWARE AND FIRMWARE UPDATES

Updates may be required to correct performance problems and will be provided under this Agreement where deemed applicable by HOS. Provided that software updates are available and are provided to HOS from the manufacture of the Equipment, HOS will only maintain support for software and firmware releases that are at the latest and next to latest revision levels.

#### 20. NO WARRANTY

Other than the obligations set forth herein, HOS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR USE, AND/ OR FITNESS FOR A PARTICULAR PURPOSE. HOS SHALL NOT BE RESPONSIBLE FOR DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES ARISING OUT OF THE USE OR PERFORMANCE OR LOSS OF THE EQUIPMENT.

#### 21. CREDIT CHECK

Customer authorizes HOS or its authorized representative to conduct a confidential credit inquiry on Customer’s financial responsibility and credit worthiness at any time during the term of this Agreement.

#### 22. VENUE AND OTHER PROVISIONS

This Agreement shall be governed by and construed according to the laws of the State of Texas. The venue for all claims under this Agreement shall be Midland, Texas. This writing constitutes the entire agreement between the parties and may not be modified unless such modification is made in writing

and signed by duly authorized representatives of all parties hereto. Should any provision of this Agreement be found invalid or unenforceable by any court having jurisdiction, then such provision may be severed and the remainder of the Agreement shall survive in full force and effect. This Agreement is not assignable by Customer without the prior written consent of HOS, and any attempt by Customer to assign any rights, duties, or obligations which arise under this Agreement without such prior consent shall be null and void.

### 23. INTEGRATED AGREEMENT

This Maintenance Agreement, together with HOS's Terms and Conditions of Sale, and any applicable supplements is intended by the Parties as a final expression of their agreement with respect to the purchase of Goods and Services, and a complete and exclusive statement of such agreement, and as such, supercedes all prior and contemporaneous agreements, representations, warranties and understandings of the Parties, whether oral, written or implied.

### 24. CORRECTIVE SERVICE

In the event of product failure, HOS will, at its option, repair the defective product by means of telephone support or on-site service at no charge for parts and labor or replace the product with a comparable product.

To obtain service under this Agreement, the Customer must first contact HOS telephone support personnel. Telephone support personnel will work to resolve issues professionally and quickly, however, the Customer must reasonably assist HOS.

If telephone support is unsuccessful, HOS or its authorized representative will repair the product on-site in accordance with the terms hereof and without charge for parts, labor or travel, or at its option, HOS may provide a comparable replacement product.

### 25. OBLIGATIONS OF CUSTOMER

Customer is responsible for periodic cleaning to keep the Equipment in good operating condition between regularly scheduled maintenance calls. Customer shall permit HOS access to the products whenever service is required. Customer shall ensure that the user cooperates with HOS to the extent necessary to permit service to be performed efficiently and without interruption. Customer shall permit HOS to use any Customer equipment or facilities that HOS reasonably deems necessary for the performance of service. Customer shall ensure that the site meets the environmental specifications contained in the user manual supplied with the product to be serviced. If a product under service fails through operation in a site not meeting HOS' specification HOS may refuse to provide service until the site meets such specifications and or charge for the additional cost associated therewith.

### 26. PERSONNEL

HOS reserves the right to determine the assignment of its employees or its third party contractors in providing service hereunder.