

THIRD PARTY MAINTENANCE AGREEMENT TERMS AND CONDITIONS

1. SCOPE OF COVERAGE

These Terms and Conditions ("Agreement") constitute a legally binding agreement between HOS and Dealer sometimes referred to herein as Third Party Dealer. For purposes of this Agreement "Equipment" includes both the equipment and accessories listed on Page 1 hereof. This Maintenance Agreement ("Agreement") covers Supplies and labor associated with Supplies. "Supplies" includes but is not limited to toner, developer, drums, and imaging unit(s) for the Equipment. "Supplies" do not include staples or paper. This Agreement covers labor and material for adjustments, repairs and replacement of parts as necessitated by normal use of the Equipment. This Agreement does not cover standard key operator responsibilities. This Agreement does not cover damage to the Equipment and/or any parts thereof arising from misuse, abuse, negligence or causes beyond the control of HILLIARD OFFICE SOLUTIONS ("HOS"), including electrical surges, acts of God and natural disasters. If the Equipment is modified, damaged, altered or serviced by anyone not employed or authorized by HOS, or if parts, accessories or components not authorized by HOS are fitted to the Equipment, HOS reserves the right to assess additional charges and/or terminate this Agreement. HOS reserves the right at any time to change any of the terms and conditions herein, and will communicate material changes to Dealer. Dealer's continued use of HOS'S services thereafter will be deemed acceptance thereof.

2. METER READING INFORMATION

Dealer or Customer shall provide HOS an accurate count from the copy meter during the last three (3) business days of each monthly/quarterly billing period, 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 Dealer or Customer fails to provide such reading, HOS may: (i) send a representative to the Equipment Location to retrieve such reading, in which event Dealer or Customer will incur an additional service charge; and/or (ii) charge the Dealer and/or the Customer an average based on prior months' usage; and/or (iii) charge the Dealer and/or the Customer based on previous service history records, in which event the Dealer and/or the 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 Standard 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 incur an additional fee.

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

Labor performed during a service call, including lubrication and cleaning of the Equipment and adjustments will be covered by the Base Rate provided for herein. This Agreement does not cover repair or replacement of manufacturer defects or damage caused by third parties, services associated with application software updates on equipment not sold in conjunction with the connected Equipment. This Agreement does not cover computer hardware or software reconfiguration of network settings, modification to files, or programs, networks and network expansions. The Dealer and/or the Customer will be invoiced on a per-call basis at HOS's current published rates for computer and/or network services. Customer is responsible for periodic cleaning to keep the Equipment in good operating condition between regularly scheduled maintenance calls. Title and ownership of all Parts and Supplies delivered to the Dealer and/or the 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 Dealer hereby grants HOS a security interest in said Parts and Supplies, 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 the Dealer and/or the Customer to ensure the Dealer and/or the Customer has adequate, but not excessive supply 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 the Dealer and/or the Customer's monthly Allowance.

7. TERM

The effective date of this Agreement is the date of Third Party Dealer's ("Dealer") signature. The Agreement shall continue for 365 days 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 Dealer is not in Default. At each automatic renewal HOS reserves the right to modify the terms of this Agreement.

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. Quarterly Base Rates are invoiced in advance of each quarter. Unless Dealer and/or Customer provides HOS with a state sales tax certificate exempting such tax, all State or local taxes will be added and included 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 the Renewal Date. Dealer agrees to pay to HOS the total amount of such charges within fifteen (15) days of the HOS Invoice Date for such charges. Dealer 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 Dealer 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. A convenience charge of 3.5% will be assessed for use of a credit card. A restocking fee will be assessed when appropriate at an amount equal to twenty percent (20%) of the cost of the item being restocked. 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. Dealer will be invoiced on the basis selected on Page 1: monthly or quarterly. Any invoice not disputed in writing by Customer or Dealer 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 50 miles round-trip from HOS's Midland, Lubbock, Abilene, or Dallas offices, whichever is closer. Each mile in excess of the 50-mile round-trip radius will be charged at \$1.60 per mile.

9. OUTDATED MACHINES

"Outdated Machine" means any Equipment that has been out of production for five (5) or more years or at such time as the manufacturer discontinues making the Equipment, whichever is earlier. 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, Dealer or HOS may terminate this agreement in accordance with the terms hereof.

Dealer Initial

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 Dealer a written Reconditioning Estimate, itemizing the needed repairs and their cost. Reconditioning charges are not covered by this Agreement. If Dealer 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 Renewal Date. Any service provided thereafter will be on a "per call" basis at HOS'S current published rates.

11. NON-COMPETE

Dealer agrees that within the Restricted Area, during the term of this Agreement and for three years thereafter ("Noncompete Term"), Dealer will not, directly or indirectly, for Dealer's benefit or for the benefit of another person or entity, engage in any activities relating to or pertaining in any way to the maintaining of Equipment or the purchasing for resell of Supplies. Dealer further agrees that within the Restricted Area for the Noncompete Term, Dealer will not, directly or indirectly, for Dealer's own benefit or for the benefit of another person or entity: (a) persuade or attempt to persuade any of the officers, directors, employees and/or independent contractors of HOS to leave the employment of HOS or to engage in any of the Restricted Activities described in this Covenant Not to Compete; (b) persuade or attempt to persuade any customer or client with whom HOS is transacting or is negotiating to transact business, not to transact business with HOS, or to transact business with another person, firm or company that competes with HOS; and (c) interfere or attempt to interfere with the providing of services, equipment, materials, supplies or other goods by or to HOS to or from any customer, client, vendor, subcontractor, supplier or other person or business entity who utilizes, purchases or supplies services or goods from or to HOS. Restricted Area shall mean any county in any state where HOS has performed services commensurate with the services offered herein, where HOS has a customer, or where Dealer performed work for the benefit of HOS.

12. TERMINATION

Dealer may terminate this Agreement by giving written notice to HOS at least thirty (30) days prior to the Renewal Date. If Dealer terminates this Agreement without the required 30-day written notice, Dealer agrees to pay HOS the following amounts as reasonable liquidation (and not as a penalty) for breach hereof. If Dealer terminates the Agreement during the first six (6) months after the Start/Anniversary Date, Dealer will pay HOS a fee equal to six (6) times Customer's monthly Base Charge or the monthly average of the previous 6 months invoices to Dealer, whichever is greater. If Dealer terminates the Agreement at any time thereafter, Dealer will pay HOS a fee equal to four (4) times Customer's monthly Base Charge or the monthly average of the previous 6 months invoices to Dealer, whichever is greater. To the extent that any dispute arises out of the termination of the Agreement, the prevailing party will be entitled to seek recovery of its reasonable and necessary expenses and attorney's fees. In accordance with Paragraph 5 above, HOS reserves the right to collect Customer's remaining Supplies after termination of this Agreement. HOS may terminate this Agreement by giving Dealer written notice at least thirty (30) days written notice.

13. BREACH OR DEFAULT

If Dealer 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 Dealer 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) Dealer 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) Dealer 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.

14. RELOCATION OF EQUIPMENT

If, at Customer's or Dealer's request, HOS moves the Equipment to a different location from that specified in the Agreement, HOS will charge Dealer 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 inspect the Equipment before and after such move to determine whether to continue services under this Agreement. HOS shall have the option to charge, and Dealer 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.

15. UNAPPROVED SUPPLIES

If Customer uses supplies other than those provided by HOS, and such supplies are determined by HOS to be defective and/or not acceptable and/or to cause abnormally frequent service calls or service problems, then HOS may, at its sole option, terminate this Agreement.

16. 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. Products and support are offered by HOS subject to the terms and conditions of the Supplier, which are available upon request.

17. CREDIT CHECK

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

18. 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 Dealer without the prior written consent of HOS, and any attempt by Dealer to assign any rights, duties, or obligations which arise under this Agreement without such prior consent shall be null and void.

19. INTEGRATED AGREEMENT

This Maintenance Agreement, together with HOS'S Terms and Conditions of Sale, 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.

Dealer Initial