



Cost Per Copy Agreement

LEASE AGREEMENT NUMBER: 1493885

| CUSTOMER INFORMATION | | | |
|--|------------------------------|---|--|
| FULL LEGAL NAME OF CUSTOMER Olton Area Library | | | |
| STREET ADDRESS 701 Main St | | | |
| CITY, STATE, ZIP Olton, TX 79064 | PHONE 806-285-7772 | FAX | |
| BILLING NAME (IF DIFFERENT FROM ABOVE) | | BILLING STREET ADDRESS PO BOX 675 | |
| CITY, STATE, ZIP OLTON TX 79064 | | | |
| EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE) As Stated Above | | | |

| EQUIPMENT DESCRIPTION | | | | | | <input type="checkbox"/> SEE ATTACHED SCHEDULE | |
|---|-------------------------------|-------------------------|-------|-------------------------|-------|--|-------|
| TYPE, MAKE, MODEL NUMBER, SERIAL NUMBER, AND INCLUDED ACCESSORIES | NOT FINANCED UNDER THIS LEASE | BEGINNING METER READING | | MONTHLY IMAGE ALLOWANCE | | CONTRACT USAGE PER IMAGE CHARGE (PLUS TAX) | |
| | | B&W | COLOR | B&W | COLOR | B&W | COLOR |
| 1 Xerox VersaLink C7020/SS2 Copier System | <input type="checkbox"/> | | | | | .0129 | .079 |
| | <input type="checkbox"/> | | | | | | |
| | <input type="checkbox"/> | | | | | | |
| | <input type="checkbox"/> | | | | | | |
| | <input type="checkbox"/> | | | | | | |
| TOTAL CONSOLIDATED MONTHLY IMAGE ALLOWANCE AND CONTRACT USAGE PER IMAGE CHARGES (IF CONSOLIDATED) | | | | | | | |

METER FREQUENCY **Monthly**

| TERM AND PAYMENT SCHEDULE | | | |
|----------------------------------|--|------------------------|--------------------------|
| TERM IN MONTHS 60 | MONTHLY BASE PAYMENT AMOUNT* \$104.97 | 60 Day Deferral | *(PLUS APPLICABLE TAXES) |
| ORIGINATION FEE* \$425.00 | PAYMENT PERIOD IS MONTHLY UNLESS OTHERWISE INDICATED | | |

TERMS AND CONDITIONS: (THIS LEASE CONTAINS PROVISIONS SET FORTH ON THE SECOND PAGE OF THIS LEASE, ALL OF WHICH ARE MADE A PART OF THIS LEASE)

1 **Definitions.** The words "you" and "your" mean the legal entity identified in "Customer Information" above, and "we," "us" and "our" means Benchmark Business Solutions Inc. "Party" means you or us, and "Parties" means both you and us. "UCC" means the Uniform Commercial Code. "Equipment" means the items identified in the Item Description section above and in any attached Equipment Schedule. "Lease" means this Cost Per Copy Agreement. "Lease Payment" means the Monthly Lease Payment specified above. "Inception Date" will be the date the Equipment is delivered to you or any later date we designate. If we designate a later Inception Date, you agree to pay us an additional amount equal to the periodic payments due under this Lease prorated for the period between the date the Equipment is delivered to you and the Inception Date.

2 **Lease, Payments, Taxes and Late Payments.** You agree and represent all Equipment was selected by you based upon your own judgment and you want us to provide you the Equipment, and you agree to lease the same from us. You agree to pay us each Lease Payment and all other amounts that become due and payable under this Lease. This Agreement will begin on the date the Equipment is installed or any later date we designate, where your first Lease Payment is due 30 days following the date this Agreement begins with each subsequent Lease Payment due on the same date each month thereafter, whether or not we invoice you. If any payment is not paid in full by five (5) days after its due date, you will pay a late charge of the greatest of ten percent (10%) of the amount due or \$26.00, not to exceed the maximum amount permitted by law. For each dishonored or returned payment instrument, you will be assessed the applicable returned item fee which shall not exceed \$35. Restrictive covenants on any payment instrument will not reduce your obligations or affect our rights. You will pay when due, either directly or by reimbursing us, all taxes and fees relating to the Equipment and this Lease. Sales or use tax due upfront will be payable over the term with a finance charge.

CUSTOMER LEASE ACCEPTANCE

BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT YOU ARE ENTERING INTO A NON-CANCELLABLE LEASE AND THAT YOU HAVE READ AND AGREE TO ALL TERMS AND CONDITIONS SET FORTH ON PAGES 1 AND 2 OF THIS TWO-PAGE LEASE.

| | | | |
|-------------------|-----------|-------------------------|----------------|
| (As Stated Above) | | James M. Dehorch | 8/28/19 |
| CUSTOMER | SIGNATURE | PRINT NAME & TITLE | DATE |

ACCEPTANCE OF DELIVERY

The Customer hereby certifies that all the Equipment: 1) has been received, installed, and inspected, and 2) is fully operational and unconditionally accepted.

SIGNATURE: X NAME AND TITLE: DATE:

LESSOR ACCEPTANCE

| | | | |
|-------------------------------------|-----------|--------------------|------|
| Benchmark Business Solutions | | | |
| LESSOR | SIGNATURE | PRINT NAME & TITLE | DATE |

1607 Broadway, Lubbock, TX 79401

ADDITIONAL TERMS AND CONDITIONS

3. **Meter Readings, Image Charges, and Annual Adjustments.** Each month during the term of this Lease, you are entitled to make the total number of images shown under Image Allowance (or Total Consolidated Image Allowance, if applicable) each period during the term of this Lease. If you make more than the allowed images in any period, you will pay us an additional amount equal to the number of the excess images made during such period multiplied by the applicable Contract Usage Per Image Charge. Regardless of the number of images made in any period, you will never pay less than the Base Payment Amount. You agree to provide us with the actual meter readings on any business day as designated by us, provided that we may estimate the number of images used if such meter readings are not received within five days after being requested. We will adjust the estimated charge for excess images upon receipt of actual meter readings. You agree that the Base Payment Amount and the Contract Usage Per Image Charges may be proportionately increased at any time if our estimated average page coverage is exceeded. After the end of the first year of this Lease and not more than once each successive twelve-month period thereafter, the Base Payment Amount and the Contract Usage Per Image Charges (and, at our election, the Base Payment Amount and Contract Usage Per Image Charges under any subsequent agreements between you and us that incorporate the terms hereof) may be increased by a maximum of 10% of the then existing payment or charge. Images made on equipment marked as not financed under this Lease will be included in determining your image and overage charges.
4. **Equipment and Software.** Equipment may contain or have software delivered with it. You agree that as to software only that (a) you will execute a separate license agreement with a third party for such software, (b) we do not own the software and cannot transfer any interest in it to you, and (c) we have no responsibility whatsoever for any such software or license agreement under this Lease. You agree the Equipment (including software) is for your business use in the United States (including its possessions and territories), will not be used for personal, household or family purposes and is not being acquired for resale. You will not attach the Equipment as a fixture to real estate or make any permanent alterations to it.
5. **Non-Cancellable Lease.** THIS LEASE CANNOT BE CANCELLED OR TERMINATED. YOUR OBLIGATION TO MAKE ALL PAYMENTS, AND TO PAY ALL OTHER AMOUNTS DUE OR TO BECOME DUE, IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF THE PERFORMANCE OF ANY THIRD PARTY OR US.
6. **Lease Term.** The Initial Term, which is indicated above or identified in any attached Equipment Schedule, commences on the Inception Date.
7. **End of Lease Options.** At the end of the Initial Term, or any renewal term (the "End Date"), this Lease will renew for successive twelve (12) month terms, unless you a) provide at least sixty (60) but no more than one hundred twenty (120) days' prior written notice to us of your intent to return the Equipment (including software) and b) you return the Equipment, at your expense, to a location we specify. You cannot pay off this Lease or return the Equipment prior to the End Date without our consent. If we consent, we may charge you, in addition to other amounts owed, an early termination fee equal to 5% of the amount we paid for the Equipment.
8. **Equipment Delivery and Maintenance.** Equipment (including software) will be delivered to you at the location specified above or in an Equipment Schedule. Equipment (including software) may not be moved to another location without first obtaining our written consent. You shall permit us to inspect Equipment and any maintenance records relating thereto during your normal business hours. You are responsible for keeping the Equipment in good working order, and you have entered into a separate maintenance agreement with us to fulfill that obligation. Payments under the Lease may include amounts owed under that agreement, which amounts may be invoiced as one payment for your convenience. We may charge you a Monthly Supply Freight Fee to cover our costs of shipping supplies to you.
9. **Equipment Return.** If the Equipment (including software) is returned to us, it shall be in the same condition as when delivered to you (normal wear and tear excepted) and, if not in such condition, you will be liable for all expenses we incur to return the Equipment to such condition. You are solely responsible for protecting and removing any confidential data/images stored on the Equipment prior to its return for any reason.
10. **Equipment Ownership, Labeling and UCC Filing.** If and to the extent that this Lease is deemed a security agreement under the UCC, and otherwise for precautionary purpose only, you grant us a first priority security interest in your interest in the Equipment (including software) and all proceeds thereof in order to secure your performance of this Lease. We are and shall remain the sole owner of the Equipment. You agree to keep the Equipment (including software) free from any liens or encumbrances and to notify us if there is a change in the jurisdiction of your organization. We may label the Equipment to identify our ownership interest in it. You authorize us to file by any permissible means a UCC financing statement to show, and to do all other acts to protect, our interest in the Equipment. You agree to pay any filing fees and administrative costs for the filing of such financing statements.
11. **Assignment.** YOU MAY NOT ASSIGN, SELL, PLEDGE, TRANSFER, SUBLET OR PART WITH POSSESSION OF THE EQUIPMENT (INCLUDING SOFTWARE), THIS LEASE OR ANY OF YOUR RIGHTS OR OBLIGATIONS UNDER THIS LEASE (COLLECTIVELY "ASSIGNMENT") WITHOUT OUR PRIOR WRITTEN CONSENT. If we agree to an Assignment, you agree to pay the applicable assignment fee and reimburse us for any costs we incur in connection with that Assignment without notice to us. We may sell, assign or transfer all or any part of the Equipment, this Lease and/or any of our rights or obligations under this Lease. Our assignee will have the same rights that we have (to the extent assigned), but none of our obligations, and you agree not to assert against our assignee any claims, defenses, counterclaims, recoupments, or set-offs that you may have against us. You agree and acknowledge that any Assignment by us will not materially change your obligations under this Lease.
12. **Liability.** WE ARE NOT RESPONSIBLE FOR ANY LOSSES, DAMAGES OR INJURIES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, TO YOU OR ANY THIRD PARTY CAUSED BY THE EQUIPMENT (INCLUDING SOFTWARE) OR ITS USE, WHETHER ARISING FROM TORTIOUS CONDUCT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER LEGAL OR EQUITABLE THEORY. You agree to reimburse us for, and to defend, indemnify and hold us harmless on an after-tax basis against, any costs, expenses, damages, fines, settlements, claims or liability arising out of or relating to this Lease or the Equipment (including software) or its use, including reasonable attorneys' fees and disbursements.
13. **Equipment Warranty Information and Disclaimers.** WITH RESPECT TO EQUIPMENT (INCLUDING SOFTWARE), WE DISCLAIM, AND YOU WAIVE, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE, AND WE MAKE NO REPRESENTATIONS OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, ITS SUITABILITY, FUNCTIONALITY, DURABILITY, OR CONDITION. We hereby assign to you any warranty rights given to us with respect to the Equipment and, if the Equipment is returned to us, such rights are deemed reassigned by you to us.
14. **Default and Remedies.** You will be in default under this Lease if (1) we do not receive any payment within ten (10) days after the date it is due, or (2) you breach any other obligation in this Lease or any other agreement with us. If you default, we may, in addition to other remedies, require you to promptly return the Equipment (including software) to a location we specify, at your expense, and require immediate payment, as liquidated damages for loss of bargain and not as penalty, of: (a) all amounts then due, plus interest from the due date until paid at the rate of one and one-half percent (1.5%) per month; (b) the sum of all Lease Payments remaining in the Initial Term (less the fixed maintenance component thereof as reflected on our books and records) and (c) Taxes. If you do not return the Equipment as required above, you agree to pay us the then determined fair market value thereof as of the end of the Initial Term. You agree to pay all costs, including attorneys' fees and disbursements, incurred by us to enforce this Lease.
15. **Risk of Loss and Insurance.** You assume and agree to bear the entire risk of loss, theft, destruction or other impairment of the Equipment (including software) upon delivery. You agree to maintain commercial general liability insurance acceptable to us. You shall, at your expense, (a) keep the Equipment insured against loss or damage for a minimum of its full replacement value under a comprehensive policy of insurance or other equipment replacement coverage with an insurance carrier of your choice, which coverage and carrier is satisfactory to us, (b) name us as a loss payee under such policy, and (c) provide proof of insurance satisfactory to us within thirty (30) days after you execute this Lease. If you fail to maintain property loss insurance satisfactory to us and/or you fail to timely provide proof of such insurance, we have the option, but not the obligation, to secure property loss insurance on the Equipment from a carrier of our choosing in such forms and amounts as we deem reasonable to protect our interests. If we secure insurance on the Equipment, we will not name you as an insured party, your interests may not be fully protected, and you will reimburse us the premium which may be higher than the premium you would pay if you obtained insurance, and which may result in a profit to us through an investment in reinsurance. If you are current in all of your obligations under the Lease at the time of loss, any insurance proceeds received will be applied, at our option, to repair or replace the Equipment, or to pay us the remaining payments due or to become due under this Lease, plus our booked residual, both discounted at 3% per annum. No loss or damage to Equipment (including software), or our receipt of insurance proceeds, shall relieve you of any of your obligations under this Lease.
16. **Finance Lease and Customer Waivers.** You and we agree this Lease is a "finance lease" governed by UCC Article 2A. To the extent you are permitted by law, you waive (a) all rights and remedies under Article 2A (Sections 508-522) of the UCC, and (b) any rights you now or later may have under any statute or otherwise which require us to sell, lease or otherwise use any Equipment to reduce our damages including our realization of the remaining value of the Equipment, or which may otherwise limit or modify any of our rights or remedies.
17. **Authorization of Signer and Credit Review.** You represent that you may lawfully enter into, and perform, this Lease, that the individual signing this Lease on your behalf has all the necessary authority to do so, and that all financial information you provide completely and accurately represents your financial condition. By having your authorized representative sign this Lease, you agree to furnish financial information that we may request now and in the future, including your tax identification number and you authorize us to obtain credit reports on you now and in the future.
18. **Original Document.** The parties agree that the original hereof for enforcement and perfection purposes, and the sole "record" constituting "chattel paper" under the UCC, is the paper copy hereof bearing (i) the original or a copy of either your manual signature or an electronically applied indication of your intent to enter into this Lease, and (ii) our original manual signature. THIS LEASE MAY NOT BE AMENDED OR SUPPLEMENTED EXCEPT IN A WRITTEN AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES AND NO PROVISIONS CAN BE WAIVED EXCEPT IN A WRITING SIGNED BY US.
19. **Jurisdiction, Venue and JURY TRIAL WAIVER.** This Lease shall be governed by the laws of the state in which our (of, if we assign this Lease, or our assignee's) principle place of business is located. You agree that any suit relating to this Lease shall be brought only in a state or federal court in such state. You irrevocably consent and submit to the jurisdiction of such courts, and you waive any right to transfer of venue. Each party waives any right to a jury trial.
20. **Miscellaneous.** Your obligations under the "Liability" Section commence upon execution, and survive the expiration or earlier termination, of this Lease. This Lease constitutes the entire agreement between the Parties as to the subjects addressed herein, supersedes any prior agreements (including purchase orders), and representations or statements not included herein are not part of this Lease and are not binding on the Parties. If a court finds any term of this Lease unenforceable, the remaining terms will remain in effect. The failure by either Party to exercise any right or remedy will not constitute a waiver of such right or remedy.

APPLICABLE TO GOVERNMENTAL ENTITIES ONLY

You hereby represent and warrant to us that as of the date of the Lease: (a) the individual who executed the Lease had full power and authority to execute the Lease on your behalf; (b) all required procedures necessary to make the Lease a legal and binding obligation against you have been followed; (c) the Equipment will be operated and controlled by you and will be used for essential government purposes for the entire term of the Lease; (d) that all payments due and payable for the current fiscal year are within the current budget and are within an available, unexpended, and government purposes for the entire term of the Lease; (e) you intend to pay all amounts payable under the terms of the Lease when due, if funds are legally available to do so; (f) your obligations to remit amounts under the Lease constitute a current expense and not a debt under applicable state law; (g) no provision of the Lease constitutes a pledge of your tax or general revenues; and (h) you will comply with any applicable information reporting requirements of the tax code, which may include 8038-G or 8038-GC Information Returns. If funds are not appropriated to pay amounts due under the Lease for any future fiscal period, you shall have the right to return the Equipment and terminate the Lease on the last day of the fiscal period for which funds were available, without penalty or additional expense to you (other than the expense of returning the Equipment to the location designated by us), provided that at least thirty (30) days prior to the start of the fiscal period for which funds were not appropriated, your Chief Executive Officer (or Legal Counsel) delivers to us a certificate (or opinion) certifying that (a) you are a state or a fully constituted political subdivision or agency of the state in which you are located; (b) funds have not been appropriated for the applicable fiscal period to pay amounts due under the Lease; (c) such non-appropriation did not result from any act or failure to act which you are located; (d) funds have not been appropriated for the applicable fiscal period to pay amounts due under the Lease. You agree that this paragraph shall only apply if, and to the extent that, state law precludes you from entering into the Lease if the Lease constitutes a multi-year unconditional payment obligation.

Maintenance Agreement - New Equipment

| | | | | |
|--|--|---------------------------------------|-------|------------------------------|
| CUSTOMER (hereinafter referred to as "You" or "Your") | | | DATE: | 8/22/2019 |
| FULL LEGAL NAME Olton Area Library | | | | |
| INSTALL ADDRESS 701 Main | | City, State and Zip Olton TX 79064 | | County |
| METER COLLECTION SOFTWARE CONTACT <i>Jocelyn Mandrell</i> | | EMAIL ADDRESS | | PHONE NUMBER 806-285-7772 |
| BILL TO ADDRESS (if different from above) P.O. Box 675 | | City, State and Zip Olton TX 79064 | | County |

Agreement Summary:

See Appendix B NO Sales Rep: Steven Jones

| Device Make | Device Model | Monthly Service Base Amount | Install Location <small>*if different from above</small> | Monthly Image Allowance | | Contract Usage Per Image Charge (Plus Tax) | |
|-------------|--------------|-----------------------------|---|-------------------------|-------|--|----------|
| | | | | B&W | COLOR | B&W | COLOR |
| Xerox | C7020/SS2 | \$0.00 | | 0 | | \$0.0129 | \$0.0790 |
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Agreement Options

| | |
|--------------------------------------|---------|
| Billing Frequency Option | Monthly |
| Contract Term | LEASE |
| Monitoring Software | NO/\$10 |
| Electronic Invoicing | NO |
| Smart Center Analyst Services (SCAS) | NO |
| Auto Quote | NO |

Included: All Travel, Parts and Labor (including drums, PM kits, toner and developer), Access to the Benchmark Smart Center
Not Included: Paper, Staples, Exterior Plastic, and Glass

**Installation of meter collection software is required for all print devices as specified in the full terms and conditions. Failure to provide access to monitoring software, will result in a \$10 monthly admin fee per device for manual meter collection.

**Base Charges are billed in Advance and Overage is billed in Arrears.

**Billing payment period is monthly unless otherwise indicated.

**\$10 per device Includes: Set up of print drivers on new computers, install network scanning on server, install Scan-To-PC software, setup scan to email, setup fax & LAN fax, setup equipment accounting.

**When monitoring software alerts Benchmark that new equipment has been installed a specialist will automatically send you a quote to add the device to a service agreement.

Special Provisions:

Pricing Fixed for the Term of the Lease

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THIS PAGE, THE REVERSE SIDE, ATTACHED EQUIPMENT LIST, ANY APPLICABLE ADDENDUMS, ALL OF WHICH PERTAIN TO THIS AGREEMENT AND WHICH YOU ACKNOWLEDGE HAVING READ. THIS AGREEMENT IS NOT BINDING UNTIL ACCEPTED BY US. YOU CERTIFY ALL ACTIONS REQUIRED TO AUTHORIZE EXECUTION OF THIS AGREEMENT, INCLUDING YOUR AUTHORITY, HAVE BEEN FULFILLED.

| | | | |
|--|---|------------------------------------|--|
| SUPPLIER: Benchmark Business Solutions | | CUSTOMER: (As Stated Above) | |
| By: <u><i>Steven Jones</i></u> Date Accepted: _____ <small>Benchmark Authorized Signature</small> | By: <u><i>James M. Dehosh</i></u> Date Accepted: <u>8/26/19</u> <small>Signature</small> | | |
| Print Name & Title: <u>Steven Jones</u> | Print Name & Title: <u>James M. Dehosh</u> <u>County Judge</u> | | |

Maintenance Terms & Conditions

GENERAL TERMS

- 1. Definitions.** The words "you" and "your" mean the legal entity identified in "Customer Information" fields above, and "we," "us" and "our" mean Benchmark Business Solutions, Inc. "Device(s)" means the items identified in "Equipment" above and in any attached Equipment Schedules, or future Addendums. "Base" rates refer to static monthly charges for service. "Allowance" means the number of copies included in the Base charge. "Usage Per Image Charge" means the applicable prints or copies made in excess of any stated allowance.
- 2. Payments and Late Payments.** You agree to pay us the full amount due for all Base charges, Usage charges, and billable service or supply charges by the due date listed on the invoice. If any amount payable to us is not paid when due, you will be subject to interruption of covered services and a late charge up to three (3) percent of the overdue balance. Billing disputes must be submitted to us no later than the due date listed on the invoice to avoid late charges or service interruption. ACH or Credit Card draft payment method may be required for certain coverage plans or contract terms.
- 3. Renewal.** We may annually increase both the Base rate and Overage rates by amounts determined at our discretion, but not to exceed 15% of the then current payment and/or rate in each year.
- 4. Term.** The term of this agreement will be based on the length selected above or based on the length of active lease agreements, whichever is longer. Minimum term requirements may vary based on equipment lease agreements and selected coverage plans. Commencement date and coverage will begin on the date of new equipment installation or ten (business days) from the date of confirmed monitored status, whichever is later.
- 5. Covered Equipment.** Services selected above will be provided to those devices listed under Equipment.
- 6. Cancellation Notice.** We maintain responsibility covered under customer selected services for the full term of this agreement until either party provides written notice of cancellation with 60-days' notice. If your agreement term is based on an active equipment lease agreement, all lease terms and conditions must be met before cancellation requests are accepted. If we elect to cancel this agreement, written notice will be sent to the contact and address listed above.
- 7. Liability.** The parties agree that we will not be liable for any consequential damages of any nature caused to the business or property of Owner of Equipment ("Company") by any failure, defect, or malfunction of equipment to be maintained by us.
- 8. WARRANTY.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, WE WARRANT (A) THAT ALL PERSONNEL PERFORMING SERVICES HEREUNDER BY OR ON BEHALF OF US WILL HAVE APPROPRIATE TRAINING AND EXPERIENCE AND (B) ALL EQUIPMENT IS IN ACCORDANCE WITH INDUSTRY STANDARDS, AND ALL SUPPLIES AND MATERIALS ARE OF GOOD QUALITY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING (AND WITHOUT LIMITING ANY OBLIGATION OF US TO MAKE REPAIRS UNDER THIS AGREEMENT), YOU EXPRESSLY AGREE AND ACKNOWLEDGE THAT IN NO EVENT SHALL ANY MANUFACTURER'S WARRANTY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, BE DEEMED GIVEN BY OR OTHERWISE TRANSFERRED OR APPLIED TO US.
- 9. EQUIPMENT WARRANTY DISCLAIMER.** WE HAVE MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO THE GOODS AND SERVICES BEING PROVIDED THAT HAS BECOME ANY BASIS OF THIS BARGAIN. FURTHER, WE HAVE MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO THE GOODS OR SERVICES BEING PROVIDED THAT HAS CREATED OR AMOUNTED TO AN EXPRESS WARRANTY THAT THE GOODS WOULD CONFORM TO ANY SUCH AFFIRMATION OR PROMISE. WE DISCLAIM ANY WARRANTY OF MERCHANTABILITY WITH RESPECT TO THE GOODS OR SERVICES PROVIDED BY THIS AGREEMENT. WE DISCLAIM ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSES WHATSOEVER WITH RESPECT TO THE GOODS OR SERVICES BEING PROVIDED UNDER THIS AGREEMENT. COMPANY AGREES THAT WE SHALL NOT BE LIABLE FOR DAMAGES RESULTING FROM AN ALLEGED BREACH OF THIS AGREEMENT BEYOND THE COST OF ONE YEAR'S SERVICE AND MAINTENANCE UNDER THIS AGREEMENT.
- 10. GOVERNING LAW, CONSENT TO JURISDICTION AND VENUE OF LITIGATION.** THIS AGREEMENT AND EACH SCHEDULE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. YOU AGREE THAT ANY DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT WILL BE ADJUDICATED IN THE FEDERAL OR STATE COURT LOCATED IN LUBBOCK COUNTY TEXAS. YOU HEREBY CONSENT TO PERSONAL JURISDICTION AND VENUE IN THAT COURT AND WAIVE ANY RIGHT TO TRANSFER VENUE. EACH PARTY WAIVES ANY RIGHT TO A TRIAL BY JURY.

BREAK/FIX SERVICE TERMS

1. We agree to maintain all equipment listed, in a normal operating condition. All costs for Labor, Parts, Travel and Service will be borne by us, subject to the terms of this agreement and based on specific plan options selected. Non-covered charges for labor, parts, or travel will be billed at the then current rates.
2. All necessary parts will be replaced, at no additional cost, provided the cost of those parts does not exceed the total value of the equipment. If the cost of necessary parts exceeds the total value of the equipment, we will notify you with suggested replacement options. Replacement cost is your responsibility. If the replacement is purchased from us, a trade-in credit may be offered toward the cost of a new device.
3. We will not be responsible for maintenance in the event of: Damage caused by Accident, Misuse, Act of God, Line Voltage Problems, Neglect or Failure To Follow Factory Operating Instructions, or if maintenance or repairs are performed by anyone other than our personnel. It also ceases if competitive supplies are used, or if the damage occurs as a result of your abuse or improper handling of the device or supplies.
4. All equipment will be serviced upon your request, during our normal business hours (8 a.m. to 5 p.m. local time, except weekends and holidays). Request for service outside our normal business hours will be provided on a best effort basis and, if available, will be billed at overtime rates plus travel.
5. We, at our discretion, may authorize our approved maintenance subcontractors or approved service providers to perform maintenance and repairs to the Devices. Devices located outside our local service areas will require subcontractor coverage for any onsite service needed.

TONER AND SUPPLY TERMS

1. All cost for toner and ink consumables, and standard shipping will be borne by us for all devices covered by this agreement and actively reporting through the Monitoring Software. We agree to supply you with all toner and ink consumables required to operate the Devices. We agree to provide auto supply replenishment for those devices using Monitoring Software. You must purchase staples and paper separately.
2. All toner and ink consumables provided as a part of this agreement in the standard course of business or as Safety Stock shall at all times remain our property. You may use the toner and ink consumables pursuant to the terms of this Agreement, but you shall not have any ownership rights in or to the toner or ink consumables. You shall promptly return to us all unused items supplied by us under this agreement. You shall not be charged for any toner or ink consumables in use upon the expiration or termination of this Agreement. Any items not returned shall be billed by us to you at the then current cartridge retail purchase price.
3. Auto supply replenishment is scheduled based on individual device performance, coverage, and usage, and may vary. Waste Toner Containers are not available for auto shipment. Other certain items may not be eligible for auto shipment based on device model and supply item type. Covered items not eligible for auto shipment will be provided at no additional cost, but must be requested by you as needed to allow for standard shipping time. Additional requests for toner and ink consumables will be subject to approval based on current usage and shipment history. Any customer request for additional items will be considered Safety Stock unless otherwise approved. Flat rate overnight shipping amounts can be quoted at the time of order.
4. Cost-per-image and cartridge pricing is based on an industry-standard 5% page coverage model. Toner and ink consumables ordered or requested based on excessive page coverage may be subject to a mid-term cost-per-image escalation or billing for additional cartridges.
5. Any defective toner or ink consumable items provided to you by us must be reported and returned to us within 30 days of receiving a replacement item. If defective item is not returned, the replacement item may be billed at then current retail price. Standard shipping for defective items and replacements will be covered by us.

METER READING REQUIREMENTS

Monthly meter readings are required for each covered device.

1. Meter collection. Those devices reporting through Monitoring Software will be collected by us. Devices not reporting for any reason will require your submission until monitoring is restored.
2. Estimated Meters. Estimated meters are based on historical volume usage. If historical volume usage is unavailable, a minimum estimation of 50 mono impressions will be applied. If estimated meters are issued for three (3) consecutive billing cycles, you may become subject to invoicing monthly data collection fees and prevailing hourly billable rate for labor and travel to collect accurate meter readings.
3. Meter Adjustments. Any billing issued based on estimated meters are not eligible for billing adjustments, but will not be responsible for additional overage charges until current meters exceed billed meters. Additional estimations will cease until such time that the current meters exceed previously billed estimates, as long as accurate meters are being submitted monthly.

MONITORING SOFTWARE. Monitoring Software is involved, You grant Permission to Install and Maintain.

1. Customer Refusal or Non-Response. Customers refusing these Monitoring Software terms or not-responding to our requests for installations or updates may disqualify printing devices from certain coverage, delay existing services, or become subject to invoicing monthly data collection fees and prevailing hourly billable rate for labor to collect meter readings.
2. Device Changes. You agree to notify us in writing of any contact person or location changes regarding covered devices. You assume responsibility for estimated meter readings, delayed service and supply fulfillment in the case of device changes not reported.

ANALYST CONSULTING & SMART CENTER ANALYST SERVICES

1. If Analyst Consulting services are included in the purchase of a printing device from us, our trained and certified employees will work with your IT personnel (if applicable) to setup all covered equipment and software, according to machine configuration, following equipment delivery for the first ninety (90) days following installation. Following the completion of those 90 days or in the case that Analyst services were not included in the Purchase Agreement, you will be responsible to complete the work yourselves or agree to pay us to provide the work at standard billable rates.
2. Smart Center Analyst Services are considered separate and apart from Break/Fix technical services