



Agreement

Client Name: City of McKinney Contact Person: Don Grammar
Billing
Telephone Number: 972-547-7591 Fax #: 972-547-2600 E-mail Address: dgrammar@mckinneytexas.org
Billing Address: 115-B Industrial Blvd. McKinney Texas 75069
Street Address/PO Box City State Zip code
Billing E-mail: phollis@mckinneytexas.org Billing Contact: Patti Hollis

Program Worksheet

Term: 36

Order No: _____

Mono Cost Per Print: 0.0155

MBS Sales Rep: Stephen Meyer

Mono Prints Included: 200,000

Effective From: January 5th 2010 to December 31st 2013

Color Cost Per Print: 0.145

To Be Billed: ☒ 1st

**Schedule A
Schedule B
Schedule G
Must be completed.**

Items Included*:

Parts
Labor
Toner
Maintenance Kits
Consumables

(*Shipping included on these items)

Color Prints Included: 20,000

Billing: ☒ Monthly

Toner Type:

Compatible ☐

Monthly Base Charge: \$6,000.00

OEM ☒

☐ Houston ☒ Dallas ☐ Fort Worth

Customer's Initials

Initial Covered Equipment:

See Attached

Schedule A

Schedule B

Schedule G

* 144 units

* _____ units

* _____ units

*** Initial Covered Equipment can be modified throughout the contract with equipment additions and deletions with Schedule A Addendum.**

Service Calls

Marimon will provide all service calls as requested by the customer on the next business day. Service is to be performed during normal working hours (8:00 a.m. to 5:00 p.m. daily) not including Saturdays, Sundays or Holidays. Service calls that are required outside of the normal working hours will be assessed the normal printer hourly rate of \$120 plus parts.

Coverage Worksheet

This agreement becomes effective upon receipt of a signed contract. It will remain in force for the period indicated on the worksheet and will be renewed automatically. The customer agrees to pay the then current rate at the beginning of each new period. Marimon reserves the right to discontinue service until past due receivables (30 days from invoice date) are paid in full.

I. The **Print Check Platinum Agreement** is based on the customer's usage and is billed at the 1st of every month. The invoice is due within 30 days. MBS has no obligation to provide maintenance and supplies described herein unless the customer is current in all payments to be made to MBS under this Agreement.

II. Upon expiration of the initial term of this Agreement, this Agreement will automatically renew for successive one (1) year terms unless the Customer provides written notice of non-renewal at least sixty (60) days before the end of the term. Upon renewal, the PrintCheck Platinum agreement rate may be increased, not to exceed 10%. This Agreement may not otherwise be canceled.

III. This Agreement may not be assigned.

IV. This Agreement shall be governed by Texas law. If this Agreement is placed in the hands of an attorney for collection, customer shall be liable for all attorney's fees and costs of collection. Venue shall be in Harris County, Texas.

V. This Agreement constitutes the whole agreement between MBS and the customer and may be amended only in writing signed by MBS and the customer.

VI. Transition Billing: You agree to pay to us an interim payment from and including the commencement date through, but not including the payment due date of the month next following the Commencement date (the "Interim Payment Period") at the rate equal to 1/30th of the minimum monthly payment set forth herein for each calendar day during the Interim Payment Period.

VII. Remittance:

a. Payment, Failure to Remit Payment: MBS will be due by date specified on Invoice. If any part of a payment is late, you agree to pay a late charge of 1.5% of the past due amount or, if lower, the maximum charge allowed under applicable law. Failure to pay invoices when due shall constitute cause for suspension of termination of services by Marimon provided Marimon has given written notice to Client of such failure to pay.

b. Cost Adjustments: At the end of the first year of this Agreement and once each successive twelve month period, Marimon may increase the base usage charge per print and the per print charge over the base minimum by a maximum of 10% of the existing charge.

VIII. Program Fee: Client agrees to pay a fixed monthly base charge the "Monthly Base Charge" (MBC), plus all applicable taxes. The MBC includes the equipment identified in Schedules A of this Agreement, and the maintenance and supply services. The MBC is calculated on the basis of cost per print multiplied by a monthly minimum number of prints. Excess color prints and excess Mono prints will be billed at their respective rates identified above on a monthly basis.

IX. Maintenance and Supplies: The charges established in this Agreement include payment for the use of the designated Equipment, accessories, maintenance (during Regular Service Hours; 8:00 a.m. to 5:00 p.m. local time, except weekends and holidays), inspection, adjustment, parts replacement, and cleaning material required for proper operation, as well as toner, developer, maintenance kits, and consumables. Client must purchase paper and staples separately. Marimon will bill Client separately for any requested service, supplies, or maintenance on Equipment not listed on Schedule A at prevailing rates.

a. Equipment Eligible for Coverage: This Agreement covers the Equipment, all of which shall be located at ("Client's Site(s)"). Client represents and warrants that, other than as set forth on Schedule A, there is no other equipment located at Client's Site(s) capable of using Marimon maintenance and supplied toner cartridges. To the best of Client's knowledge, there are no Pre-Existing Conditions, other than those set forth on Schedule B attached hereto.

b. Definition of Services Provided: Marimon agrees (a) to perform only those repairs involving worn Equipment components that have failed during ordinary use of the Equipment under normal operating conditions (trays, covers, and other non-consumable parts are not covered), (b) to provide regularly scheduled maintenance with respect to the Equipment (c) to supply Client with all toner required to operate the Equipment (except as may be modified by Schedule B attached hereto). All Magnetic Ink Character Recognition toner ("MICR toner") requirements must be specifically identified within this Agreement, otherwise it will be assumed that this consumable type is chargeable to Client by Marimon. Requests for services outside of Regular Service Hours will be provided on a best effort basis at Marimon's prevailing time and material hourly rate. Such charges for services outside of Regular Service Hours are in addition to the prepaid Monthly Base Charge. This Agreement does not cover after-hours service, shop overhauls, and service made necessary by accident, fire, water, or natural disasters.

c. Access to Equipment: Marimon shall have the right to access Client's Site and any other Client premises that may house Equipment covered under this Agreement upon reasonable notice for access with Client supervision during regular work hours. Marimon reserves the right to invoice the Client at Marimon's prevailing time and material hourly rate, separate from the MBC, when access to the Equipment is denied for greater than fifteen (15) minutes, when the Client initiated the request for Service.

d. Loss of Damage of Equipment: Client is responsible for all risk of loss, including any missing Equipment or parts, and destruction of or damage to the Equipment, and agrees to promptly notify Marimon in writing of any loss. No such loss relieves Client from the payment obligations under this Agreement. An average calculated monthly volume will be applied to the Equipment in question and these pages will be billed for estimated usage from the last billed meter until date of damage or loss notification to Marimon.

e. Authorized Maintenance Providers: Marimon, at its discretion, may authorize its approved maintenance subcontractors or approved service providers to perform maintenance and repairs to the Equipment. In cases where Marimon will manage your third party service agreement on your behalf, then all sums currently due under that agreement must be paid in full before Marimon will assume any obligation or responsibility.

f. Repair Responsibility: Marimon's responsibility ceases if persons make repairs to the Equipment other than a Marimon authorized representative or subcontractor. It also ceases if competitive supplies are used, or if the damage occurs as a result of consumer abuse or improper handling.

g. Ownership and Control of Toner Cartridges: All toner cartridge supplies provided under this Agreement shall at all times remain the property of Marimon. Client may use the toner cartridges pursuant to the terms of this Agreement, but Client shall not have any ownership rights in or to the toner cartridges. In the event this Agreement is terminated Client shall make available all toner cartridges for pick-up by Marimon within three (3) business days after the date this Agreement is terminated. Client shall not be charged for any toner cartridges in use upon the expiration of this Agreement. Any toner cartridges not returned shall be billed by Marimon to Client at the prevailing cartridge retail purchase price. The ordering of cartridges significantly in excess of the number of prints produced may be charged to Client by Marimon.

i. Addition of Equipment to Agreement and Right of Inspection: Client shall notify Marimon promptly upon installing any additional equipment ("Additional Equipment") at Client's Site capable of using Marimon supplied toner cartridges. Additional Equipment will be listed as an Additional Equipment Schedule A.

1. If the Additional Equipment is of the same model as any of the Equipment serviced by Marimon under this Agreement then, upon installation, such Additional Equipment shall automatically be covered by and considered Equipment under the terms of this Agreement. Billings or surcharges for Additional Equipment will be reflected in the billing cycle immediately following the billing cycle in which the Additional Equipment is installed. If Client adds Additional Equipment the MBC charges may be adjusted accordingly at Marimon's discretion.

2. If any such Additional Equipment is used equipment, Client represents and warrants to Marimon that, except for Pre-Existing Conditions fully disclosed to Marimon prior to such Additional Equipment being covered by this Agreement, all of the Additional Equipment shall, on the date such coverage commences, be in good working order. Marimon shall be entitled to take a physical inventory of the Additional Equipment upon or prior to its being covered by this Agreement to determine whether they are in working order. In the event, as of the date coverage commences under this Agreement, any Additional Equipment is not in good working order, Client shall have such Additional Equipment repaired at Client's sole expense and, until such Additional Equipment is so repaired, any Additional Equipment with Pre-Existing Conditions shall not be covered under this Agreement. An initial meter reading of zero (0) is agreed, unless the Client provides timely information to the contrary, for any equipment that meets the conditions of i.1.

X. Limitation of Liability: Marimon shall have no responsibility to the Client or any other person or entity with respect to consequential or incidental liability caused by any equipment or replacement parts or units, or Service provided by Marimon, including, but not limited to, any interruption of service, loss of business or anticipatory profits, or consequential damages resulting from the use or operation of the Equipment, even if Marimon has been advised in advance of the possibility or likelihood of such damages. In no event shall Marimon be liable for loss of profits or any indirect, special or consequential damages arising out of any breach of this Agreement by Marimon, even if Marimon has been advised in advance of the possibility or likelihood of such damages. Without limiting the application of the foregoing limitations on damages, in no case shall the total damages payable by Marimon under or in connection with this Agreement exceed the dollar value of this Agreement.

XI. Digital Collection Service (DCS):

a. Permission to Install and Maintain Digital Collection Service: Marimon will provide ("DCS") that enables Marimon to monitor usage of, and print counts produced on, the Equipment. Client agrees that Marimon shall have the right, at any time during the term of this Agreement, to install the Tracking Software on one or more of Client's computer networked station(s) or print servers. Client agrees to provide Marimon, during normal business hours, access to Client's computer networked station(s) or print servers to enable Marimon to upgrade, modify or maintain the Tracking Software or to install new releases or additions to the Tracking Software. Under no circumstances will the Tracking Software provide Marimon access to Client information other than information directly related to this Agreement. Client agrees to not delete or remove the Tracking Software or to alter, modify or otherwise render it unusable during the term of this Agreement without the prior written consent of Marimon. If Client disagrees, then Marimon retains the right to invoice Client the prevailing hourly billable rate for labor required to obtain these meter readings, per meter reading cycle. Marimon shall apply an estimated monthly volume to any and all Equipment that cannot be accessed.

b. No License, other Prohibition: Nothing herein shall be construed as granting a license to Client for the use of the Tracking Software. Client may not, nor may Client permit or cause any other person to (a) use or copy the Tracking Software, in whole or in part, in any manner, (b) modify, translate, reverse engineer, decompile, or disassemble the Tracking Software, (c) rent, lease, loan, resell, distribute, use in a client-server network to provide third parties access to, or otherwise transfer the Tracking Software, or (d) remove any proprietary notices on the Tracking Software.

c. Intellectual Property Rights: All rights (including all intellectual property rights, whether recognized currently or in the future) in and to the Tracking Software (including any source code, executable code, tools and/or libraries related to the Tracking Software) will at all times be owned by Marimon. No modifications and/or use by client of the Tracking Software shall under any circumstances transfer any right, title, or interest in or to the Tracking Software to Client or any third party.

d. Tracking Software Warranty, Liability: Client acknowledges that the Tracking Software will be installed on Client's server(s) "as is" without warranty of any kind, either express or implied, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Marimon does not warrant that the Tracking Software will be error free or will operate without interruption. Marimon shall in no event be liable to Client or any third party for any special, consequential, incidental, or indirect damages in connection with the Tracking Software. If the software is found to cause issues on the Client's networked station(s), and these issues can be reasonably associated to the installation of the software through uniform software through uniform software testing and tracing methodologies, Marimon's liability will be limited to the removal of said Tracking Software from the Clients environment.

XII. Miscellaneous:

a. Notices: Notices must be given in writing and will be deemed given five (5) days after mailing to the other party's business address.

b. Authority: Client represents that: (1) Client has authority to enter into this Agreement, and (2) this Agreement is signed by a Client authorized officer, representative, or agent.

c. Entire Agreement Regarding Maintenance and Supplies: This Agreement contains the entire Agreement and understanding of the parties with respect to the Maintenance and Supplies. There are no representations, inducement, promises, or agreements, oral or otherwise, not embodied herein or also embodied in any attached agreement. Any and all prior discussions, negotiations, commitments, and understandings relating to Service, Maintenance, or Supplies are merged herein. There are no conditions precedent to the effectiveness of this Agreement other than as stated herein, and there are no related collateral agreements existing between the parties, other than any agreement attached hereto.

d. Agreement Renewal: The Term of this Agreement will be extended automatically for successive twelve (12) month Terms unless Client sends Marimon written notice on non-renewal no sooner than one hundred twenty (120) days and no later than thirty (30) days before the end of the Term.

e. Non-Appropriation of Funds: The parties understand that as long as Customer has sufficient appropriated government funds to make the payments hereunder, it will keep this agreement in effect through all the renewal terms and make all payments. If Customer does not have sufficient appropriated government funds, Customer has the right to cancel this Agreement with MBS. Official legal documentation must be provided to MBS, proving the actuality of the non-appropriation of annual government funds in order to utilize this right. Upon verification of the non-appropriation of annual government funds, Customer will be released from any obligations in this Agreement.

f. Waiver of Breach: The failure of any party hereto to insist upon strict performance of any of the Agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, shall not be construed to be a waiver or relinquishment of performance of any agreement, or of any such option or right, but the same shall be and remain in full force and effect.

g. Interpretation and Fair Construction of Contract: This Agreement has been reviewed and approved by each of the parties. In the event it should be determined that any provision of this Agreement is uncertain or ambiguous, the language in all parts of this Agreement shall be in all cases construed as a whole according to its fair meaning and not strictly construed for nor against any party.

h. Amendment and/or Modification: Neither this Agreement nor any term or provision hereof, may be changed, waived, discharged, amended, or modified orally, or in any manner other than by an instrument in writing signed by all of the parties hereto.

h. Validity: In case any term of this Agreement shall be determined to be invalid, illegal, or unenforceable, in whole or in part, the validity of any of the other terms of this Agreement shall no in any way be affected thereby.

i. Corrections: Client authorizes Marimon to insert missing information or to correct information including, but not limited to, Client's proper legal name, serial numbers, or the Equipment description as necessary.

j. Software: Performance issues related to software and/or connectivity are not covered under the terms of this Agreement. Any warranties related software will be those offered by the manufacturer and will be passed directly to the user.

k. Software/Hardware: Connectivity and performance issues related to software and non-standard hardware are not covered under the terms of this Agreement. Any warranties related to these solutions, which include but are not limited to: HP Digital Sending Software, WebJet Admin, Auto Store, any OCR software, computers and scanners, will be those offered by the manufacturer and passed directly to the user.

l. Costs and Attorney's Fees: In any legal action related to or arising out of this Agreement or any attached Agreement, the prevailing party of parties shall be entitled to recover from the other party reasonable attorney's fees and other costs incurred. Attorney's fees covered by this paragraph include, without limitation, lawsuits, arbitration, fees incurred in bankruptcy proceedings to modify or vacate any automatic stay of such legal action or proceeding, in appeals, and in post-judgment collection services.

"Marimon" Marimon Business Systems, Inc.	"Client"
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: