



Function4 Image / Service Agreement

Sold To: (legal name)				Ship To:					
Name: <u>Brazoria County</u> Account Number: _____				Name: <u>Brazoria County</u> Account Number: _____					
Contact Name: <u>Mindy Burch</u>				Street Address: <u>Multiple</u>					
Phone Number: <u>979-864-1840</u>				City: _____ State: _____ Zip: _____					
Street Address: <u>111 E. Locust St.</u>									
City: <u>Angleton</u> State: <u>TX</u> Zip: <u>77515</u>									
Tax Exemption <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (Certificate required)				Tax Exemption Number: _____					
PO Required <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (Copy required)				PO Number: _____ PO Expiration Date: _____					
Maintenance Agreement									
<input type="checkbox"/> Cost Per Page <input type="checkbox"/> Subscription									
<input checked="" type="checkbox"/> With Supplies <input type="checkbox"/> Maintenance Only - Supplies Purchased Separately									
Effective Date: _____									
Billing Cycle for CPP contract: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually				Contract Term (Months): <input type="checkbox"/> 12 <input type="checkbox"/> 24 <input type="checkbox"/> 36 <input type="checkbox"/> 48 <input type="checkbox"/> 60 <input type="checkbox"/> 63					
Billing Cycle for Excess Copies: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually				Digital Support Services Opt Out <u>XXXXXXX</u> (Initial required)					
Lease Contract Number _____									
Product Covered Under Contract:									
Item	Model/Description	Equipment ID	Serial Number	Type	Base Amount	Base Allowance	CPP	Overage CPP	Meter Reading
1				B/W					
				C					
2				B/W					
				C					
3				B/W					
				C					
4				B/W					
				C					
5				B/W					
				C					
6				B/W					
				C					
Comments									
<div style="border: 1px solid black; padding: 10px; text-align: center;"><i>Customer's signature below acknowledges receipt and consent to Function4 Image / Service Agreement Terms and Conditions. Not binding on Function4 until signed by Function4 Manager.</i></div>									
Customer Name: _____				Function4 Representative: _____					
Please Print									
Signature: _____				Function4 Manager: _____					
Authorized Representative of Customer				Date					
Title: _____									
FOR INTERNAL USE									
<input type="checkbox"/> New Customer <input type="checkbox"/> Maintenance w/ Equipment Order <input type="checkbox"/> Maintenance Only <input type="checkbox"/> Maintenance Billed by Function4 <input type="checkbox"/> Maintenance Billed with Lease <input type="checkbox"/> Dealer Served									
Key Operator Contact: _____				Phone: _____		Email Address: _____			
Meter Read Contact: _____				Phone: _____		Email Address: _____			
Accounts Payable Contact: _____				Phone: _____		Email Address: _____			
Special Instructions:						Additional Documents Attached:			
						<input type="checkbox"/> Price Exception <input type="checkbox"/> Tax Exempt Certificate <input type="checkbox"/> Purchase Order <input type="checkbox"/> Credit Application			

1. **DEFINITION AND INCORPORATION.** The term "Maintenance Agreement" as used herein shall mean the Function4 Image/Service Agreement provided by Function4 as either: (i) an CPP with supplies only contract, which the Equipment may be provided by Function4, by customer, or another party, (ii) a Maintenance only contract regarding the service and Equipment that is the subject of a Maintenance Agreement, or (ii) a Subscription contract regarding Subscription Equipment (defined below), along with these Terms and Conditions. The specific contract type will be outlined in the ordering documents. Customer (specified on the reverse side hereof) and Function4, LLC ("Function4") agree that these Terms and Conditions are incorporated by reference into the Function4 Image/Service Agreement to which they are attached as well as all purchase orders and invoices between Customer and Function4 concerning the Equipment which is the subject of a Maintenance Agreement.

2. **INSTALLATION.** Certain Equipment must be installed according to specific requirements in terms of space, electrical, and environmental conditions. Installation requirements are defined in the Equipment Operator Manual. Customer shall ensure that the Equipment is placed in an area that conforms to the manufacturer's specifications and requirements and will bear all cost and expense required for installation such as telephone and electrical wiring, remodeling, noise and power filters, and electrical work external to the equipment.

3. **CPP with Supplies.** If Customer selects the Cost Per Page ("CPP") with Supplies Option on the Maintenance Agreement and pays the applicable charge for the Maintenance Agreement, Function4 will perform maintenance cleaning and make inspections, adjustments, and repairs, and replace defective parts for the Equipment without additional charge to Customer, provided such calls are made during Normal Business Hours (as defined in paragraph 8, below). Function4 will furnish the following supplies, to be delivered at accepted intervals in quantities as usage history dictates as determined by Function4 and additional deliveries as required: Toner, Developer, Drums or Photoconductor, Filter Change, Fuser Oil, Webs. CPP with Supplies does not include paper, labels, staples, or transparencies of any kind. Function4 reserves the right to charge Customer for shipping and handling charges incurred by Function4 for the delivery of any Consumable Supplies delivered to the Customer. Function4 agrees to train Customer personnel in the use of the Equipment at reasonable times. At times, other than any anniversary or renewal dates as described in paragraph 18, Function4 shall have the right under this Maintenance Agreement to increase the CPP rate upon thirty (30) days written notice to Customer.

4. **EXCESS COPIES.** The initial term of this Maintenance Agreement is based on anticipated customer usage as stated in "Base Allowance" on the face of the Maintenance Agreement (the "Initial Term"). Base Allowance copies are accumulated from the initial meter read. Customer shall provide Function4 with meter readings on the last day of each month and/or when requested by Function4. Each 8½" x 11" copy will be recorded as a single meter click. Each 11" x 17" copy will be recorded as a double meter click. Duplexed copies shall be counted at twice the rate of simplex copies. For models equipped with banner printing capabilities, the following meter click charges shall apply: 18" to 27" = 3 clicks; 27" to 36" = 4 clicks; 36" to 47" = 5 clicks. Function4 reserves the right to conduct on-site inspections and meter readings to verify the accuracy of meter readings at any time and to substitute, in its sole and absolute discretion, its own readings for the Customer's readings. Customer agrees to provide Function4 access to the Equipment during Normal Business Hours to perform such inspections and meter readings. Further, if Customer does not provide Function4 with meter readings on the last day of the month, Function4 shall be entitled to estimate the meter reading and Customer agrees to accept such estimated reading. Should the Base Allowance be exceeded prior to expiration of any applicable billing cycle, Customer agrees to pay the current excess copy charge for each copy in excess of the Base Allowance. Invoices for excess copies will be tendered either monthly, quarterly, semi-annually, or annually as determined by Function4.

5. **PAYMENT; SUSPENSION OF SERVICE.** Customer agrees to pay, by check made payable to Function4, ACH or by credit card, all invoices rendered for services performed and/or parts installed on Equipment within 30 days from the date of the invoice. Function4 does not accept cash payments. If any part of any payment due to Function4 hereunder is more than five (5) days past due, Customer agrees to pay a late charge equal to 10% of the past due amount to cover Function4's administrative costs occasioned by said late payment. Customer agrees that amounts not timely paid shall bear interest at the rate of 1.5% monthly (18% per annum), or at the maximum rate allowed by law, whichever is less. Without waiver of any other rights hereunder, Function4 shall have the right to discontinue service in the event Customer becomes delinquent in payment.

6. **CUSTOMER CHANGES.** Function4 reserves the right to assess additional charges and/or terminate services in the event the Customer implements any changes, alterations, attachments, or additions that make it more expensive or impractical for Function4 to provide service to Customer or the Equipment.

7. **MAINTENANCE ONLY.** If Customer selects the Maintenance Only Option on the Maintenance Agreement, Function4 will provide such maintenance service as is necessary to maintain the Equipment in good operating condition, including replacement of parts which have broken or worn out through normal use. This Maintenance Agreement covers all routine, remedial and preventative maintenance service. This Maintenance Agreement does not include Consumable Parts or

Consumable Supplies. Consumable Parts are photoreceptor drum (imaging units, drum cartridges, masters) and fuser unit cleaner/lubricants (fuser webs, cleaning rollers, wicks, belts, fuser oil). Consumable Supplies are toner, developer, filters, paper, preventative maintenance kits, print wheels, ribbons, ink cartridges, staples, and waste toner bags/receptacles. If Customer uses parts or suppliers other than Function4 Consumable Parts and/or Consumable Supplies, and if such parts or supplies are defective or not adaptable to use on the Equipment resulting in unnecessary service calls (chargeable item), service problems, or unacceptable copy quality, then Function4 may terminate this Maintenance Agreement and the unused portion of any fee refunded is in Function4's sole and absolute discretion. In the event Function4 so terminates this Maintenance Agreement, Customer will be offered continuing service from Function4 at published hourly rates, subject to change without notice. The Operator Manuals for each piece of Equipment define specific operator responsibilities. Performance of normal operator functions as described in the Operator Manuals are Customer's responsibility, are not included in this Maintenance Agreement, and are subject to additional charges at established Function4 rates then in effect. Customer agrees to exercise proper care of the Equipment. This Maintenance Agreement does not cover service calls caused by user error, misuse or abuse, nor does it cover software and/or network printing configuration or related issues, and such services will be subject to additional charges at established Function4 rates then in effect.

8. **BUSINESS HOURS FOR SERVICE.** All services provided hereunder are available only during Function4's Normal Business Hours, which is hereby defined to consist of 8:00 am to 5:00 pm Central Time, Monday through Friday, exclusive of Function4 holidays and subject to change by Function4. At Customer's request, Function4 may render service outside of normal business hours, subject to availability of personnel and additional charges at established Function4 rates then in effect.

9. **RETAINED TITLE.** Title to all supplies furnished in connection with the Maintenance Agreement, including consumable parts such as drums, remains in Function4 until said supplies are consumed to the extent that they may not be further utilized in the copy making process. In the event of Customer default or cancellation of this Maintenance Agreement, all such supplies and consumable parts shall be returned to Function4 on demand. Additionally, Function4 reserves the right to charge Customer a prorated amount for any unused portion of drum remaining pursuant to Function4's standard formula for such proration.

10. **AVAILABILITY OF SUPPLIES.** Function4 Customer Service Engineers do not carry or deliver Consumable Supplies (toner and paper). It is Customer's responsibility to purchase and have the necessary supplies available for Customer Service Engineer's use.

11. **RECONDITIONING.** When a shop reconditioning is necessary, or the manufacturer's life expectancy of the Equipment has been exceeded, and normal repairs and parts replacement cannot keep a unit in satisfactory operating condition, Function4 will submit to Customer a cost estimate of needed repairs which will be in addition to ordinary maintenance/service charges. If Customer does not authorize such work, Function4 may refuse to renew this Maintenance Agreement for such unit, and/or refuse to continue providing service to such unit under this Maintenance Agreement, furnishing service only on a "Per Call" basis.

12. **NETWORK INTEGRATION.** If Network Integration services are provided by Function4, Customer warrants that the Function4 Digital Needs Analysis ("DNA") has been accurately completed and Function4 may rely on the information contained in the DNA in providing network integration services. Function4 reserves the right to assess additional charges for service due to Customer's modification of its network, software, or operating system(s).

13. **SUBSCRIPTION.** If Customer selects the Unlimited Subscription, the service includes the equipment, accessories, and/or software listed in the applicable ordering documents (the "Subscription Equipment") and all toner (paper and staples are not included), parts, and routine maintenance (and service for the Subscription Equipment which will be performed by Function4 during our regular business hours (8:00 AM to 5:00 PM – Monday through Friday, except Holidays) at no additional charge. Service requested by you at times other than regular business hours will be furnished at our established overtime service rates, subject to the availability of our Service Personnel.

14. **NOT INCLUDED IN THE UNLIMITED SUBSCRIPTION.** The following service events are not covered under the Unlimited Subscription and will be invoiced to you at our Standard Service Rates. Service calls resulting from: (a) The use of paper and toner or other supplies not meeting our specifications; (b) User error or failure to perform operator maintenance as defined in the operator manuals; (c) Electrical or mechanical work external to the Subscription Equipment and/or system; (d) Repair or replacement of network printing, scanning, faxing functions affected by updates or modifications of your network; (e) Repair or replacement of peripheral equipment such as Fiery controllers, coin vending equipment, etc., unless added and charged as a separate line item in the Agreement; or (f) Operator negligence, misuse, accidents, acts of God, natural disasters, improper storage, and unusual physical or electrical stress.

15. **SUBSCRIPTION CONSUMPTION VOLUME LIMIT.** If in any 12-month period your copy volume or consumption of toner is 20% higher than _____, then we may increase the monthly payment by 20% for the remaining months of the Term.

Customers Initials: _____

16. **SYSTEM MONITORING.** Function4 will deploy and enable its Meter Agent, which is a Device Relationship Management (DRM) system that interacts with Function4 product(s) for the purpose of automated meter reading, technical performance monitoring, consumable and supply-level monitoring for replenishment, and product status (and as described in Function4's DNA). Should Customer opt-out of utilizing System Monitoring, Function4 reserves the right to assess an incremental invoicing fee on Customer not to exceed \$25 per invoice.

17. **DIGITAL SUPPORT SERVICE (DSS).** Unless the Customer opts-out of DSS, Function4 shall provide Customer with DSS, for a fee of \$9.95 per month per device covered under this Maintenance agreement billed with the base billing cycle. DSS provides remote Help Desk Support which includes troubleshooting network connectivity issues, network print, scan and fax resolution, print/fax driver updates, installation of additional print/fax drivers and installation of additional scan/fax destinations.

18. **TERM AND AUTOMATIC RENEWAL.** The Term of this Agreement shall be for thirty-six (36) months, unless the Lease Agreement outlines a shorter or longer Term for _____ () months (the "Term"). At the end of the Term of this Agreement (or any renewal term) (the "End Date"), this Agreement will renew for an additional twelve month period under the same terms unless: (a) you provide us written notice, at least 90 days but not more than 150 days prior to the End Date, or your intent to terminate. Each year the prices under this Agreement may increase, but they shall not to exceed 15% annually.

19. **LIQUIDATED DAMAGES.** In the event of Customer default or voluntary termination, Customer promises to pay to Function4 liquidated damages (and not as a penalty) equal to 75% of the recurring Fees remaining to be paid from the effective termination date through the end of the Term. In the event Customer is in default of any obligation under this agreement and remains in default for seven (7) days after notice thereof, Function4 may cancel this agreement and collect damages according to the foregoing formula.

20. **NO WAIVER.** Customer acknowledges and agrees that any delay or failure to enforce its rights hereunder by Function4 does not constitute a waiver of such rights by Function4, or in any way prevent Function4 from enforcing such rights, or any other rights hereunder, at a later time.

21. **ENTIRE AGREEMENT.** The Maintenance Agreement constitutes the entire agreement between Customer and Function4 related to the maintenance of the Equipment, and any and all prior negotiations, agreements (oral or written), proposals (oral or written), understandings and/or communications between the parties relating to this Maintenance Agreement are hereby superseded.

22. **NO INDUCEMENTS.** Customer represents and warrants that no promise, agreement, or inducement, whether written or oral, which is not herein expressed has been made to Customer in executing this Function4 Image / Service Agreement.

23. **NO MODIFICATION OF TERMS.** Customer expressly acknowledges and agrees that these terms and conditions may not be varied, modified, or changed except by written agreement executed by a duly authorized representative of Function4, and that this Maintenance Agreement cannot be modified by course of performance or course of dealing. No sales or service personnel, including but not limited to, managers or supervisors, have any authority to override this provision.

24. **AUTHORITY.** Customer and Function4 each represent and warrant that their respective signatures to the Maintenance Agreement have been duly authorized to enter into this Maintenance Agreement by them.

25. **LIMITATION ON LIABILITY.** Under no circumstances shall Function4 be responsible to Customer for any indirect, special, or consequential loss or damage, however caused, arising out of this Maintenance Agreement or services provided under this Maintenance Agreement. Function4's liability in case of nonperformance or breach of this Maintenance Agreement shall not exceed the amount of money which Customer has paid to Function4 pursuant to this Maintenance Agreement.

26. **INDEMNITY.** CUSTOMER SHALL INDEMNIFY FUNCTION4 AGAINST AND HOLD FUNCTION4 HARMLESS FROM AND AGAINST ANY AND ALL FUTURE LOSS, COST, EXPENSE AND LIABILITY OF WHATEVER KIND, TYPE OR NATURE, INCLUDING THOSE BROUGHT BY THIRD PARTIES, ARISING OUT OF OR RELATING TO THIS MAINTENANCE AGREEMENT. In the event of an indemnified claim hereunder, Function4 agrees to present such indemnified claim in writing to Customer promptly and to timely furnish Customer all evidence, witnesses and other reasonable assistance requested to defend against any such indemnified claim.

27. **DISCLAIMER.** CUSTOMER TAKES THE EQUIPMENT "AS IS" AND FUNCTION4 MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABLE. Function4 expressly disclaims any duty as insurer of the Equipment and Customer shall pay for all costs of repair and parts or replacement of the Equipment made necessary by, but not limited to, loss or damage through accident, abuse, misuse, theft, fire, water, causality, natural force or any other negligent act of Customer or Customers' agents and/or service performed by non-Function4 personnel. Function4 will not assume any liability for any conditions arising

from electrical circuitry external to the Equipment and Equipment Line Cord, nor is an external electrical work covered under this agreement.

28. **ATTORNEYS FEES; COSTS.** In the event Customer defaults under the Maintenance Agreement, or if any other dispute arises hereunder requiring Function4 to refer said matter to an attorney and/or to initiate, or defend, any court action in any way related to this Maintenance Agreement, Customer agrees to pay Function4's reasonable attorneys' fees and all costs resulting from such action.

29. **CHOICE OF LAW AND FORUM SELECTION CLAUSE.** Customer hereby covenants and agrees that any and all disputes arising out of or in connection with this Maintenance Agreement shall be interpreted and construed in accordance with the laws of the State of Texas. This Maintenance Agreement is entered into an enforceable in the State of Texas. Customer hereby covenants and agrees the exclusive venue and jurisdiction of any action brought regarding this Maintenance Agreement and any and all disputes with Function4 shall lie with any state or federal court of competent jurisdiction in Harris County, Texas.

30. **WAIVER OF JURY TRIAL. CUSTOMER HEREBY EXPRESSLY WAIVE TRIAL BY JURY AS TO ANY AND ALL ISSUES ARISING OUT OF, OR IN ANY WAY RELATED TO THIS MAINTENANCE AGREEMENT.**

31. **NOTICE.** Any notice or other communication given or required in connection with this Maintenance Agreement shall be in writing, and shall be given by certified registered mail, postage prepaid, return receipt requested. If sent to Function4, said notice shall be sent to the registered agent for Function4 in the state in which the transaction arose, or to Function4, Attention: William Patsouras, 12560 Reed Rd Suite 200, Sugar Land, Texas 77478, or such other address as Function4 may hereafter designate in writing. If to Customer, the notice shall be sent to Customer at the address specified on the first page of this agreement hereof, or such other address which may be specified by Customer in writing to Function4.

32. **FAIR NOTICE. CUSTOMER HEREBY AGREES THAT ANY LANGUAGE IN THIS MAINTENANCE AGREEMENT THAT IS IN ALL CAPITAL LETTERS AND/OR BOLD-FACE TYPE AND IN PARAGRAPHS 26, 27, 28, 30, 32 AND THE PROVISION ARE CONSPICUOUS AND THAT CUSTOMER HAS BEEN GIVEN FAIR NOTICE OF ALL TERMS AND CONDITIONS OF THIS MAINTENANCE AGREEMENT.**

33. **AFFIRMATIVE ACTION.** Function4 and all vendors and/or subcontractors are obligated to and do, to the best of Function4's knowledge comply with the EEO clause at 41 CFR 60 1.4(a) and The Affirmative Action Clauses at 250.4(a) and 741.4(a).

34. **ASSIGNMENT:** Neither party may assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of the other party. However, Function4 may assign or otherwise transfer its rights, interests, or obligations under this Agreement without your consent in the event of a change in control of 50% or more of the equity of Function4, the sale of substantially all the assets of Function4, or the restructuring or reorganization of Function4 or its affiliate entities. Client transfer its rights, interests, and obligations under this Agreement without Function4 consent then such assignment will not be valid, and Customer shall remain responsible for all fees under this Agreement and any attachment or scheduled regardless of whether Customer continues to derive any benefit from the Services. In addition, unless otherwise agreed, we may contract with third parties to deliver some or all the Services, and no such third-party contract is to be interpreted as an assignment of this Agreement. However, we will use commercially reasonable efforts to ensure that any and all such third parties abide by all of the terms of this Agreement, and, except as otherwise agreed, we will remain solely responsible for the fulfillment of all of our obligations under this Agreement. This Agreement is binding upon the parties, their successors and permitted assigns.

Customers Initials: _____

Function4 Image / ServiceAgreement Addendum - Additional Equipment

Sold To:		Ship To:	
Name: _____	Account Number: _____	Name: Brazoria County	Account Number: _____
Address Line 1: Mindy Burch		Street Address: Multiple	
Address Line 2: 979-864-1840		City: _____ State: _____ Zip: _____	
Street Address: 111 E. Locust St.			
City: Angleton	State: TX	Zip: 77515	

ADDENDUM TO FUNCTION4 IMAGE / SERVICE AGREEMENT

Product Covered Under Contract:

Item	Model/Description	Equipment ID	Serial Number	Type	Base Amount	Base Allowance	CPP	Overage CPP	Meter Reading
7				B/W					
				C					
8				B/W					
				C					
9				B/W					
				C					
10				B/W					
				C					
11				B/W					
				C					
12				B/W					
				C					
13				B/W					
				C					
14				B/W					
				C					
15				B/W					
				C					
16				B/W					
				C					
17				B/W					
				C					
18				B/W					
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19				B/W					
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26				B/W					
				C					
27				B/W					
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28				B/W					
				C					
29				B/W					
				C					
30				B/W					
				C					

This page is a continuation of the Function4 Image / Service Agreement dated _____ between Function4 and Customer.

Customer Signature: _____

Function 4 Representative: _____