

BayCopy Limited Equipment Maintenance Agreement

Terms and Conditions

1. **Application of this Agreement**

Equipment Maintenance Agreement commences on the date of installation and is for the term and at the rate of charge and on the special conditions all as specified in the attached machine. Purchase Agreement and relates exclusively to the Equipment specified in that Contract ("the Contract") and is made with the purchaser under that Contract ("the Customer").
2. **Service Obligations**

BayCopy will, within reasonable time of request from the Customer, at the Installation address specified in the contract and during the normal working hours (8.30am to 5.00pm) Monday to Friday, excluding public holidays.

 - (a) Replace parts necessary for the efficient working of the Equipment. All parts replaced become the property of BayCopy.
 - (b) Service the equipment based on the needs of the Equipment as determined by BayCopy including inspecting and adjustment.
 - (c) Should BayCopy require the equipment to be removed to its workshop for further servicing BayCopy may, at its absolute discretion, provide replacement Equipment.
 - (d) The Customer is aware that BayCopy may need to remotely access the equipment in this Agreement as agreed with the Customer at the time.
 - (e) BayCopy will activate Canon's cloud-based Data Backup service on compatible Equipment in this Agreement to assist in the restoration of data stored on the hard disk in the event of hard disk failure unless the Customer notifies BayCopy they wish to opt out by ticking the check box on page 1 of this Agreement.
 - (f) The Customer acknowledges the data included in Canon's Data Backup may include personal information such as usernames in an address book.
 - (g) The Customer is responsible for any network charges incurred as a result of remote monitoring or updating software or both.
3. **Service Limitations**

If the Equipment is damaged or destroyed by reason of:

 - (a) Fire, flood, tempest or another Act of God or
 - (b) The failure of the Customer to operate and use the Equipment in accordance with the machine specifications (including volume), the operating procedures and environmental specifications approved by BayCopy; exposure to fire, liquid, foreign particles, corrosive gases, chemical elements, excessive heat, humidity, dust or airborne contaminants.
 - (c) Any act of willful damage or interference by any person or persons other than employees or agents of BayCopy or
 - (d) The attachment to the Equipment of any accessories, attachments, or devices not supplied by BayCopy.
 - (e) The use of consumable supplies and parts not supplied by or alternatively not meeting BayCopy specifications.
 - (f) The negligent use or misuse of the Equipment by the Customer or
 - (g) Any failure or fluctuation (transients) of electrical power supply to the Equipment or any external electromagnetic interference or failure of air-conditioning and humidity control for the Equipment or telecommunications systems, (computer network) and/or lines.
 - (h) Any service performed on any item of the Equipment by any other person other than BayCopy's personnel or agents, other than with the written consent of BayCopy.

Then in all such cases (a) to (h) above BayCopy shall repair to good working condition or replace the Equipment as the case may be, provided that the reasonable costs, charges and expenses incurred by BayCopy in so doing shall be the sole responsibility of the Customer and shall be an additional charge to the service charges provided for herein. The services to be provided by BayCopy pursuant to this Agreement shall not include the following:

 - i. Normal operator functions
 - ii. The provision of expandable supply items (such as cassettes, laser cartridges, staples, paper, transparencies etc.
 - iii. Painting, modifications or refurbishing the Equipment.
 - iv. Performing services connected with the relocation, removal and re-installation of the Equipment, or the adding or removing of accessories, attachments or devices.
 - v. Electrical work external to the Equipment.
 - vi. Service relating to accessories, attachments and other devices or consumables not supplied by BayCopy, including telecommunications and computer network works external to the Equipment.
4. **Limitation of Liability**

The Customer agrees that BayCopy will not be liable for any loss of profits or incidental, indirect, special, consequential or punitive damages of whatsoever kind arising from the servicing and operation of the Equipment by the service agent in terms of this Agreement. In the event of any other property of the Customer, other than the Equipment being damaged through the negligent acts or omissions of the service agent or his agent, the liability of the service agent's staff shall not exceed the actual cost of replacement or repair of the damaged property and shall not extend to any loss of profits or any other damage of whatsoever kind whether accidental, incidental, indirect, special, consequential or punitive or otherwise arising therefrom.
5. **Indemnity**

The Customer shall at all times indemnify BayCopy against any loss or damage or claim in respect of damage or injury to third parties or property of any nature arising in any manner out of this Agreement.
6. **Charges**
 - (a) The charges payable by the Customer for the BayCopy services due under this Agreement are as stated in the Contract and commence on the installation date. If there are no charges specified in the Contract, charges will be levied by BayCopy at its standard rates as specified in its current price book for Equipment of the type, age and character covered by this Agreement.
 - (b) Minimum monthly usage charges apply to imaging devices on meter contract.
 - (c) The Customer will pay for servicing outside normal working hours at the rate then currently charged by BayCopy.
 - (d) BayCopy reserves the right to vary any time the charges payable under this Agreement. Normally this is done twelve monthly however may occur more frequently when economic conditions require.
 - (e) Charges may apply for manual services, such as meter collection via phone/fax, where automated or self-service solutions are available.
 - (f) Charges will be invoiced monthly for payment.
 - (g) The Customer shall make payment in full without any deduction or withholding whatsoever on any account by the 20th of the month following invoice date.
 - (h) Late payment of charges will incur a fee of 1.5% per invoice total per month, and late payment of charges may incur a late payment fee of \$8.00 excl GST per invoice per month, applied only to Customers that pay late, to cover cost of obtaining money relating to unpaid invoices. Late payment fees can be avoided by accounts being paid in full by the due date. If more time is needed to pay an account the Customer can contact BayCopy to make arrangements.
 - (i) BayCopy reserves the right to defer delivery of consumables or goods and/or the provision of maintenance service to the goods without giving notice of such if and while any amounts remain overdue, or any credit limit is exceeded.
 - (j) Charges may be levied for all service spare parts and consumable items provided but not paid for under a cost per copy Agreement.
 - (k) Under no circumstances shall the Customer have any right to set off any charges due hereunder, against any other sum (actual or contingent) claimed and/or due by BayCopy to the Customer, whether under this Agreement and/or on any other account.
 - (l) The Customer shall promptly notify BayCopy should any logged service call be found unnecessary or that the presence of a BayCopy service representative at a particular time be inconvenient. Failure to provide reasonable notice in these situations may, at BayCopy's discretion, incur a charge.
7. **The charges do not include:**
 - i. All costs relating to the installation of facsimile equipment or facsimile boards to multi-functional machines and alterations to the internal telephone system to facilitate installation. These are payable by the Customer. Any accessories added after the initial installation of the system may incur an installation fee.
 - ii. Re-installation of printer and scanner drivers or e-metering for reasons other than the failure of BayCopy equipment under an Equipment Maintenance Contract is chargeable at the current rate. This applies to any changes to the Customer's network, internet provider and hardware at any time.
 - iii. All costs relating to printing issues from any Customer device as a result of third-party software updates. BayCopy is not liable for any software update that causes an error in the Customer's operating system or a conflict that prevents or alters the print process.
 - iv. Freight and handling costs on all toner and consumables provided, and return or recycling thereof, under all types of Equipment Maintenance Contracts. These costs are payable by the Customer.
 - v. Any network hardware cabling or installation thereof not covered in the purchase price. BayCopy or a third party can provide this at an additional charge. This is payable by the Customer.
 - vi. Costs relating to the recovery and/or recycling of any equipment during or at termination of the Agreement. These are payable by the Customer.
8. **Copying Machines – additional obligations and term**
 - (a) The Customer shall appoint an operator who shall receive instruction in the use of the Equipment by BayCopy free of charge. BayCopy may levy a charge for additional operator training that may be required after the initial instruction or after a period of 30 days from installation date. In the case of interfaced equipment, BayCopy will provide key operator training only on the operation and maintenance of installed BayCopy equipment. BayCopy will not provide training on the operation and use of the Customer's PC and Macintosh workstations and applications.
 - (b) The service Agreement excludes support of the Customer's network or any optional facsimile, network equipment, scanners etc.
 - (c) The Customer will promptly advise BayCopy of any change in operator. The Customer shall ensure that the operator is trained to perform the tasks set out in the operator's manual and be able to furnish a correct meter reading to BayCopy on and as at the date requested.
 - (d) Service by BayCopy does not include the performance of those duties which are the responsibility of the operator.
 - (e) The Customer agrees to provide BayCopy with reasonable access to the Equipment to provide service thereon and to ensure the accuracy of the meter readings.
 - (f) The Customer shall not tamper with the meter or do any act which will affect the accuracy of the meter readings. If BayCopy determines for any reason the Customer's meter reading is inaccurate BayCopy may, in addition to any other legal or equitable remedy, terminate this Agreement without notice.
 - (g) Should a Customer's meter reading not be received by BayCopy on or before the date requested, or BayCopy is unable to contact the Customer for a meter reading, BayCopy reserves the rights to issue, and the Customer agrees to pay, an invoice based on estimated copy/unit usage. When the actual meter reading is received the invoice computation will take into account the previous estimates.
 - (h) BayCopy is not liable or responsible for loss of data during the installation or subsequent use of hardware and software. It is recommended that Customers back up data prior to installation.
 - (i) The Customer agrees to all applicable End User Licensing Agreements (EULA's) and conditions of use.
 - (j) Installation of interfaced photocopiers – initial installation at the Customer's location may be included in the purchase price but is limited to the installation, configuration and training on the printer and scanner drivers on up to, but not exceeding, one server and five workstations. Driver installation and training on additional servers or workstations is chargeable at the current rate. BayCopy may levy a charge for printer driver support that may be required after the initial installation or after a period of 30 days from installation date. Custom configuration, integration or re-programming may incur extra costs.
 - (k) BayCopy is under no obligation to provide servicing outside normal working hours unless otherwise agreed.
 - (l) All toner and consumables supplied as part of a metered Equipment Maintenance Contract remains the property of BayCopy until it is expended during normal use. Any unused toner and consumables not returned to BayCopy within 30 days of Contract termination will be invoiced to the Customer by BayCopy at applicable rates.
9. **Alteration in Equipment Location or Address**

The Equipment shall initially be located at the installation address as per the Equipment Maintenance Agreement. The Customer must always ensure that the Equipment is located in accordance with the requirements of the operator's manual. Should the Customer change the location of the Equipment BayCopy reserves the right to terminate the Agreement without notice or to increase the service charges if additional costs are hereby incurred. Movement of the Equipment shall be performed by BayCopy or its agents at the charges applicable at the time. The Customer shall in any event notify BayCopy of any proposed change in the location of the Equipment before any such change is initiated. Any damage to Equipment as a result of failing to inform BayCopy will be chargeable.
10. **Termination**
 - 10.1 It is acknowledged by both parties that this Agreement is for the term indicated on Page 1 of this Agreement.
 - 10.2 As BayCopy has committed resources and staff for the Term of the Contract, the Contract may only be terminated on the following conditions:
 - (a) At least 30 days prior written notice is given by the Customer to BayCopy; and
 - (b) The Customer pays to BayCopy a sum calculated as the remaining months of the Term multiplied by the average service volume produced in the previous 12 months plus GST.
11. **Assignment**

Neither this Agreement nor any of the rights or obligations hereunder shall be assigned by the Customer without the prior written consent of BayCopy.
12. **Law**

This Agreement shall be construed in accordance with the laws of New Zealand.
13. **Force Majeure**

Any failure or omission by BayCopy to carry out or observe any of the terms and conditions of this Agreement shall not give rise to any claim against BayCopy or be deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of BayCopy. If, by reasons of any cause reasonably beyond the control of either party, there is any delay by the party so affected in performing its obligations under this Agreement then the other party shall not be liable to perform its obligation hereunder and in such case the parties herein will use their best endeavours to resume their respective obligations hereunder as soon as possible.
14. **Amendment**

No amendment to this Agreement shall be binding upon either party unless confirmed in writing by authorised persons of both parties.
15. **Waiver**

Failure or neglect by BayCopy to enforce, at any time, any of the provisions of this Agreement, shall not be deemed to be a waiver by BayCopy of its rights hereunder nor in anyway affect the validity of the whole or any part of this Agreement nor prejudice BayCopy's rights to take subsequent action.