

**MAINTENANCE AGREEMENT**

**CUSTOMER DETAILS**

Company Name

Type of Entity

Company VAT No

Company Reg No/ID No

**For Office Use**

Representative Name

Business Unit

Contract Number

Customer Account Number

**PHYSICAL ADDRESS- EQUIPMENT LOCATION**

Company Name

Physical Address (domicilium citandi et executandi)

City  Postal Code

Contact Person

Tel (W/Cel)  E-mail

Alternative Tel (W/Cel)

**LANDLORD DETAILS**

Company/Customer Name

Physical Address (domicilium citandi et executandi)

City  Postal Code

Contact Person - Creditors:

Tel (W/Cel)  E-mail

**EQUIPMENT DETAILS - 1**

Model <input type="text"/>	Serial No. <input type="text"/>	Location <input type="text"/>							
Service Base Rate <input type="text"/>	Included A4 Images			Excess Rate per A4 Image			Start Meter Reading		
	Colour <input type="text"/>	B/W <input type="text"/>	Scan <input type="text"/>	Colour <input type="text"/>	B/W <input type="text"/>	Scan <input type="text"/>	Colour <input type="text"/>	B/W <input type="text"/>	Scan <input type="text"/>
	R <input type="text"/>	<input type="text"/>	<input type="text"/>	R <input type="text"/>	R <input type="text"/>	R <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**EQUIPMENT DETAILS - 2**

Model <input type="text"/>	Serial No. <input type="text"/>	Location <input type="text"/>							
Service Base Rate <input type="text"/>	Included A4 Images			Excess Rate per A4 Image			Start Meter Reading		
	Colour <input type="text"/>	B/W <input type="text"/>	Scan <input type="text"/>	Colour <input type="text"/>	B/W <input type="text"/>	Scan <input type="text"/>	Colour <input type="text"/>	B/W <input type="text"/>	Scan <input type="text"/>
	R <input type="text"/>	<input type="text"/>	<input type="text"/>	R <input type="text"/>	R <input type="text"/>	R <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**SPECIAL REQUIREMENTS**

**CONTRACT PERIOD**

Initial Period / Contract Period (Months)  12  24  36  48  60 Initial:

**BANK DETAILS**

Method of Payment  DEBIT ORDER  EFT

I/We authorise OCTOPI Smart Solutions (Pty) Ltd to draw against my/our bank account by direct debit order, the amount which may be due from time to time in terms of the agreement. I/We undertake to advise OCTOPI Smart Solutions (Pty) Ltd in writing of any changes in the banking details.

Name of Account Holder

Branch Code  Bank Account Number

Please specify the day when you would like your debit order to run  
 1st  8th  15th  25th  28th

Bank Name

Branch Name

Type of Account  CHEQUE  OTHER

I acknowledge that I have read and agree to the terms and conditions that form part of this agreement, and that I am authorised to bind the company to these terms and conditions as detailed above & overleaf.

This agreement is not valid unless signed by an authorised OCTOPI Service Manager. OCTOPI Smart Solutions agrees to maintain the above equipment based on the terms and conditions that form part of this agreement.

Date  Print name

Signature:

Date  Print name

Signature:

## 1. OCTOPI'S RESPONSIBILITIES

OCTOPI will replace, without charge, parts that have broken or worn through normal use and are necessary for equipment operation. OCTOPI agrees to use authorised parts and supplies, at intervals and quantities as determined by OCTOPI. This Agreement covers the STANDARD service radius of 50kms (fifty kilometres) from any authorised Octopi service centre. Installations, service calls or toner deliveries outside this radius may be subject to additional service charges

## 2. CUSTOMER'S RESPONSIBILITIES

- 2.1. Customer will provide OCTOPI with true and accurate copy counter readings at intervals as requested by OCTOPI for the purpose of maintenance and billing. All copies in excess of the amount included in the Service Base rate charge are subject to a maintenance meter billing.
- 2.2. Customer agrees that in the event that OCTOPI does not receive a current copy count, the Customer will receive a billing for the Service Base rate amount and/or an estimated bill based on previous usage history. The next sequential billing will be adjusted for actual excess billing for the previous and current billing periods.
- 2.3. Customer agrees to promptly notify OCTOPI of any problems or malfunctions with the meter system and cease use of the system until correction of such problems is made. OCTOPI may use software to facilitate the taking of meter readings. Should there be any discrepancy between the actual meter readings per the device meter counters and the readings per the software, the equipment counter reading will prevail.
- 2.4. Customer agrees toner and supplies will be used exclusively in contracted equipment listed.
- 2.5. Customer agrees to pay invoices within 30 (thirty) days from statement date, failing which OCTOPI, at its option, may cancel this agreement. Further, Customer agrees to pay all costs of collection including reasonable attorney's fees, whether suit be brought or not, incurred by OCTOPI in collecting any past due balance or recovering any equipment.
- 2.6. No early payment discounts are allowed.
- 2.7. Service Base Rate: is the rate charged for the use of the equipment listed on the Maintenance Agreement for the initial period of the agreement.
- 2.9. Customer agrees and consents that OCTOPI may collect a sample of Customer's paper/media to be used for analysis or verification purposes.
- 2.10. Should Customer use, or have used, paper/media not approved by OCTOPI, then OCTOPI shall not be liable for resulting damage, but shall be entitled to bill Customer for any cost of repairs.
- 2.11. The equipment has a normal yield per container of toner of the number of copies specified in the manufacturers' equipment specification. In the event of the equipment having a yield per container of toner less than such normal yield (based on 5% (five percent) coverage per A4 page), the Customer shall immediately become liable to pay for toner used by the equipment. The Customer will be quoted for the toner where yields have not been achieved and toner will only be supplied on return of the signed quotation acknowledging that payment will be made, in addition to the monthly service charges due in terms of this Agreement. In such circumstances OCTOPI may also increase such service charges, without notice and with immediate effect.
- 2.12. OCTOPI reserves the right to withhold toner should the Customer refuse to furnish meter readings at the time of toner order.
- 2.13. Any Toner/Cartridges or parts delivered by OCTOPI remains the property of OCTOPI at all times. Any unused toner must be returned to OCTOPI on request or on termination of the Maintenance Agreement. The Customer agrees to exercise a duty of care over such toner and to use it solely for the purpose and equipment for which it was supplied, failing which OCTOPI reserves the right to charge for such toner at its then published retail prices
- 2.14. The Customer shall designate and make available a suitable key operator to be trained on and monitor use of the Equipment, and assist with fault finding via remote support.

## 3. LIMITATIONS

- 3.1. The charges under this Agreement shall specifically exclude coverage for the following:
  - 3.1.1 Repairs resulting from causes other than normal use, such as abuse, or misuse by the operator including without limitation damage to the copier drums and use of unauthorised supplies. It shall also exclude accidents, theft, vandalism, electrical power failure, unsuitable electrical power, damage due to load shedding or power outages, lightning damage, surges and lightning damage via the network, fire, water, damage due to transportation, failure to provide suitable office environment or failure to provide space requirements recommended by manufacturer.
  - 3.1.2 Repairs made necessary due to service performed by parties other than OCTOPI or its authorised representatives.
  - 3.1.3 Service calls or work which the Customer requests to be performed outside OCTOPI's regular business hours (Monday through Friday, 08:00 to 16:30). Calls outside the normal business hours, and on public holidays, will be charged at OCTOPI's then after hours rate.
  - 3.1.4 All optional equipment unless otherwise specified in this agreement.
  - 3.1.5 A letter under the hand of any manager of OCTOPI, whose appointment need not be proven, as to the cause or reason of any equipment's state of disrepair shall be final and binding and Customer irrevocably accepts such reason/cause.
  - 3.1.6 Printheads and consumable items for Inkjets, Wide format and Bubble jet devices are specifically excluded.
  - 3.1.7 Staples on all devices are excluded.
  - 3.1.8 Masters and inks on Risograph machines are not included in this agreement unless specifically indicated otherwise.
  - 3.1.9 Scanning to E-Mail is dependent on availability of your SMTP server. In cases where ADSL is used, consistency cannot be guaranteed.
- 3.2. OCTOPI will not be liable for any failure or delay in performance due in whole or in part to any cause beyond OCTOPI's control, including but not limited to work stoppages, electricity disruptions, load shedding, fires, civil disobedience, riots, rebellions, acts of God and similar occurrences.
- 3.3. OCTOPI makes no express or implied warranties regarding the service of equipment or the installation of same and disclaims any implied warranty including any warranties of merchantability and or fitness for a particular purpose.
- 3.4. This Agreement represents the entire agreement between the parties and supersedes all prior oral and/or written proposals and communications.
- 3.5. This Agreement extends only to the original Customer and is non-transferable. This Agreement cannot be honoured if the equipment is moved out of OCTOPI's normal service area. If the equipment is moved beyond OCTOPI's service zones without OCTOPI's prior written consent, Customer agrees, subject to clause 6.7, that this Agreement shall be deemed terminated by the Customer. Equipment cannot be moved without OCTOPI's prior written consent.
- 3.6. The transfer of equipment to a different zone within the service area subjects the Agreement to the applicable rate for the new zone.
- 3.7. OCTOPI's exclusive remedy and OCTOPI's entire liability in terms of this Agreement, will be to make all necessary adjustments and repairs (or at OCTOPI's option replace or substitute equipment) to keep the equipment in good operating condition in accordance with the manufacturers policies then in effect.
- 3.8. In no event arising from any case whatsoever will OCTOPI be liable for any indirect, special or consequential damages arising out of this Agreement or the use of any equipment and services provided under this Agreement.
- 3.9. Services and/or goods will not be supplied if the Customer's account is not up to date and/or if the Customer refuses to provide a copy counter reading.
- 3.11. The Network Printer board, Fax board, ColorPass and RIP are excluded from this Maintenance Agreement, and the Customer is liable for replacement/repairs to these boards.
- 3.12. Customer is limited to only 1 (one) toner cartridge per colour per request, provided yield is achieved for the colour requested. OCTOPI reserves the right to charge the customer, pro rata for all toner ordered & supplied in excess of such yield.
- 3.14. OCTOPI cannot guarantee the compatibility of software to the printer should software be upgraded.
- 3.15. In the event that OCTOPI identifies unsuitable/unstable power to which the equipment is connected, the Customer shall rectify this immediately at their cost, failing which the Customer will be liable for all callouts, parts, repairs relating or attributed to this problem.

## 4. CONTRACT INVOICING

- 4.1. Periodic statements will be issued electronically by OCTOPI.
- 4.2. A3 formats/prints are charged with the specified A4 rate.
- 4.3. Signature of a debit order is mandatory. Should Customer not sign a debit order, manual payments will be subject to OCTOPI's standard current administration charges.

## 5. TERMS AND CONDITIONS

- 5.1. An annual escalation will be applied to the service rates, on each anniversary of the commencement date. In addition to the annual escalation, OCTOPI retains the right to increase rates without notice to the Customer, which increase shall be in OCTOPI's sole discretion and having regard to such factors as inflation, the foreign exchange rate and increased costs of fuel, parts and labour.
- 5.2. OCTOPI reserves the right to inspect all equipment to be included under this Agreement to determine that it is in good mechanical condition on the commencement date of the Agreement. Should the equipment require repair or overhaul for acceptance, such repairs, if approved by the Customer, will be made at OCTOPI's then current hourly rate plus parts.
- 5.3. OCTOPI reserves the right to discontinue this Agreement on any equipment for the following reasons:
  - 5.3.1 The equipment is not being used in accordance with intended purposes, lack of proper operator maintenance, or abuse of equipment by the operators;
  - 5.3.2 Equipment requires repairs outside the included Maintenance of this agreement but approval to proceed has been denied;
  - 5.3.3 Parts are no longer available to OCTOPI from the manufacturer of the equipment;
  - 5.3.4 Equipment has been moved beyond OCTOPI service zones without OCTOPI consent; and/or
- 5.4. In addition to all other charges, the Customer shall be responsible for any applicable tax, now or hereafter assessed, levied or imposed by any State or Local authority, for any performance, equipment or supplies provided under this Agreement.
- 5.5. No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless recorded in a written document and signed by or on behalf of the duly authorised representatives of both Parties.

- 5.6. OCTOPI reserves the right to refuse orders for Maintenance Agreements when service is not available or is required in remote areas.
- 5.7. This Agreement does not include the purchase and delivery of the equipment and optional accessories.
- 5.8. OCTOPI reserves the right to amend the service charge Maintenance agreements without notice if toner prices or usage increase for whatever reason.
- 5.9. OCTOPI may, revert Customer to a toner exclusive service agreement by giving Customer 30 (thirty) days written notice. The rate charged will then be in accordance with OCTOPI's applicable maintenance rates.
- 5.10. **Divisibility** - In the event that any of the provisions of this Agreement are found to be invalid, unlawful, or unenforceable, such terms shall be severable from the remaining terms, which shall continue to be valid and enforceable.
- 5.11. This Agreement shall be governed by and construed in accordance with the Laws of the Republic of South Africa.
- 5.12. The Customer hereby consents to OCTOPI instituting any proceedings against it arising out of this Agreement in any Magistrate's Court, otherwise having jurisdiction in respect of the Customer, notwithstanding that the subject matter of such proceedings would exceed the jurisdiction of such Court.
- 5.13. The parties accept as their respective domicilium citandi et executandi for the purposes of this Agreement the addresses as recorded in the Schedule. Either party may change its aforesaid address to any other address in the Republic of South Africa by giving to the other party no less than 14 (fourteen) days written notice of such change.
- 5.14. Any notice addressed to the Customer at the domicilium citandi et executandi required to be stated as per clause above, and sent by post shall be deemed to be received by the Customer 7 (seven) days after its posting.
- 5.15. All notices and all payments affected or made in terms of or in pursuance of this Agreement, shall be affected or made, as the case may be, to the domicilium citandi et executandi specified or provided for in terms of clause 5.13 above.
- 5.16. All rates exclude V.A.T.
- 5.17. OCTOPI may cede any or all of its rights in terms hereof to any third party without prior notice to the Customer.

## 6. DURATION OF AGREEMENT

- 6.1. This Agreement shall commence on installation of the equipment and shall continue for an initial period.
- 6.2. Prior to expiry of the initial period, the Customer must give three calendar months (ninety days) written notice to terminate the Agreement, which termination will take effect on the date on which the initial period shall have expired, failing which the Agreement shall automatically renew on a month-to-month basis. The Customer may thereafter terminate the Agreement on an anniversary of its Commencement Date, by giving 30 (thirty) days' prior written notice to OCTOPI.
- 6.4. OCTOPI is entitled to terminate the Agreement at any time, prior to the expiry of the initial period, upon written notice. All amounts in arrears or owing to OCTOPI will become immediately due & payable at date of cancellation.
- 6.5. **Certificate of balance** - A certificate signed by any OCTOPI manager or its attorney, whose appointment need not be proven, setting forth the amount of indebtedness at any time ("the Debt"), that the Debt is then due and payable, and the interest payable on the Debt and the date from which such interest is reckoned, shall constitute sufficient proof of the facts therein stated and shall be binding on the Customer for all purposes, including, without derogating from the generality of the foregoing, the granting of provisional sentence, summary judgement or any other remedy, provided that if the a foregoing provisions are unenforceable for any reason, such certificate shall constitute prima facie proof of the Debt.
- 6.7. In the event of any amount due in terms hereof not being paid on due date or in the event of the Customer breaching any of the terms of this Agreement (all of which terms are deemed material and going to the root of this Agreement), OCTOPI shall be entitled forthwith to cancel this Agreement, claim all amounts which are in arrears at the date of cancellation and claim (without prejudice to any other relief which it may have against the Customer in lieu of the relief provided to OCTOPI in this clause, whether in common law or otherwise) as pre-estimated liquidated damages either:
  - 6.7.1. The total amount of all OCTOPI Service Base rate charges, that would have been paid by the Customer to OCTOPI for that portion of the prescribed initial period, still remaining after the aforesaid cancellation; and/or
  - 6.7.2. The average of the monthly amounts that OCTOPI has billed the Customer in terms of this Agreement for the period prior to the aforesaid cancellation multiplied by the number of months remaining in respect of that portion of the prescribed initial period, still remaining after the aforesaid cancellation, whichever is the greater.

## 7. PROTECTION OF PERSONAL INFORMATION

- 7.1. In accordance with the Protection of Personal Information Act 4 of 2013 ("POPIA"), OCTOPI requires the consent of the Customer to process all personal information as defined within POPIA ("Personal Information").
- 7.2. As such, the Customer expressly consents and agrees that OCTOPI may:
  - 7.2.1. Make enquiries to confirm and verify any Personal Information provided by the Customer and generally make whatever enquiries OCTOPI deems necessary from any source whatsoever;
  - 7.2.2. Request Personal Information relating to the Customer from any credit bureau;
  - 7.2.3. Process the Customer's Personal Information for purposes of providing the services provided in terms of the Agreement;
  - 7.2.4. Process and disclose the Customer's Personal Information for purposes of the prevention, detection and reporting of fraud and criminal activities, the identification of the proceeds of unlawful activities and the combating of money laundering activities;
  - 7.2.5. Process and report on the Customer's Personal Information to comply with an obligation imposed by any applicable laws;
  - 7.2.6. Utilise automated decision processes to facilitate the generation of credit score cards for the purposes of determining the creditworthiness of the Customer and retain and utilise records of information pertinent to the Customer's ongoing creditworthiness;
  - 7.2.7. Provide the Customer's Personal Information to OCTOPI's cessionary/ies, subsidiaries and associated entities and group companies for purposes of marketing and referring potential business opportunities within OCTOPI's associated group of companies.
  - 7.2.8. Process and disclose the Personal Information to any person providing services to OCTOPI's or representative or agent of OCTOPI; and
  - 7.2.9. Process and disclose the Personal Information to any financier, cessionary or person that may take cession of the Agreement with the Customer.
- 7.3. The Customer has the right to access its Personal Information held by OCTOPI and the Customer shall be granted access during office hours within a reasonable time after receiving a written request for access.

## 8. GUARANTEE TERMS AND CONDITIONS

- 8.1. I/We the guarantor/s listed in the Guarantee section overleaf do hereby bind myself/ourselves jointly and severally as guarantor/s and co-principal debtor/s for all amounts which are now or might in the future become payable by the Customer to OCTOPI in terms of the above Agreement arising out of or incidental to same and the schedules hereto, both current and future or from any other cause however arising.
- 8.2. I/We renounce the benefits of excussion (requiring that the Customer is sued first), division (divide the claim so that each is liable for their share only) and cession of action (claim is ceded to the guarantor before the guarantor is compelled to pay), the nature and extent of which I/we acknowledge myself/ourselves to be aware.
- 8.3. No extension of time or indulgence that may be granted to the Customer in the aforementioned Agreement at any time, nor any release of any other security or guarantee shall in any way affect my/our liability hereunder.
- 8.4. I/We consent to the jurisdiction of the Magistrate's Court, provided that OCTOPI shall be entitled to institute action in any division of the High Court of South Africa having jurisdiction and that OCTOPI shall not be limited to costs on the Magistrate's Court scale.
- 8.5. I/We agree to make payment of any legal costs that may be awarded against me/us on an attorney and own client scale.
- 8.6. I/We choose as my/our domicilium citandi et executandi for all purposes arising out of this Guarantee the address/es set out in the guarantee section overleaf alongside my/our respective signature/s.
- 8.7. I/We indemnify and hold OCTOPI harmless against any claim arising out of or incidental to the Agreement, its breach or its termination for any reason whatsoever.
- 8.8. I/We warrant and represent that I/we have received and will continue to receive adequate value for the granting of this guarantee.
- 8.9. I/We hereby agree that where it is contemplated that more than one person will sign as guarantor, I or any of us who may have signed as guarantor/s shall be bound jointly, irrespective of whether or not the other or others referred to will have executed this Agreement or become bound in terms hereof.
- 8.10. I/We consent to OCTOPI making enquiries about my/our credit record with any credit reference agency and any other party to confirm the details in this Guarantee. Clause 7 (Protection of Personal Information) above shall apply to this Guarantee as though specifically set forth herein.
- 8.11. A certificate under the hand of any manager of OCTOPI, as given from time to time, in respect of the guaranteed obligations or in respect of any other fact shall, on the face of it, be proof of the Customer's indebtedness to OCTOPI and/or such other fact. It shall not be necessary to prove the appointment of