

RISO, Inc. Maintenance Agreement – Additional Terms & Conditions

Available online at <https://us.riso.com/terms>

1. This Agreement becomes valid upon execution by RISO. **IN ORDER TO PROVIDE FOR UNINTERRUPTED SERVICE, THE TERM OF THIS AGREEMENT) SHALL BE FOR THE INITIAL TERM (SEE PARAGRAPH 2.1 BELOW) AND SHALL AUTOMATICALLY RENEW FOR SUCCESSIVE RENEWAL TERMS (SEE PARAGRAPH 2.s. BELOW) UNLESS — AT LEAST THIRTY (30) DAYS PRIOR TO THE EXPIRATION OF THE INITIAL TERM OR THE RENEWAL TERM THAT IS THEN IN EFFECT — EITHER PARTY NOTIFIES THE OTHER IN WRITING OF ITS INTENTION NOT TO RENEW THIS AGREEMENT WITH RESPECT TO ANY OR ALL OF THE COVERED EQUIPMENT (AND THEN SUCH NOTICE SHALL BE EFFECTIVE ONLY AS TO SUCH EQUIPMENT AS IS SO INDICATED). NOTICE OF INTENTION NOT TO RENEW THIS AGREEMENT SHALL BE MADE IN THE MANNER PROVIDED BY PARAGRAPH 8.h. BELOW.**
 - a. **RATES AND AMOUNTS CHARGED UNDER THIS AGREEMENT ARE NOT GUARANTEED FOR ANY SUBSEQUENT RENEWAL TERM, AND CUSTOMER EXPRESSLY ACKNOWLEDGES THAT AS THE COVERED EQUIPMENT AGES, AND FOR OTHER REASONS, AT THE TIME OF A RENEWAL RISO MAY DESIRE TO MAKE A FEE CHANGE AS PROVIDED IN PARAGRAPH 3(E) BELOW. ACCORDINGLY, AT LEAST FORTY-FIVE (45) DAYS PRIOR TO THE START OF EACH RENEWAL TERM, RISO WILL NOTIFY CUSTOMER OF ANY SUCH FEE CHANGE APPLICABLE TO THAT RENEWAL TERM.**
 - b. **Customer agrees that the Terms and Conditions governing any Renewal Term shall be those terms posted online and effective as of the start date of that Renewal Term.**
 - c. **In the event that RISO determines that Customer’s actual usage of the Equipment during the Contract Billing Period (see paragraph 2.f below) exceeds the Base Copy Volume provided in this Agreement, RISO may, but is under no obligation to, offer Customer the opportunity to renew this Agreement under a different Base Copy Volume and Base Contract Amount than is contained in this Agreement. If Customer accepts any such revision to the Base Copy Volume and/or Base Contract Amount, the revised Base Copy Volume and Base Contract Amount shall be substituted, for all purposes, into this Agreement for the then current and any subsequent Renewal Terms.**
2. In this Agreement, the following words and phrases have the meaning set forth below:
 - a. "Allowance for Masters" is the amount that the Equipment's master count meter (or "Master Meter") may increase during an overage billing period before Customer will incur a Master Overage Charge. For example, if Overage Charges are billed every six months and the Allowance for Masters is 1,000 masters per month, Customer will incur a Master Overage Charge if more than 6,000 masters are used in the six-month billing period.
 - b. "Base Contract Amount" is the minimum charge Customer will pay for Service, Parts, and Operating Supplies covered under this Agreement for the Contract Billing Period. This amount is not guaranteed for subsequent renewals of this Agreement and may increase as the Equipment ages, as noted in paragraph 1.a. above.
 - c. "Base Charge Per Copy" is the Base Contract Amount divided by the Annual Base Copy Volume.
 - d. "Base Copy Volume" is the number of Copies Customer is entitled to make during the Overage Billing Period before incurring any Overage Copy Charges. If the Overage Billing Period is twelve months, then the Base Copy Volume is the Annual Base Copy Volume referred to on page one of this Agreement, or sometimes listed as the volume of copies billed at a "Rate" of "\$0" under "Periodic Usage or "Overage" Charges: COPY" (both referred to herein as the "Annual Base Copy Volume"). If the Overage Billing Period is other than twelve months, the Base Copy Volume is the Annual Base Copy Volume apportioned evenly over the number of months in the Overage Billing Period. For example, if the Annual Base Copy Volume is 1,000,000, with a Contract Billing Period of twelve months, and an Overage Billing Period of three months (quarterly), the Base Copy Volume for each three month billing period would be 250,000.
 - e. "Business Hours" means between 8:30 AM and 5:00 PM in Customer's time zone, Monday through Friday.
 - f. "Contract Billing Period" is twelve (12) months unless otherwise indicated in the "Base Contract Billed Every ____ Month(s)" (sometimes referred to as the "Base Copy Billing Cycle") on page 1 of this Agreement.
 - g. "Copy" and "Copies" refer to Customer's use of the Equipment and Accessories covered under this Agreement that causes increases to the Equipment's copy billing meter (or "Copy Meter").
 - h. "Copy Overage Charge" is the amount Customer will be charged for Copies used in excess of the Base Copy Volume, and is calculated by multiplying the Overage Copy Charge Rate by the number of Copies by which the Customer exceeds the Base Copy Volume for the applicable Overage Billing Period.
 - i. "Covered Equipment," "RISO Equipment," or "Equipment" refers to the Equipment listed on page 1 of this Agreement identified by Description and Serial Number.
 - j. "Date Installed" is the date the Equipment was installed at Customer's location.
 - k. "Fee Changes" has the meaning set forth in paragraph 3.e.
 - l. "Initial Term" is twelve (12) months from the Contract Start Date stated on page one of this Agreement unless otherwise indicated in the "Base Contract Billed Every ____ Month(s)" in which case the Initial Term shall be the number of months indicated.
 - m. "Master Overage Charge" is the amount Customer will be charged for masters used in excess of the Allowance for Masters (or sometimes listed as the volume of masters listed at a Rate of \$0 under "Periodic Usage or "Overage" Charges: MASTER) during the applicable Overage Billing Period ("Excess Masters"). The Master Overage Charge is calculated by multiplying the Overage Master Charge Rate by the number of Excess Masters.
 - n. "Operating Supplies" are inks and/or masters for use in RISO Equipment.
 - o. "Overage Billing Period" is the number of months in the time frame referred to on page one of this Agreement as "Overage Charges Billed Every ____ Month(s)" (sometimes referred to as "Usage/Overage Billing Cycle").
 - p. "Overage Charges" are the aggregate of the Master Overage Charge and Copy Overage Charge.
 - q. "Overage Copy Charge Rate" is the amount per Copy Customer will be charged for making Copies in excess of the Base Copy Volume described in paragraph 2.d above.

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- r. "Overage Master Charge Rate" is the amount per master Customer will be charged for each master used in excess of the Allowance for Masters. The Overage Master Charge Rate is as listed on page one of this Agreement (sometimes referred to as the "Periodic Usage or "Overage" Charges" rate).
- s. "Renewal Term" is twelve (12) months from the Term End Date.
- t. "RISO Corporate Holiday" refers to all published corporate holidays extended to RISO employees.
- u. "RISO Products" refers to Equipment, Accessories, and/or Operating Supplies sold or furnished by RISO and that are included in this Agreement.
- v. "RISO Authorized Technician" means a RISO product specialist employed by RISO, or a RISO-certified technician.
- w. "Standard Rates" are the then current hourly rate customarily charged by RISO for service technician labor, including the higher rates charged for service outside Business Hours and RISO Corporate Holidays, and the then current published list prices for RISO parts and Operating Supplies.
- x. "Start Copy Meter" is the copy billing meter reading at the beginning of the Contract Start Date.
- y. "Start Master Meter" is the master count meter reading at the beginning of the Contract Start Date.
- z. "Term End Date" is the date upon which an Initial Term or Renewal Term ends.

3. Payments:

- a. Unless otherwise agreed to in writing by RISO, the Base Contract Amount for the Initial Term is due at the time Customer executes this Agreement, and for any Renewal Term is due within thirty (30) days of Customer's receipt of invoice for the Base Contract Amount applicable to the Renewal Term.
- b. RISO will invoice any Overage Charges at the conclusion of each Overage Billing Period (see paragraph 2.o. above), and these amounts will be due 30 days from date of invoice.
- c. RISO shall have the right to apply all sums received from Customer to any amounts due and owed to it in such order or priority as RISO shall determine.
- d. If for any reason Customer's check is returned for nonpayment, a \$25 insufficient funds charge will be assessed and Customer agrees to pay this assessment upon receipt of invoice.
- e. RISO may change the amounts of any fees charged to Customer set forth in this Agreement, including without limitation, the Base Contract Amount, the Base Copy Charge, the Base Copy Volume, the Master Overage Charge, the Overage Copy Charge Rate, and the Allowance for Masters ("Fee Changes"), by notifying Customer of Fee Changes at least forty-five (45) days prior to the expiration of the Initial Term or the Renewal Term that is then in effect. Customer may thereafter elect to terminate this Agreement by so notifying RISO in the manner provided in paragraph 8.h. at least thirty (30) days prior to the Term End Date, and such termination shall be effective as of the Term End Date. If Customer does not notify RISO of its election to terminate this Agreement at least thirty (30) days prior to the Term End Date, then the Fee Changes shall become effective at the beginning of the Renewal Term. The maximum annual increase will not exceed 7% per year.

4. Customer undertakes that:

- a. Customer acknowledges that RISO recommends that all maintenance and repair work ("Service") on the Equipment be carried out by RISO's representatives. If Service is performed by persons other than RISO's Authorized Technicians, and if RISO determines that such Service is the cause of operating problems with Customer's RISO Equipment, then RISO may determine that costs to return the RISO Equipment to the operating specifications and standards of the manufacturer are not covered under this Agreement; otherwise, such costs will be covered under this Agreement.
- b. Customer will comply with RISO's specifications for the type, use, and storage of paper and other copying media to be used in the Equipment, and Customer acknowledges that Service that becomes necessary due to Customer's failure to comply will not be covered under this Agreement.
- c. In the event Operating Supplies are covered as part of this Agreement, (i) RISO may in its discretion, and based upon its experience in the printing and copying industry, determine that Customer's consumption of Operating Supplies exceeds that which would typically be obtained by normal use of the Equipment at the level of meter readings for such equipment, and in such event, RISO may suspend further delivery of Operating Supplies until the usage level of the Equipment, as determined by the meter readings, justifies further shipment of Operating Supplies; (ii) any Operating Supplies not consumed by the Equipment covered by this Agreement remain the property of RISO and may not be used by Customer in any other Equipment or for any other purpose; and (iii) Customer agrees to return to RISO any unused Operating Supplies at the termination of this Agreement.
- d. Customer agrees to obtain and provide RISO with accurate and timely Copy Meter and Master Meter readings at the conclusion of each Overage Billing Period during and at the conclusion of this Agreement, and at the conclusion of each Term End Date, or at such other times that RISO may reasonably request in order to monitor usage of the Equipment, monitor consumption of Operating Supplies, and calculate Copy Overage Charges and Master Overage Charges. If Customer does not provide RISO with a required meter reading, RISO may estimate the Copy Meter and/or Master Meter reading(s) based on a representative period of past usage as determined by RISO in its sole discretion, and Customer agrees to accept such estimated reading for billing purposes, provided further that a subsequent bill(s) may thereafter be adjusted, as appropriate, in accordance with actual reading(s). Customer further agrees that if a RISO inspection determines that Customer's meter readings are incorrect, RISO may substitute its own meter readings, and Customer agrees to accept these substituted readings for billing purposes.
- e. Customer agrees to keep the Equipment and Operating Supplies covered under this Agreement at the address shown on this Agreement, and not to move the Equipment and/or Operating Supplies without RISO's written consent, such consent not to be unreasonably withheld.
- f. Customer grants RISO's Authorized Technicians access to the Equipment covered under this Agreement for purposes of inspection, Service, to perform its obligations or exercise its rights under this Agreement, or any other purpose at any reasonable time during Business Hours, including on-site inspections to verify the accuracy of meter readings.
- g. Customer will not use the Equipment covered under this Agreement other than in accordance with the manufacturer's specifications, as posted on RISO's web site, <http://us.riso.com>.
- h. Customer will appoint at least one member of its staff at each location as a principal operator who shall be trained in the use of the Equipment by RISO. Customer will ensure that a principal operator is available to carry out the instructions in Equipment instruction manual(s). Customer is responsible for requesting training if a principal operator is no longer employed by Customer or is no longer appointed as a principal operator.
- i. Customer agrees to pay RISO's Standard Rates for:
 - i. Service required on any RISO Corporate Holiday or outside Business Hours when Customer requests that service be provided at these times.
 - ii. Service made necessary to repair damage or make adjustments required if such damage or adjustment is **caused by** the use of supplies, parts, or attachments not sold or approved by RISO or its authorized dealers. (RISO Equipment is designed to give excellent performance when used with genuine RISO Operating Supplies. It is not a condition of this Agreement, however, that Customer use only genuine RISO Operating Supplies.)
 - iii. Service made necessary due to incompatibility of, or defects in, Customer's computers, network, or software.
 - iv. Service made necessary by neglect or misuse of Customer, including untrained operators of the Equipment.
 - v. Equipment relocation service.
 - vi. Operating Supplies not identified on page one as included under this Agreement.
 - vii. Service calls to train additional principal operators because a principal operator is no longer employed by Customer or is no longer appointed as a principal operator.

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- viii. Service not covered under this Agreement.
- ix. Any parts, labor, or Operating Supplies provided to Customer if the need for the same is caused by Customer's breach of any provision or requirement of paragraph 4, including as a result of excessive usage as referenced in paragraph 4.c.(i).

5. Subject to the foregoing, RISO undertakes that during the Contract Billing Period, RISO will provide Service of the Equipment covered by this Agreement in accordance with the general operating specifications and standards of the manufacturer, including inspection, adjustment, repairs, and parts replacement, subject to the following additional terms:

- a. RISO shall not be liable for any failure to render Service or provide supplies due to causes beyond RISO's reasonable control.
- b. If Customer fails to pay RISO any amounts due hereunder within 30 days of the due date, RISO may place Service calls and Operating Supplies on a C.O.D. status at Standard Rates, or RISO may elect to suspend performance of RISO's obligations under this Agreement, until all monies due are paid, without prejudice to any existing rights, including but not limited to RISO's right to terminate this Agreement.
- c. RISO has no liability for Service or repair obligations to the Equipment except as provided for in this Agreement.

6. Entire Agreement:

- a. This Agreement constitutes the entire agreement between Customer and RISO regarding the Service of the Equipment and accessories and the provision of Operating Supplies covered under this Agreement, and supersedes all previous agreements, proposals, representations, or understandings, written or oral.
- b. No modification or amendment hereof shall be binding upon RISO unless made in writing and executed on behalf of RISO by its duly authorized officer or representative. This Agreement may be modified only in writing signed by the parties hereto, and may not be modified through any purported course of dealing or course of performance.

7. **Warranty and Exclusions:** Except as stated herein, or in RISO's written warranty applying to the RISO products ("RISO, Inc. New Product Warranty"), there are no other representations, warranties, promises, guarantees or agreements, oral or written, expressed or implied, between the parties hereto with respect to the Agreement or the RISO Products.

THIS AGREEMENT DOES NOT GIVE RISE TO ANY EXPRESS OR IMPLIED WARRANTIES, AND, (EXCEPT FOR RISO'S WRITTEN WARRANTY APPLYING TO NEW RISO PRODUCTS) ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, REASONABLE CARE, AND/OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT RISO KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), ARE EXCLUDED WITH RESPECT TO ANY RISO PRODUCT OR ANY OTHER PRODUCT SOLD, USED, OR PROVIDED UNDER THIS AGREEMENT. RISO FURTHER DISCLAIMS ANY AND ALL WARRANTIES, AND/OR REPRESENTATIONS OF TITLE AND NON-INFRINGEMENT WITH RESPECT TO ANY TRADEMARKS AND OTHER INTELLECTUAL PROPERTY, OR ANY LICENSED SOFTWARE AND/OR DOCUMENTATION.

8. General:

- a. Customer authorizes RISO to insert in this Agreement serial numbers, Start Copy Meter readings, Start Master Meter readings, and other information about the Equipment or Operating Supplies as well as other omitted factual matters.
- b. In the event this Agreement relates to more than one item of Equipment, failure to make payment as to any amount due under this Agreement shall operate as a default with respect to the Agreement as a whole and shall not be a default limited to any single item of Equipment.
- c. Signatures: The person executing the Agreement on behalf of Customer warrants and represents that he/she has full power and authorization to enter into this Agreement and to bind Customer. RISO and Customer agree to accept a digital image of this Agreement, as executed, as a true and correct original.
- d. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, trustees, and assigns.
- e. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall not invalidate the remaining provisions of this Agreement.
- f. Neither RISO nor Customer shall be liable to the other for any punitive or exemplary damages of any sort (including treble or other multiple damages), and both expressly waive any right they might otherwise have to seek the same. RISO will not under any circumstances be liable to Customer for any loss of business or profit or for any consequential or incidental damages, whatever the cause.
- g. There are no intended, indirect, or incidental third party beneficiaries to this Agreement.
- h. All notices or demands required or permitted by this Agreement shall be in writing and shall be delivered personally, sent by certified or registered mail (postage prepaid), by facsimile, or overnight air courier, to the address of the receiving Party as set forth herein, or to such other address as either Party may designate by notifying the other Party in writing. Any notice or demand will be effective upon receipt. In the event that RISO is unable to provide written notice to Customer for reasons such as Customer refuses to accept delivery of notice or has ceased to do business from its address as stated on page one of the Agreement, then receipt of such notice shall be deemed to occur three business days after the mailing of notice. Notices from RISO to Customer shall be sent to Customer's address on page one of this Agreement. Notices from Customer to RISO shall be sent to:
RISO, INC.
Attention: Service Contracts Administration
300 Rosewood Drive
Suite 210
Danvers, MA 01923
- i. **Waiver, Defaults, Breaches, and Omissions:** The failure of either Party at any time to require performance by the other Party of any provision hereof shall in no way affect the full right to require such performance at any time thereunder. Nor shall the waiver by either Party of a breach of any provision hereof constitute a waiver of any succeeding breach of the same or any other such provision nor constitute a waiver of the provision itself. A delay by RISO in invoicing Customer for any amounts due under this Agreement shall not constitute a waiver of Customer's obligation to pay those amounts within the time due upon later receipt of invoice.

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- j. Governing Law: This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without giving effect to any conflict of law, provision, or rule.
9. Default. Customer will be in default under this Agreement if:
- a. Customer breaches any terms, warranties or representations contained herein or in any other agreement between RISO and Customer;
 - b. Any guarantor of Customer's debts to RISO breaches any terms, warranties or representations contained in any guaranty or other agreement between the guarantor and RISO;
 - c. Any representation, statement, report or certificate made or delivered by Customer or any guarantor to RISO is not accurate when made;
 - d. Customer fails to pay any portion of Customer's debts to RISO when due and payable hereunder or under any other agreement between RISO and Customer;
 - e. Customer abandons any of the RISO Equipment or Accessories that are the subject of this Agreement;
 - f. Customer or any guarantor is or becomes in default in the payment of any debt owed to any third party;
 - g. A money judgment issues against Customer or any guarantor;
 - h. An attachment, sale or seizure issues or is executed against any assets of Customer or of any guarantor;
 - i. The undersigned dies while Customer's business is operated as a sole proprietorship, any general partner dies while Customer's business is operated as a general or limited partnership, or any member dies while Customer's business is operated as a limited liability company, as applicable;
 - j. Any guarantor dies;
 - k. Customer or any guarantor shall cease existence as a corporation, partnership, limited liability company or trust, as applicable;
 - l. Customer or any guarantor ceases or suspends business;
 - m. Customer, any guarantor or any member while Customer's business is operated as a limited liability company, as applicable, makes a general assignment for the benefit of creditors;
 - n. Customer, any guarantor, or any member while Customer's business is operated as a limited liability company, as applicable, becomes insolvent or voluntarily or involuntarily becomes subject to the Federal Bankruptcy Code, any state insolvency law or any similar law;
 - o. Any receiver is appointed for any assets of Customer, any guarantor, or any member while Customer's business is operated as a limited liability company, as applicable;
 - p. Any guaranty of Customer's debts to RISO is claimed to be terminated; or
 - q. RISO determines in good faith that it is insecure with respect to any of the RISO Products or the payment of any part of Customer's obligation to RISO.
10. Rights of RISO Upon Default. In the event of a default, RISO may at any time at RISO's election, do any one or more of the following:
- a. Without notice or demand to Customer, declare all or any part of the debt Customer owes RISO immediately due and payable, together with all costs and expenses of RISO' collection activity, including, without limitation, all reasonable attorneys' fees, costs, or expert fees; exercise any or all rights under applicable law (including, without limitation, the right to possess, transfer and dispose of any or all RISO Products that are the subject of this Agreement).
 - b. Upon RISO' oral or written demand, require that Customer segregate and keep the RISO Products in trust for RISO, and in good order and repair, and that Customer not sell, rent, lease, consign, otherwise dispose of or use any of the RISO Products, nor further encumber any of the RISO Products.
 - c. Upon RISO's oral or written demand, require that Customer immediately deliver the RISO Products to RISO, in good order and repair, at a place specified by RISO, together with all related documents; or RISO may, in RISO' sole discretion and without notice or demand to Customer, take immediate possession of the RISO Products together with all related documents.

All of RISO' rights and remedies are cumulative. RISO' failure to exercise any of RISO' rights or remedies hereunder will not waive any of RISO' rights or remedies, whether legal or equitable, as to any past, current, or future default.

11. Arbitration: Any controversy or claim arising out of or relating to this Agreement shall be determined exclusively by binding arbitration in Boston, Massachusetts in accordance with the Commercial Arbitration Rules of the American Arbitration Association utilizing three arbitrators. The arbitrators shall award all reasonable attorney's fees and costs, including fees of arbitration and expert fees, incurred in connection with the arbitration to the Party the arbitrators determine substantially prevailed in the arbitration. Any award or order rendered by the arbitrators pursuant to the terms of this Agreement may be entered as a judgment or order in any state or federal court and may be confirmed within the federal judicial district which includes the residence of the Party against whom such award or order was entered. The Federal Arbitration Act, Title 9 U.S.C. Sections 1 et seq., as amended, will govern all arbitration(s) and confirmation proceedings hereunder. Consistent with paragraph 8(f) above, the arbitrators shall have no power to award, and the Parties do not agree to arbitrate any claims seeking, punitive or exemplary damages (including treble or other multiple damages). Notwithstanding the binding arbitration provision of this paragraph 11, in the event of a breach or default by Customer pursuant to paragraph 3 above, or as necessary to restrain violation of intellectual property rights, RISO shall have the right to bring an action in any court of competent jurisdiction for injunctive relief, repossession, replevin, sequestration, seizure, attachment, and/or any other prejudgment or provisional action or remedy. The filing of any such action or remedy will not waive RISO's or Customer's right to compel arbitration under this paragraph. If Customer fails to make payments when due, RISO may seek recovery, at its option, in arbitration, including by way of counterclaim, or by bringing suit in a court of competent jurisdiction.

12. Indemnity: Customer agrees to save, hold harmless, and indemnify RISO from any and all claims, actions, liabilities, or damages, including without limitation attorneys' fees, costs, expert fees, and expenses, incurred by RISO as a result of (a) Customer's misuse or abuse of the Equipment or Operating Supplies that are the subject of this Agreement, or (b) Customer's negligent, reckless, or unlawful conduct resulting in bodily or emotional injury to any person or property damage to any real or personal property.