

## TOTAL ASSET MANAGERS, LLC TERMS AND CONDITIONS

By accepting these terms, Total Asset Managers, LLC ("TAM") agrees to provide and the undersigned "Customer" agrees to accept maintenance service listed on Exhibit A, the Equipment and Features List, and for any additional "Equipment" and "Features" that may be added by Customer, subject to written acceptance by TAM.

**1. TERMS OF AGREEMENT.** The "Term" of this Agreement begins and ends on the dates as listed in Exhibit A, unless sooner terminated in accordance with the provisions of this Agreement. It will automatically renew for successive one-year terms, unless either party exercises its option to terminate this Agreement. To exercise its option to terminate at the end of a Term, a party must deliver a written notice of termination to the other party that is received no later than sixty (60) days before the last day of the then-existing Term. This Agreement may be terminated by either party if the other party has failed to comply with its terms and conditions. The Customer may remove individual Equipment and/or Features by giving sixty (60) days' written notice to TAM.

**2. RESPONSIBILITIES OF THE CUSTOMER.** The Customer will maintain environmental conditions on its site for the duration of this Agreement as specified by the original equipment manufacturer. The Customer shall provide TAM with full and free access to the Equipment, and a safe place in which to perform maintenance service. The Customer shall also maintain a current backup of the Operating System and other applicable software programs, configurations and data. Should full unit replacement be required, it is customer's responsibility to acquire, at their own expense, any s/w licensing that is required that does not come bundled with the replacement unit. Should any person other than TAM service representatives repair, modify, or perform any maintenance service on any Equipment as listed on Exhibit A, and as a result, TAM is required to restore the Equipment to good operating condition, the Customer will be billed separately per the call rates and terms in effect at that time.

**3. INSPECTION AND REPAIR.** TAM reserves the right to perform an on-site or virtual inspection of any Equipment covered by this Agreement. The Equipment shall be made available to determine if it is in good operating condition. Until the inspection has been performed, or unless TAM accepts written certification from Customer that the equipment is in good operating condition, TAM cannot guarantee the quality or approach of its maintenance services. Any repairs or adjustments that are required to bring the Equipment into good operating condition are not included in this Agreement. Customer has the choice of using TAM service representatives

to perform the needed repairs under a separately negotiated contract, or bring the Equipment into good working condition with another vendor. TAM reserves the right to adjust the Equipment and Features List after the inspection, which shall be negotiated in good faith with the Customer. TAM may terminate this Agreement if the Equipment is not brought up to good working condition.

**4. RESPONSIBILITIES OF TAM.** TAM shall maintain the Equipment and Features listed on Exhibit A or other amendments, in good operating condition, according to the hours of coverage as listed in Exhibit A. Maintenance service includes on-call remedial maintenance including: lubrication, adjustments, and replacement of parts as warranted. TAM shall exchange faulty hardware for new, or reconditioned to perform as new, hardware. Faulty hardware parts shall then become TAM property. All services are dependent upon hardware availability on reasonable terms. If hardware cannot be replaced or if parts are no longer available, TAM shall work with Customer to find a mutually acceptable solution. Maintenance service is limited to only those adjustments or repairs that are the result of normal usage, wear, and tear.

**5. EXCLUSIONS FROM TAM MAINTENANCE SERVICE.** The following services are outside the scope of maintenance service provided by TAM service representatives: **(a)** Electrical work external to the Equipment; **(b)** Modems/telephone lines; **(c)** Repair of damage which adversely affects the Equipment's operability or serviceability. Damage is described as follows: caused by fire, flood, water, lightening, transportation, or due to neglect or misuse; **(d)** Repair of damage caused by the Customer's improper use, management, or supervision of the Equipment, including electrical power, air conditioning, or humidity control, or damage which is caused by the use of the Equipment for purposes other than for which it is designed; **(e)** Furnishing platens, drums, batteries, supplies, or other accessories, including media such as tapes and disk packs; **(f)** Furnishing printer consumables: fusers, maintenance kits, feed rollers, separation, transfer toners, ribbons, thermal print heads, jet print head bleeder kits and lines, and scanner lamps or bulbs; **(g)** Systems engineering services or software support, including programming, diagnosis of application software problems, hardware or software upgrades, restoration of operating systems, programs, and files, or preparation of Customer's media for such files; **(h)** Maintenance or repairs based on Customer's unauthorized attempt to repair or maintain the Equipment, or any changes, modifications, or alterations in or to the Equipment. Customer will contact TAM for authorization prior to attempting repair or maintenance of the covered Equipment. Excluded services noted above may be performed by a separately negotiated Agreement.

## **6. INVOICES, PAYMENTS, AND CHARGES.**

- a. Maintenance and other charges will be invoiced in advance and are due and payable within 30 days of receipt of invoice. TAM reserves the right to adjust the specified charges if the Equipment specifications, attachments, or features of any item or Equipment are changed after the start date. Charges for a partial-month's service will be prorated on the basis of a 30-day month. All invoices unpaid thirty (30) days after the invoice date will have interest applied at the rate of 1.5% per month. Customer agrees to pay all costs involved in collecting overdue accounts, including reasonable attorney's fees. TAM may terminate maintenance service by giving ten (10) days' written notice to the Customer when Customer is in payment default.
- b. Rates and fees shall remain unchanged for the first term of this Agreement. TAM may negotiate a price change with the Customer after the first term.
- c. Any unscheduled on-call remedial maintenance not included in Exhibit A will be invoiced to the Customer, based on the current TAM on-call rates. Travel time and expenses will also be included in this fee.
- d. All taxes shall be the responsibility of the Customer. Taxes include: import duties, customs, federal, state, municipal, or any other government excise sales, use, occupational, or similar taxes.
- e. Unpaid maintenance fees (and any associated costs and expenses) shall become immediately due and payable to TAM, if this Agreement is terminated for any reason. Any pre-payment of services that are part of an early termination, shall be reimbursed according to the date of termination and prorated based on a 30-day month.

**7. LIMITS OF LIABILITY.** TAM'S TOTAL LIABILITY FOR ANY CLAIM OF ANY TYPE WHATSOEVER IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY TAM'S SOLE NEGLIGENCE. THE CUSTOMER'S EXCLUSIVE REMEDY FOR ANY CLAIM OF NEGLIGENCE WILL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER DURING THE ONE (1) YEAR PERIOD PRECEDING THE DATE OF LIABILITY. TAM SHALL NOT BE LIABLE IN CONTRACT LAW, TORT, OR ANY OTHER THEORY OF LAW, FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, EXEMPLARY, EXTRACONTRACTUAL, OR CONSEQUENTIAL DAMAGE PERTAINING TO THE MAINTENANCE SERVICE OR EQUIPMENT OUTLINED IN THIS AGREEMENT. NOR WILL TAM BE LIABLE FOR LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OF USE OF THE EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTED FACILITIES OR EQUIPMENT, OR SERVICE DOWN-TIME COSTS. THIS LIMIT OF LIABILITY SHALL ALSO EXTEND TO CUSTOMERS OF THE CUSTOMER, NO

MATTER HOW SUCH DAMAGES OCCURRED, WHETHER OR NOT BECAUSE OF NEGLIGENCE, STRICT LIABILITY, FAULT, OR DELAY OF TAM, OR BREACH OR FAILURE TO PERFORM THIS AGREEMENT.

**8. DISCLAIMER OF WARRANTIES.** TAM PROVIDES COMPUTER EQUIPMENT MAINTENANCE SERVICES ON AN "AS IS" BASIS AND MAKES NO OTHER WARRANTIES. ALL OTHER WARRANTIES ARE SPECIFICALLY EXCLUDED, INCLUDING: IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, A WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING PERFORMANCE, OR USAGE OF TRADE.

**9. PERIOD OF MAINTENANCE SERVICE AVAILABILITY.** The maintenance charges described in Exhibit A entitles the Customer to maintenance service availability as defined on Exhibit A.

**10. GENERAL.**

a. TAM shall not be liable for delays caused by an act of God or any matter beyond TAM's reasonable control, which can include fire, flood, earthquake, explosion, strike, labor dispute, war, riot or other civil commotion, transportation delay, labor or material shortage, Customer's subcontractor or vendor delay, and government act. The date and time of service shall be extended for a period equal to the time lost by the reason of delay.

b. The parties shall have one (1) year after the discovery of a breach of this Agreement in which to file a claim for action.

c. TAM reserves the right to assign or subcontract to third parties all or part of the maintenance services which are included in this Agreement.

d. These terms and conditions shall prevail despite any variance that is submitted by the Customer for the repair or maintenance of the Equipment.

**11. PROPRIETARY AND CONFIDENTIAL INFORMATION.** TAM and Customer agree not to disclose to any third party, by any means, any proprietary data or confidential information of the other that the parties may have obtained in the performance of its duties without the prior written permission. However, each Party may disclose to a certified partner, who has a bona fide need to know of the Confidential Information, as it pertains to the evaluation or provision of maintenance and service duties.

**12. SEVERABILITY AND WAIVER.** If any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in force.

**13. GOVERNING LAW.** The laws of New Mexico govern all matters with respect to this Agreement.

**14. ENTIRE AGREEMENT.** This Agreement states the full agreement between the parties and supersedes all prior negotiations and agreements.

**15. COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.