

City of Los Alamitos

Agenda Report Consent Calendar

July 21, 2015
Item No: 8J

To: Mayor Richard D. Murphy & Members of the City Council
Via: Bret M. Plumlee, City Manager
From: Jason Al-Imam, Administrative Services Director
Subject: City Hall Copier Lease

Summary: This report addresses the lease of new copier equipment for use by the departments in City Hall.

Recommendation: Authorize the Administrative Services Director to execute a 60-month lease agreement between the City of Los Alamitos and Konica Minolta to provide for a Bizhub 754E high-volume black and white multifunction copier for City Hall and a Bizhub C454E color multifunction copier for Administration.

Background

The City of Los Alamitos has been on a five year lease with Konica Minolta for one black and white copier (Bizhub 751) and one color copier (Bizhub C452). The copier lease with Konica Minolta is set to expire on August 23, 2015. The copiers are used for general day-to-day copying and scanning, as is standard in all departments, and the duplication of large documents such as City Council agendas.

Discussion

On March 30, 2015, a Request for Proposal was sent out to solicit proposals from copier leasing/maintenance companies for a 5-year contract for one (1) high-volume black and white multifunction copier and one (1) color multifunction copier. The City received three proposals, which were received from Konica Minolta, Pacific ConnecTeq and Xerox.

The proposed pricing for the color copier was as follows:

	Monthly Lease	Price per Page		Estimated Annual Cost
		B&W Copies	Color Copies	
Konica	\$173.00	\$0.0053	\$0.0700	\$8,432
ConnecTeq	\$259.17	\$0.0075	\$0.0760	\$10,241
Xerox	\$258.47	\$0.0090	\$0.0656	\$9,590

The proposed pricing for the black and white copier was as follows:

	Monthly <u>Lease</u>	Price per <u>Page</u>	Estimated Annual <u>Cost</u>
Konica	\$265.00	\$0.0060	\$3,999
ConnecTeq	\$426.35	\$0.0075	\$6,140
Xerox	\$357.75	\$0.0064	\$5,167

Staff recommends Konica Minolta since Konica provided the lowest pricing. It's also important to note that Konica has provided the City with excellent customer service over the past 5 years and therefore the company has a proven track record with the City.

Fiscal Impact

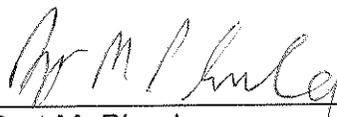
The annual cost for the new City Hall copier lease with Konica is approximately \$12,431, which is approximately \$2,900 lower than what the City has paid in the past under the lease terms which are set to expire in August 2015. This lease cost includes service, maintenance, and supplies (such as replacement toner). Sufficient funds are available in the budget to implement this contract.

Submitted By:
By:



Jason Al-Imam
Administrative Services Director

Approved



Bret M. Plumlee
City Manager

Attachment: 1. Lease Agreement

For office use only (Check one): Branch Windsor

KONICA MINOLTA

Premier Lease Agreement

APPLICATION NUMBER

1296307

AGREEMENT NUMBER

This Premier Lease Agreement ("Agreement") is written in "Plain English". The words **you** and **your**, refer to the customer (and its guarantors). The words **Lessor, we, us** and **our**, refer to **Konica Minolta Premier Finance, a program of Konica Minolta Business Solutions U.S.A., Inc., its subsidiaries and affiliates (Supplier)**

CUSTOMER INFORMATION

FULL LEGAL NAME LOS ALAMITOS CITY OF		STREET ADDRESS 3191 KATELLA AVE		
CITY LOS ALAMITOS	STATE CA	ZIP 90720-2335	PHONE* 562 431 3538	FAX
BILLING NAME (IF DIFFERENT FROM ABOVE)		BILLING STREET ADDRESS		
CITY	STATE	ZIP	E-MAIL JALIMAM@CITYOFLOSALIMITOS.ORG	
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE)				

*By providing a telephone number for a cellular phone or other wireless device, you are expressly consenting to receiving communications (for NON-marketing or solicitation purposes) at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic telephone dialing system from Lessor and its affiliates and agents. This Express Consent applies to each such telephone number that you provide to us now or in the future and permits such calls. These calls and messages may incur access fees from your cellular provider.

CUSTOMER ONE GUARANTEE

The Konica Minolta equipment leased in this Agreement is covered under Konica Minolta's Customer One Guarantee. A copy of the Guarantee can be obtained at your local branch or www.kmbs.konicaminolta.us.



MAKE / MODEL NO. / ACCESSORIES (including Software Description and Supplier / Licensor if applicable)

1 - BIZHUB 754E
1 - BIZHUB C454E

See attached 'Schedule A' for additional Equipment / Accessories / Software

TERM AND PAYMENT SCHEDULE

TERM IN MONTHS	# of payments	Payment Frequency	Payment Amount (plus applicable taxes)	Advance Payment (plus applicable taxes)
60	60	<input type="checkbox"/> Quarterly <input checked="" type="checkbox"/> Monthly	\$ 438.00	\$

END OF LEASE OPTIONS: You will have the following options at the end of the original term, provided the Lease has not terminated early and no event of default under the Lease has occurred and is continuing.
1. Purchase the Equipment for the Fair Market Value as determined by us. 2. Renew the Lease per paragraph 1 (on reverse). 3. Return Equipment as provided in Paragraph 5 (on reverse).

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT: THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

LESSOR ACCEPTANCE

Konica Minolta Premier Finance			
LESSOR	AUTHORIZED SIGNER	TITLE	DATED

CUSTOMER ACCEPTANCE

LOS ALAMITOS CITY OF	X		
FULL LEGAL NAME OF CUSTOMER (as referenced above)	AUTHORIZED SIGNER	TITLE	DATED
95-2133135 FEDERAL TAX I.D. #	Jason Al-Iman PRINT NAME	Administrative Services Director TITLE	

CONTINUING GUARANTEE

As additional inducement for us, Konica Minolta Premier Finance to enter into the Agreement, the undersigned ("you") unconditionally, jointly and severally, personally guarantees that the customer will make all payments and meet all obligations required under this Agreement and any supplements fully and promptly. You agree that we may make other arrangements including compromise or settlement with you and you waive all defenses and notice of those changes and presentment, demand, and protest and will remain responsible for the payment and obligations of this Agreement. We do not have to notify you if the customer is in default. If the customer defaults, you will immediately pay in accordance with the default provision of the Agreement all sums due under the terms of the Agreement and will perform all the obligations of the Agreement. If it is necessary for us to proceed legally to enforce this guarantee, you expressly consent to the jurisdiction of the court set out in paragraph 13 and agree to pay all costs, including attorneys fees incurred in enforcement of this guarantee. It is not necessary for us to proceed first against you before enforcing this guarantee. By signing this guarantee, you authorize us to obtain credit bureau reports for credit and collection purposes.

	X		
PRINT NAME OF GUARANTOR	SIGNATURE (NO TITLES)	TITLE	DATED

To help the Government fight the funding of terrorism and money laundering activities, Federal Law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. What this means is, when you open an account, we will ask for your name, address and other information that will allow us to identify you; we may also ask to see identifying documents.

See reverse side for additional terms and conditions

KMPF0001 - US 01/07/14

1. LEASE AGREEMENT: You agree to lease from us the personal property described under "MAKE/MODEL/ACCESSORIES" and as modified by supplements to this Agreement from time to time signed by you and us (such property and any upgrades, replacements, repairs and additions referred to as "Equipment") for business purposes only. To the extent the Equipment includes intangible property or associated services such as periodic software licenses and prepaid database subscription rights, such property shall be referred to as the "Software". You agree to all of the terms and conditions contained in this Agreement and any Schedule, which together are a complete statement of our Agreement regarding the listed equipment ("Agreement") and supercedes all other writings, communications, understandings, agreements, any purchase order and any solicitation documents and related documents. This Agreement may be modified only by written Agreement and not by course of performance. This Agreement becomes valid upon execution by or for us. The Equipment is deemed accepted by you under this Agreement unless you notify us within three (3) days of delivery that you do not accept the Equipment and specify the defect or malfunction. In that event, at our sole option, we or our designee will replace the defective item of Equipment or the Agreement will be canceled and we or our designee will repossess the Equipment. You agree that, upon our request, you will sign and deliver to us, a delivery and acceptance certificate confirming your acceptance of the Equipment leased to you. The "Billing Date" of this Agreement will be the twentieth (20th) day following installation. You agree to pay a prorated amount of 1/30th of the monthly payment times the number of days between the installation date and the Billing Date. This Agreement will continue from the Billing Date for the Term shown and will be extended automatically for successive one (1) month terms unless you (a) send us written notice, between ninety (90) days and one hundred fifty (150) days before the end of any term, of your decision to return or purchase the Equipment or renew this Lease or (b) you do not purchase or return the Equipment, as specified in your notice, within ten (10) days after the end of any term, of your decision to return or purchase the Equipment. The periodic renewal payment has been set by mutual agreement and is not based on the cost of any component of this lease. **THE BASE RENTAL PAYMENT SHALL BE ADJUSTED PROPORTIONATELY UPWARD OR DOWNWARD, IF THE ACTUAL COST OF THE EQUIPMENT EXCEEDS OR IS LESS THAN THE ESTIMATE PROVIDED TO LESSEE.** If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others. You authorize us to insert or correct missing information on this lease including your proper legal name, serial numbers, other numbers describing the Equipment and other omitted factual matters. You agree to provide updated annual and/or quarterly financial statements to us upon request. You authorize us or our agent to obtain credit reports and make credit inquiries regarding you and your financial condition and to provide your information, including payment history, to our assignee or third parties having an economic interest in this Agreement or the Equipment.

2. RENT: Rent will be payable in installments, each in the amount of the Monthly Payment (or other periodic payment) shown plus any applicable sales, use and property tax. If we pay any tax on your behalf, you agree to reimburse us promptly along with a processing fee. Subsequent rent installments will be payable on the first day of each rental payment period shown beginning after the first rental payment period or as otherwise agreed. We will have the right to apply all sums received from you to any amounts due and owed to us under the terms of this Agreement. **Your obligation to make all Monthly Payments (or other periodic payment) hereunder is absolute and unconditional and you cannot withhold or offset against any Monthly Payments (or other periodic payment) for any reason.** You agree that you will remit payments to us in the form of company checks (or personal checks in the case of sole proprietorship), direct debit or wire only. You also agree cash and cash equivalents are not acceptable forms of payment for this Agreement and that you will not remit such forms of payment to us. **WE BOTH INTEND TO COMPLY WITH ALL APPLICABLE LAWS. IF IT IS DETERMINED THAT YOUR PAYMENTS UNDER THIS AGREEMENT RESULT IN AN INTEREST PAYMENT HIGHER THAN ALLOWED BY APPLICABLE LAW, THEN ANY EXCESS INTEREST COLLECTED WILL BE APPLIED TO AMOUNTS THAT ARE LAWFULLY DUE AND OWING UNDER THIS AGREEMENT OR WILL BE REFUNDED TO YOU. IN NO EVENT WILL YOU BE REQUIRED TO PAY ANY AMOUNTS IN EXCESS OF THE LEGAL AMOUNT.**

3. OWNERSHIP OF EQUIPMENT: We are the owner of the Equipment and have sole title (unless you have a \$1.00 purchase option) to the Equipment (excluding Software). You agree to keep the Equipment free and clear of all liens and claims. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to, hard drives, disk drives or any other form of memory.

4. WARRANTY DISCLAIMER: WE MAKE NO WARRANTY EXPRESS OR IMPLIED, INCLUDING THAT THE EQUIPMENT IS FIT FOR A PARTICULAR PURPOSE OR THAT THE EQUIPMENT IS MERCHANTABILITY. YOU AGREE THAT YOU HAVE SELECTED EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE ARE LEASING THE EQUIPMENT TO YOU "AS-IS". You acknowledge that none of Supplier or their representatives are our agents and none of them are authorized to modify the terms of this Agreement. No representation or warranty of Supplier with respect to the Equipment will bind us, nor will any breach thereof relieve you of any of your obligations hereunder. You are aware of the name of the manufacturer or supplier of each item of Equipment and you will contact the manufacturer or supplier for a description of your warranty rights. You hereby acknowledge and confirm that you have not received any tax, financial, accounting or legal advice from us, the manufacturer or Supplier of the Equipment. **THIS AGREEMENT CONSTITUTES A "FINANCE LEASE" AS DEFINED IN ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.** You agree that the Customer One Guarantee is a separate and independent obligation of Supplier to you, that no assignee of the Lessor shall have any obligation to you with respect to the Guarantee and that your obligations under this Agreement are not subject to setoff, withholding, reduction, counterclaim or defense for any reason whatsoever including, without limitation, any claim you may have against Supplier with respect to the Customer One Guarantee.

5. LOCATION OF EQUIPMENT: You will keep and use the Equipment only at your address shown above and you agree not to move it unless we agree to it. At the end of the Agreement's term, if you do not purchase the Equipment, you will return the Equipment to a location we specify at your expense, in retail resalable condition (normal wear and tear acceptable), full working order, and in complete repair.

6. LOSS OR DAMAGE: You are responsible for the risk of loss or for any destruction of or damage to the Equipment. No such loss or damage relieves you from the payment obligations under this Agreement. You agree to promptly notify us in writing of any loss or damage and you will then pay to us the present value of the total of all unpaid Monthly Payments (or other periodic payments shown) for the full Agreement term plus the estimated fair market value of the Equipment at the end of the originally scheduled term, all discounted at four percent (4%) per year. Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney in fact to execute in your name any insurance drafts or checks issued due to loss or damage to the Equipment.

7. COLLATERAL PROTECTION AND INSURANCE: You are responsible for installing and keeping the Equipment in good working order. Except for ordinary wear and tear, you are responsible for protecting the Equipment from damage and loss of any kind. If the Equipment is damaged or lost, you agree to continue to pay the amounts due and to become due hereunder without setoff or defense. During the term of this Agreement, you agree that you will (1) insure the equipment against all loss or damage naming us as loss payee; (2) obtain liability and third party property damage insurance naming us as an additional insured; and (3) deliver satisfactory evidence of such coverage with carriers, policy forms and amounts acceptable to us. All policies must provide that we be given thirty (30) days written notice of any material change or cancellation. If you do not provide evidence of acceptable insurance, we have the right, but no obligation, (a) to obtain insurance covering our interest (and only our interest) in the Equipment for the lease term, and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. In that event you will be required to pay us an additional amount each month for the insurance premium and an administrative fee. The cost may be more than the cost of obtaining your own insurance. You agree that we, or one of our affiliates, may make a profit in connection with the insurance we obtain. You agree to cooperate with us, our Insurer and our agent in the placement of coverage and with claims or (b) we may waive the insurance requirement and charge you a monthly property damage surcharge in the amount of .0035 of the original equipment cost to cover our credit risk, administrative costs and other costs, as would be further described on a letter from us to you and on which we may make a profit. If you later provide evidence that you have obtained acceptable insurance, we will cancel the insurance we obtained or cease charging the surcharge.

8. INDEMNITY: We are not responsible for any loss or injuries caused by the installation or use of the Equipment. You agree to hold us harmless and reimburse us for loss and to defend us against any claim for losses or injury caused by the Equipment. **We reserve the right to control the defense and to select or approve defense counsel. This indemnity survives the expiration or termination of this Agreement.**

9. TAXES AND FEES: You agree to pay when invoiced all taxes (including personal property tax, fines and penalties) and fees relating to this Agreement or the Equipment. You agree to (a) reimburse us for all personal property taxes which we are required to pay as Owner of the Equipment or to remit to us each month our estimate of the monthly equivalent of the annual property taxes to be assessed. If you do not have a \$1.00 purchase option, we will file all personal property, use or other tax returns and you agree to pay us a processing fee for making such filings. You agree to pay us up to \$75.00 on the date the first payment is due as an origination fee. We reserve the right to charge a fee upon termination of this Agreement either by trade-up, buy-out or default. Any fee charged under this Agreement may include a profit and is subject to applicable taxes.

10. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT. We may sell, assign, or transfer this Agreement and/or the Equipment without notice. You agree that if we sell, assign, or transfer this Agreement and/or the Equipment, the new lessor will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the rights of the new Lessor will not be subject to any claims, defenses, or set offs that you may have against us whether or not you are notified of such assignment. The cost of any Equipment, Software, services and other elements of this Agreement has been negotiated between you and the Supplier. None of Lessor's assignees will independently verify any such costs. Lessee's assignees will be providing funding based on the payment you have negotiated with Supplier. You are responsible for determining your accounting treatment of the appropriate tax, legal, financial and accounting components of this Agreement.

11. DEFAULT AND REMEDIES: (a) If you do not pay any lease payment or other sum due to us or other party when due or (b) if you break any of your promises in the Agreement or any other Agreement with us or (c) if you, or any guarantor of your obligations become insolvent or commence bankruptcy or receivership proceedings or have such proceedings commenced against you, you will be in default. If any part of a payment is more than three (3) days late, you agree to pay a late charge of ten percent (10%) of the payment which is late or if less, the maximum charge allowed by law. If you are ever in default, we may do any one or all of the following: (a) instruct Supplier to withhold service, parts and supplies and / or void the Customer One Guarantee; (b) terminate or cancel this Agreement and require that you pay, AS LIQUIDATED DAMAGES FOR LOSS OF BARGAIN AND NOT AS A PENALTY, the sum of: (i) all past due and current Monthly Payments (or other periodic payments) and charges; (ii) the present value of all remaining Monthly Payments (or other periodic payments) and charges, discounted at the rate of four percent (4%) per annum (or the lowest rate permitted by law, whichever is higher); and (iii) the present value (at the same discount rate as specified in clause (ii) above) of the amount of any purchase option with respect to the Equipment or, if none is specified, our anticipated value of the Equipment at the end of the term of this Agreement (or any renewal thereof); and (c) require you to return the Equipment to us to a location designated by us (and with respect to any Software, (i) immediately terminate your right to use the Software including the disabling (on-site or by remote communication) of any Software; (ii) demand the immediate return and obtain possession of the Software and re-license the Software at a public or private sale; and/or (iii) cause the Software supplier to terminate the Software license, support and other services under the Software license). We may recover interest on our unpaid balance at the rate of four percent (4%) per annum but in no event more than the lawful maximum rate. We may also use any of the remedies available to us under Article 2A of the Uniform Commercial Code as enacted in the State of Lessor or its Assignee or any other law. You agree to pay our reasonable costs of collection and enforcement, including but not limited to attorney's fees and actual court costs relating to any claim arising under this Agreement including, but not limited to, any legal action or referral for collection. If we have to take possession of the Equipment, you agree to pay the cost of repossession. The net proceeds of the sale of any repossessed Equipment will be credited against what you owe us. **YOU AGREE THAT WE WILL NOT BE RESPONSIBLE FOR ANY CONSEQUENTIAL IN INDIRECT OR INCIDENTAL DAMAGES FOR ANY REASON WHATSOEVER.** You agree that any delay or failure to enforce our rights under this Agreement does not prevent us from enforcing any rights at a later time. All of our rights are cumulative. It is further agreed that your rights and remedies are governed exclusively by this Agreement and you waive lessee's rights under Article 2A (508-522) of the UCC.

12. UCC FILINGS: You grant us a security interest in the Equipment if this Agreement is deemed a secured transaction and you authorize us to record a UCC-1 financing statement or similar instrument in order to show our interest in the Equipment.

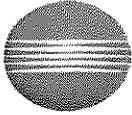
13. CONSENT TO LAW, JURISDICTION, AND VENUE: This Agreement shall be deemed fully executed and performed in the state of Lessor or its Assignee's principal place of business and shall be governed by and construed in accordance with its laws. If the Lessor or its Assignee shall bring any judicial proceeding in relation to any matter arising under the Agreement, the Customer irrevocably agrees that any such matter may be adjudged or determined in any court or courts in the state of the Lessor or its Assignee's principal place of business, or in any court or courts in Customer's state of residence, or in any other court having jurisdiction over the Customer or assets of the Customer, all at the sole election of the Lessor. The Customer hereby irrevocably submits generally and unconditionally to the jurisdiction of any such court so elected by Lessor in relation to such matters. **BOTH PARTIES WAIVE TRIAL BY JURY IN ANY ACTION BETWEEN US.**

14. LESSEE GUARANTEE: You agree, upon our request, to submit the original of this Agreement to the Lessor via overnight courier the same day of the facsimile or other electronic transmission of the signed Agreement. Both parties agree that this Agreement signed and submitted to us by facsimile or other electronic transmission shall, upon execution by us (manually or electronically, as applicable), be binding upon the parties. You waive the right to challenge in court the authenticity of a faxed or other electronically-transmitted signed copy of this Agreement and agree that the faxed or other electronically-transmitted copy containing our faxed or other electronically-transmitted signature and our manual or electronic signature shall be considered the sole original for all purposes, including without limitation, any enforcement action under paragraph 11.

15. COMPUTER SOFTWARE: Notwithstanding any other terms and conditions of this Agreement, you agree that as to Software only: a) We have not had, do not have, nor will we have any title to such Software, b) You have executed or will execute a separate software license Agreement and we are not a party to and have no responsibilities whatsoever in regards to such license Agreement, c) You have selected such Software and as per Agreement paragraph 4, **WE MAKE NO WARRANTIES OF MERCHANTABILITY, DATA ACCURACY, SYSTEM INTEGRATION OR FITNESS FOR USE AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR THE FUNCTION OR DEFECTIVE NATURE OF SUCH SOFTWARE, SYSTEMS INTEGRATION, OR OTHERWISE IN REGARDS TO SUCH SOFTWARE. CUSTOMER'S LEASE PAYMENTS AND OTHER OBLIGATIONS UNDER THIS LEASE AGREEMENT SHALL IN NO WAY BE DIMINISHED ON ACCOUNT OF OR IN ANY WAY RELATED TO THE ABOVE SAID SOFTWARE LICENSE AGREEMENT OF FAILURE IN ANY WAY OF THE SOFTWARE.**

Initials _____

KMPF0001 - US 01/07/14



KONICA MINOLTA

NON-APPROPRIATION ADDENDUM

ADDENDUM TO Agreement No. 1296307 between Konica Minolta Premier Finance, Lessor

And Los Alamitos, City of, Lessee (Full Legal Name of Lessee)

Dated:

FOR MUNICIPALITIES ONLY

A. CUSTOMER COVENANTS: You covenant and warrant that (1) it has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the payments scheduled to come due and to meet its other obligations under the Agreement and such funds have not been expended for other purposes; and

(2) that there is no action, suit, proceeding or investigation pending, or threatened in any court or other tribunal or competent jurisdiction, state or federal or before any public board or body, which in any way would (a) restrain or enjoin the delivery of the Agreement or the ability of you to make its Base Payments (as set out above); (b) contest or affect the authority for the execution or delivery of, or the validity of, the Agreement; or (c) contest the existence and powers of you; nor is there any basis for any such action, suit, proceeding or investigation; and

(3) That the equipment will be operated and controlled by you and will be used for essential government purposes and will be essential for the term of the Agreement.

(4) You have not previously terminated a rental for non-appropriation, except as specifically described in a letter appended hereto.

B. SIGNATURES: Each signor (two if monthly payment exceeds \$1,200) warrants that he/she is fully conversant with the governing relevant legal and regulatory provisions and has full power and authorization to bind you. Signor(s) for you further warrant(s) its governing body has taken the necessary steps; including any legal bid requirements, under applicable law to arrange for acquisition of the Equipment; the approval and execution has been in accordance with all applicable open meeting laws; and that a resolution of the governing body of you authorizing execution of the Agreement has been duly adopted and remains in full force and effect.

C. NON APPROPRIATION: In the event you are in default under the Agreement because:

1. Funds are not appropriated for a fiscal period subsequent to the one in which the Agreement was entered into which are sufficient to satisfy all of your obligations under the Agreement during said fiscal period;

2. Such non-appropriation did not result from any act or failure to act of you;

3. You have exhausted all funds legally available for all payment due under the Agreement; and

4. There is no other legal procedure by which payment can be made to Lessor.

Then, provided that (a) you have given Lessor written notice of the occurrence of paragraph C-1 above thirty (30) days prior to such occurrence;

(b) Lessor has received a written opinion from your counsel verifying the same within ten (10) days thereafter; and (c) you do not directly or indirectly purchase, rent or in any way acquire any services or Equipment supplied or provided for hereunder; upon receipt of the equipment delivered to a location designated by Lessor, at your expense, Lessors remedies for such default shall be to terminate the Agreement at the end of the fiscal period during which notice is given; retain the advance payments, if any; and/or sell, dispose of, hold, use or rent the equipment as Lessor in its sole discretion may desire, without any duty to account to you.

Approved and agreed to as an Addendum to and part of the Agreement, this _____ day of _____.

LESSOR ACCEPTANCE

Konica Minolta Premier Finance (DATED LESSOR SIGNATURE TITLE)

CUSTOMER ACCEPTANCE

Los Alamitos, City of (DATED FULL LEGAL NAME OF CUSTOMER SIGNATURE TITLE Administrative Services Director) Jason Al-Imam (PRINT NAME)

95-2133135

FEDERAL TAX I.D.#



EQUIPMENT REMOVAL AUTHORIZATION

Customer: LOS ALAMITOS CITY OF

Pick Up Address: LOS ALAMITOS CITY OF, 3191 KATELLA AVE, LOS ALAMITOS, CA, 90720-2335

Equipment being removed from Customer's Location:

Make: <u>KM</u>	Model: <u>C452</u>	Serial Number: <u>A0P2011006145</u>
Make: _____	Model: _____	Serial Number: _____
Make: _____	Model: _____	Serial Number: _____

Customer Owned Asset:

Customer represents and warrants that it has good title to the equipment, free and clear of any lien, mortgage, encumbrance or security interest of any kind. Customer agrees to defend, indemnify and hold Konica Minolta Business Solutions U.S.A., Inc. ("KMBS") harmless from any loss, damage claim, liability or expense of any kind (including, but not limited to, court costs and attorney's fees) arising or resulting from a breach of this representation and warranty of good title and/or the authority, expressed or apparent, of Customer to trade-in or transfer the equipment. Upon signing this Agreement, Customer surrenders possession of the equipment and all components contained therein to KMBS. Customer further agrees that the surrendered equipment will be available for pick-up at the same time that any new equipment is delivered. If the surrendered equipment is not available for pick-up at time of new equipment delivery, customer will be invoiced an additional charge for the separate pick-up.

Lease Company Owned Asset:

Lease Company Name: CIT Lease #: 061-0046607-000

Upgrade to Return KMBS will resolve current lease obligation. Asset belongs to the Lease Company. KMBS will ship back to the Lease Company at no expense to Customer.

Upgrade to Keep KMBS will resolve current lease obligation. Asset belongs to KMBS unless otherwise stated below.

Buyout to Keep KMBS will resolve current lease obligation. Asset belongs to KMBS unless otherwise stated below.

End of Lease Return Asset belongs to the Lease Company. KMBS will return equipment listed above to the respective leasing company upon receipt of a written Return Authorization Letter and Shipping Instructions. In the event KMBS does not receive a Return Authorization Letter and Shipping Instructions within 90 days of equipment pick up from Customer's location, and Customer has not made additional arrangements with KMBS for storage, the equipment listed above will be returned to Customer's location of pick up with no further obligation of KMBS.
Upon shipment of equipment, KMBS will invoice Customer \$ 0.00 for associated shipping charges.

End of Lease Return requiring interim storage of equipment requires pre-authorization from the Regional Operations Manager and Market Vice President and is subject to availability of storage space in a KMBS warehouse or arrangement for offsite storage.

Comments:

The undersigned represents that he/she is an authorized representative of the Customer and has authority to bind Customer to this Agreement.

Customer

Konica Minolta Business Solutions U.S.A., Inc.

Name: Jason Al-Imam
Please print

Name: _____
Please print

Signature: _____
Date

Signature: _____
Date

Title: Administrative Services Director

Title: _____

LEASE COMPANY USE

Approved Customer has fulfilled its obligation on current lease.
 Contingent Approval Customer has lease balance of \$ _____ which needs to be satisfied.

RA # _____ Shipping Instructions _____

Name _____ Signature _____ Title _____ Date _____



EQUIPMENT REMOVAL AUTHORIZATION

Customer: LOS ALAMITOS CITY OF

Pick Up Address: LOS ALAMITOS CITY OF, 3191 KATELLA AVE, LOS ALAMITOS, CA, 90720-2335

Equipment being removed from Customer's Location:

Make: <u>KM</u>	Model: <u>BH751</u>	Serial Number: <u>A0PN011003912</u>
Make: _____	Model: _____	Serial Number: _____
Make: _____	Model: _____	Serial Number: _____

Customer Owned Asset:

Customer represents and warrants that it has good title to the equipment, free and clear of any lien, mortgage, encumbrance or security interest of any kind. Customer agrees to defend, indemnify and hold Konica Minolta Business Solutions U.S.A., Inc. ("KMBS") harmless from any loss, damage claim, liability or expense of any kind (including, but not limited to, court costs and attorney's fees) arising or resulting from a breach of this representation and warranty of good title and/or the authority, expressed or apparent, of Customer to trade-in or transfer the equipment. Upon signing this Agreement, Customer surrenders possession of the equipment and all components contained therein to KMBS. Customer further agrees that the surrendered equipment will be available for pick-up at the same time that any new equipment is delivered. If the surrendered equipment is not available for pick-up at time of new equipment delivery, customer will be invoiced an additional charge for the separate pick-up.

Lease Company Owned Asset:

Lease Company Name: CIT Lease #: 061-0046607-000

Upgrade to Return KMBS will resolve current lease obligation. Asset belongs to the Lease Company. KMBS will ship back to the Lease Company at no expense to Customer.

Upgrade to Keep KMBS will resolve current lease obligation. Asset belongs to KMBS unless otherwise stated below.

Buyout to Keep KMBS will resolve current lease obligation. Asset belongs to KMBS unless otherwise stated below.

End of Lease Return Asset belongs to the Lease Company. KMBS will return equipment listed above to the respective leasing company upon receipt of a written Return Authorization Letter and Shipping Instructions. In the event KMBS does not receive a Return Authorization Letter and Shipping Instructions within 90 days of equipment pick up from Customer's location, and Customer has not made additional arrangements with KMBS for storage, the equipment listed above will be returned to Customer's location of pick up with no further obligation of KMBS.
Upon shipment of equipment, KMBS will invoice Customer \$ 0.00 for associated shipping charges.

End of Lease Return requiring interim storage of equipment requires pre-authorization from the Regional Operations Manager and Market Vice President and is subject to availability of storage space in a KMBS warehouse or arrangement for offsite storage.

Comments:

The undersigned represents that he/she is an authorized representative of the Customer and has authority to bind Customer to this Agreement.

Customer

Konica Minolta Business Solutions U.S.A., Inc.

Name: Jason Al-Imam
Please print

Name: _____
Please print

Signature: _____
Date

Signature: _____
Date

Title: Administrative Services Director

Title: _____

LEASE COMPANY USE

Approved Customer has fulfilled its obligation on current lease.
 Contingent Approval Customer has lease balance of \$ _____ which needs to be satisfied.

RA # _____ Shipping Instructions _____

Name _____ Signature _____ Title _____ Date _____



Maintenance Agreement

Customer Information

Sold to Acct #: <u>0000839552</u>		Payer/Bill to Acct #: _____		Ship to Acct #: _____	
Name: <u>LOS ALAMITOS CITY OF</u>		Name: <u>LOS ALAMITOS CITY OF</u>		Name: <u>LOS ALAMITOS CITY OF</u>	
Attn/Dept: _____		Attn/Dept: _____		Attn/Dept: _____	
Ste/Rm: _____		Ste/Rm: _____		Ste/Rm: _____	
Address: <u>3191 KATELLA AVE</u>		Address: <u>3191 KATELLA AVE</u>		Address: <u>3191 KATELLA AVE</u>	
City: <u>LOS ALAMITOS</u>		City: <u>LOS ALAMITOS</u>		City: <u>LOS ALAMITOS</u>	
State: <u>CA</u> Zip: <u>90720-2335</u>		State: <u>CA</u> Zip: <u>90720-2335</u>		State: <u>CA</u> Zip: <u>90720-2335</u>	
Tax Exempt Customer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Tax Exemption Number: _____		Tax Exemption Certificate must be attached when applicable.	
PO Required? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		PO Number: _____		PO Expiration Date: _____	
PO must be attached when applicable.		PO Contact: _____		Email: _____	
<input type="checkbox"/> Individual PO <input type="checkbox"/> Blanket PO		Name: _____		Email: _____	
Fleet Manager? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Name: _____		Email: _____	

Coverage / Billing Options

Coverage Options:		MFP		Wide Format	
Select Options:		<input checked="" type="checkbox"/> Supply Inclusive <input checked="" type="checkbox"/> Staples Included <input type="checkbox"/> After Hours Service - Requires After Hours Agreement <input checked="" type="checkbox"/> Decline Digital Connected Support*		Select Options: <input type="checkbox"/> Toner (Black Only) <input type="checkbox"/> 20lb Bond Roll Paper <input type="checkbox"/> Decline Digital Connected Support*	
* Digital Connect Support will be added automatically billed at \$12.00 per serial number monthly, unless declined above.					
Billing Options:		MFP		Wide Format	
Initial Term in Months:		<input type="checkbox"/> 36 <input type="checkbox"/> 48 <input checked="" type="checkbox"/> 60 <input type="checkbox"/> Other _____		<input type="checkbox"/> 36 <input type="checkbox"/> 48 <input type="checkbox"/> 60 <input type="checkbox"/> Other _____	
Flat Rate Frequency:		<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Annually		<input type="checkbox"/> Monthly <input type="checkbox"/> Annually	
Meter Frequency:		<input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Quarterly <input type="checkbox"/> Annually		<input type="checkbox"/> Monthly	
Aggregate Volume:		<input type="checkbox"/> 3/W <input type="checkbox"/> Color			
All Devices					
Effective Date:		<input checked="" type="checkbox"/> On Install <input type="checkbox"/> Date: _____			
Billing Day:		<input checked="" type="checkbox"/> Selected by KMBS <input type="checkbox"/> Preferred Day: _____ (29th, 30th, and 31st are not an available selection)			

Maintenance Pricing

MFP			Monthly Minimum Volume	Monthly Flat Rate \$	Cost Per Copy Rate \$	Start Meter	Sub Fleet	Price Plan
1	BIZHUB 754E	Color						
		B/W	0	\$ 0.00	0.00600			
2	BIZHUB C454E	Color	0	\$ 0.00	0.07000			
		B/W	0	\$ 0.00	0.00530			
3		Color						
		B/W						

Additional Equipment on Schedule B

Wide Format			Monthly Minimum Volume (Sq. Feet)	Monthly Flat Rate \$	Cost Per Square Foot Rate \$	Start Meter	Sub Fleet	Price Plan
1		Color						
		B/W						

Additional Equipment on Schedule C

Comments

CPC COMMENTS -
LOCKED FOR 5 YEARS SHIPPING FEES WAIVED

Customer's signature below acknowledges receipt and consent to KMBS Standard Maintenance Terms and Conditions "Schedule A" dated 09/01/2014. Not binding on KMBS until signed by KMBS Manager.

Customer Name: <u>Jason Al-Imam</u>	KMBS Representative: _____
<small>Please Print</small>	
Customer Title: <u>Administrative Services Director</u>	KMBS Manager Name: _____
	<small>Please Print</small>
Customer Signature: _____	Date: _____
	KMBS Manager Signature: _____
	Date: _____

For Internal Use

Maintenance: <input type="checkbox"/> with Equipment Order <input type="checkbox"/> Maintenance Only <input type="checkbox"/> Billed by KMBS <input type="checkbox"/> Billed by Lease Company <input type="checkbox"/> Dealer Serviced	Sales Rep Number: _____	Sales Rep Name: _____	Sales Rep Email Address: _____	Sales District: _____
Originating: <u>9384620</u>	<u>TERRY PIATKIEWICZ</u>	<u>TPIATKIEWICZ@KMBS.KONICAMINOLTA.US</u>	<u>46409</u>	Processed: _____
Order Taking: <u>9384620</u>	<u>TERRY PIATKIEWICZ</u>	<u>TPIATKIEWICZ@KMBS.KONICAMINOLTA.US</u>		
Servicing: <u>9384620</u>	<u>TERRY PIATKIEWICZ</u>	<u>TPIATKIEWICZ@KMBS.KONICAMINOLTA.US</u>	<input checked="" type="checkbox"/> Branch <input type="checkbox"/> Windsor	



KMBS Standard Maintenance Terms and Conditions - Schedule A

(Updated September 1, 2014)

The following terms and conditions apply to the provision of services by Konica Minolta Business Solutions U.S.A., Inc. (KMBS) to the Customer during the term of this agreement.

Equipment Services

100. **Service Coverage Hours:** Standard services under this agreement are provided during normal business hours 8am-5pm, Monday through Friday, exclusive of core National holidays observed by KMBS.

101. **Extended Coverage Services** outside of standard coverage hours may be available on a per-event charge or fixed monthly premium.

102. **Equipment Services** provided under this agreement include labor and parts required to maintain covered equipment in a normal operating condition as set forth in the equipment specifications detailed on kmbs.konicaminolta.us.

103. **Equipment Exchange** will be used for products where on-site support is not available. KMBS will employ a 'hot swap' process and will provide packaging for return of the original unit. Customer is responsible to facilitate the reconnection and return process.

104. **Preventative Maintenance** shall be performed as needed to ensure optimal operation of equipment. This includes component replacement, adjustments and cleaning. End-user maintenance as defined in the equipment's user guide is not covered.

105. **DISCLAIMER:** Repairs and/or services that fall outside the scope of this agreement may be billed at prevailing hourly rates with prior authorization. This includes but is not limited to abuse/misuse, alteration or modification, 3rd party interference, use of non-standard supplies, usage beyond recommended operating parameters, theft, neglect, fire, water, casualty or other natural force. Failure to authorize repair and/or services may result in suspension or termination of this agreement.

106. **Site Environment:** Customer shall be responsible to ensure that equipment is placed in a location that meets manufacturer's requirements (available on the KMBS website) including space, power, network, temperature and humidity. Electrical power must meet voltage, amperage and electrical noise level requirements. KMBS personnel will be granted reasonable and safe access to perform services when required.

107. **Prerequisite to service:** For equipment not previously under a continuous maintenance agreement, equipment must be in good working condition before the start of this agreement. Remedial service may be required to bring the equipment to proper operating standards and the labor and parts associated will be billed at prevailing rates. A quote will be provided for customer approval before work begins.

108. **Relocation and Move Preparation:** When requested, relocation services will be performed and billed at prevailing rates. Coverage at the new location is subject to service availability and acceptance by KMBS.

109. **Initial Installation:** Physical installation, removal of packing material and initial setup of equipment will be performed by KMBS using default configuration settings at the location specified by customer. Application of custom settings can be requested prior to installation. KMBS reserves the right to assess additional charges depending upon the extent of custom setup requirements.

110. **Service Replacement:** KMBS reserves the right to replace a device, at no additional cost to customer, with a comparable unit when repair of the original device is not practical or economically feasible.

111. **Color Calibration and Management:** Routine and periodic color calibration and management of production color print profiles is not covered by this agreement.

112. **Additional Customer Requested Services:** Customer may request services be performed that are outside the scope of this agreement. Such services will be quoted and performed at agreed rates.

Supplies and Consumables

200. **Consumable Supplies:** If a supplies inclusive option is selected, KMBS will provide toner for covered equipment on an as needed basis. Consumable supplies do not include staples (unless selected) or paper. Wide format equipment may have other coverage options and/or exclusions. The consumable supplies provided are the property of KMBS until they are consumed and are intended to be used exclusively in the covered equipment. Customer bears the risk of loss of unused supplies in the event of theft, employee misconduct, fire or other mishap.

201. **Expected Yield:** Pricing under this agreement is based on published and commercially reasonable expectations of supply and consumables consumption. At its discretion, KMBS may perform an audit of supply/consumables consumption and equipment usage data to determine consumption levels. In the event the actual consumption levels exceed the levels used to determine contract pricing by more than 20%, KMBS shall have the right to invoice for the excess consumption.

202. **Supply Source:** Genuine Konica Minolta supplies will be used under this agreement for Konica Minolta equipment. For non-Konica Minolta products KMBS will provide fully compatible toner and print cartridges for use in covered equipment.

203. **Supply shipping and handling:** KMBS may charge a supply shipping and handling fee on each periodic invoice regardless of whether supplies are shipped in any particular period. This is done to average out the total estimated supply shipping and handling fees over the duration of this contract. The current calculation for such fees can be found at <http://kmbs.konicaminolta.us/faqs>. KMBS reserves the right to charge for expedited supply orders (i.e. overnight delivery) where requested by customer.

204. **Auto Supply Delivery,** if part of a managed services agreement, requires a designated customer contact(s) to confirm



KMBS Standard Maintenance Terms and Conditions - Schedule A

(Updated September 1, 2014)

supply shipments via email and maintain delivery address information via MyKMBS.com or other agreed methodology.

Software and Solutions

300. **Licenses:** KMBS hereby grants the customer the non-exclusive, non-transferable right to install, and licenses to use the software, updates, upgrades and patches included in this agreement, provided the Agreement is in effect.

301. **License Reactivation:** Customer is responsible to safeguard software license keys. KMBS may charge a reactivation fee in the event license keys need to be regenerated.

302. **Site Environment:** Customer shall be responsible to insure that software is installed in an environment that meets manufacturer's requirements including operation system level, disk space, power, network, temperature and humidity.

303. **Data Backups and restoration:** Customer is responsible to manage server data backups. KMBS recommends adherence to industry best practices for backup procedures. In the event of a catastrophic data loss, the customer is expected to restore the environment and data to prior state.

304. **Access:** Customer shall provide KMBS personnel with access to the servers and/or equipment where the software is installed. Customer shall arrange and ensure that one of its employee's or designated agents is present at all times when KMBS is performing maintenance and support services.

305. **Solutions warranty:** KMBS makes no warranty regarding the fitness of software that may or may not have been executed in conjunction with this agreement for any particular use.

306. **Solution Integration** with print output devices covered under this or other agreement may be affected by existing customer software, configuration changes or other network environment issues. KMBS reserves the right to assess additional charges to resolve complex integration issues, including situations where the solution was initially provided by KMBS.

307. **Term:** Coverage for both level 0 (Software maintenance) and level 1 (Helpdesk support) begin at time of installation of software at customers location. Level 1 support is only available when level 0 supports is in effect.

Software Maintenance (Level 0) and Helpdesk (Level 1)

400. **Software Maintenance (Level 0)** if this option is selected, the customer is entitled support as defined in the 'Patches and Updates' sections.

401. **Patches and Updates:** Customer is eligible to receive periodic maintenance patches, hot-fixes and updates for licensed software covered under maintenance. Excluded are full version upgrades (i.e. v1.2 to v2.0) and the installation services required to install patches, hot-fixes and updates.

402. **Access to patches and updates:** Customer will be provided access to a website operated by KMBS or 3rd party supplier where patches and updates are accessible for download.

403. **Start of service** rules may vary by OEM, software activation is expected within 30 days of purchase or install whichever comes first.

404. **Current version:** Customer is required to keep software and OS at the latest recommended version levels. Failure to perform recommended updates may result in suspension and/or termination of services under this agreement

405. **Solutions Helpdesk Support (Level 1):** If this option is selected, expert helpdesk support is available to the Customer to assist with covered software solutions including, PageScope Enterprise, Print Groove, Dispatcher Pro and select 3rd party solutions. Included are helpdesk services related to end-user support, baseline workflows, features and administrative functions involved in the operation of the software and workflows. Customer participation is required for remote and/or on-site support.

Professional Services, Solutions and Network

500. **Initial Assessment:** Customer agrees to provide or assist in gathering network configuration details needed by KMBS to perform contracted services.

501. **Basic Network Services (BNS),** where offered, covers common network integration in a MS Windows™ centric environment with typical network schema and print/scanning requirements. KMBS reserves the right to assess additional fees depending on the extent of the network integration requirements needed.

502. **Technical Pilot:** When required Customer agrees to participate in a technical pilot where software installation, configuration, use cases and integration requirements are determined. Customer also agrees to participate in testing of the system(s).

503. **Solution Baseline:** is defined as the operating level and configurations agreed to by customer and KMBS upon completion of the technical pilot and testing.

504. **Enhancements** and professional services beyond the baseline capabilities of the solution are available at an additional charge.

505. **Digital Connected Support:** Unless this option has been declined, expert helpdesk support is available to the Customer to assist with issues associated with device connectivity to network, printing from desktop applications, graphics application, scanning and support on many other digital machine functions. Configuration updates that are the result of changes to the customer network environment are not included.

506. **Customer Data:** KMBS shall not be liable for any claims, damages and cost relating to loss of data or disclosure of data due to acts or omissions of Customer or its' employees, end-user errors or release of administrator password.

507. **Hard Drive Security:** If 'bizhub SECURE' or a comparable option has been ordered, KMBS will provide advanced security services. These services include real-time hard-drive encryption



KMBS Standard Maintenance Terms and Conditions - Schedule A

(Updated September 1, 2014)

(level 2 encryption – equivalent to current Department of Defense standards and US Air Force standards) and document data security through disk over-write as well as user mailbox data deletion, HDD encryption, HDD lock and administrative password (according to customer policy).

508. Professional Services Projects: When requested by the Customer, KMBS can provide professional services associated with the enhancement of the Customer's printing, network connectivity, end of life hard drive disposal, fleet management, user experience, production management, job tracking and document environment. Such projects will be quoted and upon approval, performed and billed at prevailing hourly or per-instance rates.

509. Basic Production Services (BPS): Complex products are offered with comprehensive end-user training (BPS). The training is crucial to proper equipment operation and to ensure the customer achieves satisfactory output. Service related to operator deficiency will be performed and billed at prevailing rates. Additional end user training when requested can be provided and will be billed at prevailing rates.

Meter and related

600. Meter Readings: Customer agrees to provide KMBS with a timely meter reading prior to the end of the billing period to be used to generate maintenance invoices. Should the Customer fail to provide KMBS with timely meter reads KMBS reserves the right to estimate meter readings. Repetitive failure for customer to provide timely and accurate meter readings may result in the conversion of associated equipment to flat monthly fee billing.

601. Definition of a Print: Each 8.5"x11" image generated by the covered equipment is considered a 'print'. Larger paper sizes result in images that are a multiple of a single print based on length (17"=2 prints, 27" = 3 prints, 36" = 4 prints and over 36" = 5 prints). For 'wide format' equipment, one square foot of output equals one print. Duplex images count as twice the rate of simplex prints.

602. Electronic Meter Collection: KMBS offers vCare and other network based machine data collection methods for Customer convenience, billing accuracy and to enhance service effectiveness. Unless specifically directed otherwise, KMBS will enable vCare or network monitoring on capable equipment. Should Customer opt-out of utilizing vCARE, KMBS reserves the right to assess an incremental invoicing fee not to exceed twenty five dollars (\$25) per invoice

603. Fleet Device Monitoring: If the Customer agrees to allow KMBS to install and maintain server based software to monitor the printing devices on the Customer network, and the monitoring software cannot reliably operate in the Customer's environment for any reason, KMBS reserves the right to suspend or terminate services under this agreement.

Renewal and Maintenance

700. Automatic renewal: At the end of the initial term of this agreement, coverage will be extended for an additional one year

term at then prevailing rates, unless either party has provided notice pursuant to 'Termination' clause below.

701. Customer Price Protection: At the end of the first year of this agreement and once each successive 12 month period during the initial term, the maintenance base and usage charges will not increase by more than 10%.

702. Aggregate Meter Billing contracts' escalation will occur at the annual anniversary of the initial establishment of the usage pool.

703. Auto Add of Equipment: Where the use of 'Fleet Device Monitoring' as part of a managed print program has been agreed to, it will be used to detect new devices and add such devices to this agreement at pre-established price levels. The added device(s) will be covered under the terms of this agreement. The Customer will be notified via email and may reject the addition of the device(s) by contacting KMBS.

Payment and Termination

800. Terms of Payments are due 30 days from the invoice date. Customer shall be responsible to pay all applicable sales, use, personal property or other taxes when due.

801. Remedies and Collection: Accounts that are past due are subject to a suspension of services and may be subject to a monthly late fee based on 1.5% of the total amount due and reasonable recovery of costs associated with collections.

802. DEFAULT: Should Customer violate any aspect of this agreement including payment obligations, or in the event customer is insolvent and/or declares bankruptcy, KMBS may suspend or terminate any or all portions of this agreement and may enter the Customer's premises to recover property or equipment owned by KMBS.

803. Termination: During the term of this agreement or any renewal thereof, the Customer or KMBS may provide the other party 30 day written notice of cancellation or intention not to renew with or without cause. If the Customer terminates within the initial term, the Customer will be subject to termination charges per paragraph 804.

804. Early Termination: In the event Customer terminates this agreement during the initial term or KMBS terminates due to material breach by the Customer, the Customer will be responsible to pay liquidated damages equal to 3 months billing based on the prior actual billing over the last 12 months.

General Legal

900. Business Purpose: Customer warrants and represents that the equipment under this agreement will be used for business purposes and not for personal, household or family purposes.

901. ASSIGNMENT: Customer may not assign this Agreement without KMBS' express written consent. KMBS may assign, without notice to Customer, any of its rights under this Agreement.



KMBS Standard Maintenance Terms and Conditions - Schedule A

(Updated September 1, 2014)

902. **NOTICES:** All notices required to be given under this Agreement shall be in writing and shall be sent by U.S. first class mail to the parties as follows: To Customer at the address listed on the front of this Agreement and to KMBS, at 500 Day Hill Rd, Windsor CT 09095 Attention: Contracts Department.

903. **WARRANTY: KMBS WARRANTS THAT THE SERVICES SHALL BE PERFORMED IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS AND SPECIFICATIONS FOR THE EQUIPMENT. KMBS MAKES NO OTHER WARRANTIES WHATSOEVER EXPRESS OR IMPLIED WITH REGARD TO THE SERVICE, THE SOFTWARE INCLUDED WITH THE EQUIPMENT OR ITS INSTALLATION, OR MAINTENANCE, AND EXPRESSLY DISCLAIMS AND CUSTOMER WAIVES ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

904. **REMEDY LIMITATIONS: CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY SHALL BE REPAIR OF THE EQUIPMENT OR REPLACEMENT OF A NONCONFORMING PART, AT THE OPTION OF KMBS. THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO SERVICES PROVIDED UNDER THIS AGREEMENT. THE PARTIES RESERVE THE RIGHT TO RECOVER CONTRACT DAMAGES ALLOWED VIA THIS AGREEMENT. KMBS' LIABILITY UNDER THIS AGREEMENT IS LIMITED TO THE COVER DAMAGES ON THE COST OF ALTERNATE MAINTENANCE SERVICES AND/OR CONSUMABLES PURCHASED BY THE CUSTOMER. THE PARTIES AGREE ANY CLAIM MUST BE BROUGHT WITHIN ONE YEAR AFTER THE ALLEDGED DAMAGES ARE INCURRED.**

905. **APPLICABLE LAW:** This Agreement shall be governed by the laws of the State of New Jersey without regard to choice of law principles. In the event of litigation or other proceedings by KMBS to enforce or defend any term or provision of this Agreement, Customer agrees to pay all costs and expenses sustained by KMBS, including but not limited to, reasonable attorney's fees. Customer further agrees to litigate any dispute concerning this matter in the federal or state courts in the State of New Jersey, consents to jurisdiction in that forum and waives the right to jury trial.

906. **FORCE MAJEURE:** Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to make payment) to the extent that such party was hindered in its performance by any act of God, labor dispute, or any other occurrence beyond its reasonable control.

907. **WAIVER & SEVERABILITY:** Failure by KMBS to enforce any provisions of this Agreement or any rights hereunder, or failure to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the party's right to later enforce or exercise the same or other provisions, rights, or elections it may have under this Agreement. If any provision of this Agreement shall be unlawful, void or for any reason unenforceable, then that

provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions of this Agreement.

908. **ORIGINAL DOCUMENT:** Customer further agrees (a) that facsimile or electronic signature shall be accepted as original signatures; and (b) that this Agreement or any document created pursuant to this Agreement, may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. KMBS may accept orders electronically from Customer pursuant to this Agreement. Neither party shall raise any objection to the authenticity of this Agreement nor any document created hereunder, based on either the use of a facsimile signature or the use of a copy retrieved from an electronic storage system.

909. **ENTIRE AGREEMENT:** This is the entire agreement between Customer and KMBS on the subject matter hereof and supersedes any proposal or prior agreement, oral or written, or any other communications relating to maintenance services for KMBS equipment and it may not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of each party. Customer agrees that any Purchase Order or other documentation issued to KMBS covering the equipment or maintenance is issued for purpose of authorization and Customer's internal use only, and any terms and conditions contained therein shall not modify or add to the terms and conditions of this Agreement. This Agreement will not be effective until accepted by an authorized representative of KMBS. Notice of acceptance is hereby waived by Customer.

910. **Sellers Agent:** Customer is advised no employee, representative or agent of KMBS has authority to bind KMBS to commitments not specifically set forth in this agreement.

911. **Modification of Original Terms and Conditions:** Any mutually agreed modifications are to be specified in the comments of the contract or by a duly executed amendment to this agreement.

912. **INDEMNIFICATION:** Customer shall bear all risk of theft, loss, or damage not caused by KMBS employees or agents, to all Equipment delivered and accepted under this Agreement. Customer agrees to indemnify, defend and hold harmless KMBS, its officers, directors, employees and agents from all loss, liability, claims or expenses (including reasonable attorney's fees) arising out of Customer's use of the equipment, including but not limited to liabilities arising from illegal use of KMBS equipment as well as bodily injury, including death, or property damage to any person, unless said injuries, death or property damage was caused solely as the result of KMBS' gross negligent or willful misconduct.