

## Maintenance Agreement

### Customer Information

Sold to Acct #:		Payer/Bill to Acct #:		Ship to Acct #:	
Name: Cypress School District		Name: Cypress School District		Name: Cypress School District	
Attn/Dept: Business Services		Attn/Dept: Business Services		Attn/Dept:	
Ste/Rm:		Ste/Rm:		Ste/Rm:	
Address: 9470 Moody Street		Address: 9470 Moody Street		Address: 9470 Moody Street	
City: Cypress		City: Cypress		City: Cypress	
State: CA Zip: 90630		State: CA Zip: 90630		State: CA Zip: 90630	
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.					
<input type="checkbox"/> Individual PO <input type="checkbox"/> Blanket PO		PO Contact:		Email:	
Fleet Manager? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Name: Terri Walker		Email: <a href="mailto:Twalker@cypsd.k12.ca.us">Twalker@cypsd.k12.ca.us</a>	
				Ph: 714-220-6940	

### Coverage / Billing Options

<b>Coverage Options:</b>	<b>MFP</b> 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* * Digital Connect Support will be added automatically billed at \$12.00 per serial number monthly, unless declined above.	<b>Wide Format</b> Select Options: <input type="checkbox"/> Toner (Black Only) <input type="checkbox"/> 20lb Bond Roll Paper <input type="checkbox"/> Decline Digital Connected Support*
<b>Billing Options:</b>	<b>MFP</b> Initial Term in Months: <input type="checkbox"/> 36 <input type="checkbox"/> 48 <input type="checkbox"/> 60 <input checked="" type="checkbox"/> Other 12 Flat Rate Frequency: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually Meter Frequency: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually Aggregate Volume: <input type="checkbox"/> B/W <input type="checkbox"/> Color	<b>Wide Format</b> Initial Term in Months: <input type="checkbox"/> 36 <input type="checkbox"/> 48 <input type="checkbox"/> 60 <input type="checkbox"/> Other _____ Flat Rate Frequency: <input type="checkbox"/> Monthly Meter Frequency: <input type="checkbox"/> Monthly
<b>All Devices</b> Effective Date: <input type="checkbox"/> On Install <input type="checkbox"/> Date: _____ Billing Day: <input type="checkbox"/> Selected by KMBS <input type="checkbox"/> Preferred Day: _____ (29th, 30th, and 31st are not an available selection)		

### Maintenance Pricing

MFP								Internal Use	
Item	Model Description	Serial Number	Type	Monthly Minimum Volume	Monthly Flat Rate \$	Cost Per Copy Rate \$	Start Meter		
1	BH C452	A0P2011009479	Color	none	none	0.09200	311,198		
			B/W	none	none	0.00920	499,741		
2	BH C452	A0P2011009310	Color	none	none	0.09200	86,352		
			B/W	none	none	0.00920	967,803		
3			Color						
			B/W						

☐ Additional Equipment on Schedule B

Wide Format								Internal Use	
Item	Model Description	Serial Number	Type	Monthly Minimum Volume (Sq. Feet)	Monthly Flat Rate \$	Cost Per Square Foot Rate \$	Start Meter		
1			Color						
			B/W						

☐ Additional Equipment on Schedule C

### Comments

**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: _____	KMBS Representative: _____
Customer Title: _____	KMBS Manager Name: _____
Customer Signature: _____	KMBS Manager Signature: _____
Date: _____	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:				
Order Taking:				
Servicing:				
			Processed	
			<input type="checkbox"/> Branch <input type="checkbox"/> Windsor	

## Maintenance Agreement

### Customer Information

Sold to Acct #:		Payer/Bill to Acct #:		Ship to Acct #:	
Name: Cypress School District		Name: Cypress School District		Name: King School	
Attn/Dept: Business Services		Attn/Dept: Business Services		Attn/Dept:	
Ste/Rm:		Ste/Rm:		Ste/Rm:	
Address: 9470 Moody Street		Address: 9470 Moody Street		Address: 8710 Moody Street	
City: Cypress		City: Cypress		City: Cypress	
State: CA Zip: 90630		State: CA Zip: 90630		State: CA Zip: 90630	
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.					
<input type="checkbox"/> Individual PO <input type="checkbox"/> Blanket PO		PO Contact:		Email:	
Fleet Manager? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Name: Terri Walker		Email: <a href="mailto:Twalker@cypsd.k12.ca.us">Twalker@cypsd.k12.ca.us</a>	
				Ph: 714-220-6940	

### Coverage / Billing Options

**Coverage Options:**
**MFP**

Select Options:

- ☒ Supply Inclusive    ☒ Staples Included  
☐ After Hours Service - Requires After Hours Agreement  
☒ Decline Digital Connected Support\*

\* Digital Connect Support will be added automatically billed at \$12.00 per serial number monthly, unless declined above.

**Wide Format**

Select Options:

- ☐ Toner (Black Only)  
☐ 20lb Bond Roll Paper  
☐ Decline Digital Connected Support\*

**Billing Options:**

Initial Term in Months:

☐ 36 ☐ 48 ☐ 60 ☒ Other 12

Flat Rate Frequency:

☒ Monthly ☐ Quarterly ☐ Annually

Meter Frequency:

☒ Monthly ☐ Quarterly ☐ Annually

Aggregate Volume:

☐ B/W ☐ Color

☐ 36 ☐ 48 ☐ 60 ☐ Other

☐ Monthly

☐ Monthly

**All Devices**

Effective Date:

☐ On Install ☐ Date:

Billing Day:

☐ Selected by KMBS ☐ Preferred Day: (29th, 30th, and 31st are not an available selection)

### Maintenance Pricing

Internal Use

MA #:

MFP				Monthly Minimum Volume	Monthly Flat Rate \$	Cost Per Copy Rate \$	Start Meter	Sub Fleet	Price Plan
Item	Model Description	Serial Number	Type						
1	BH C360	A0ED011013602	Color	none	none	0.09200	128,573		
			B/W	none	none	0.00920	345,339		
2			Color						
			B/W						
3			Color						
			B/W						

☐ Additional Equipment on Schedule B

**Wide Format**

Item	Model Description	Serial Number	Type	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

**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: \_\_\_\_\_  
Please Print

KMBS Representative: \_\_\_\_\_

Customer Title: \_\_\_\_\_

 KMBS Manager Name: \_\_\_\_\_  
Please Print

Customer Signature: \_\_\_\_\_

Date: \_\_\_\_\_

KMBS Manager Signature: \_\_\_\_\_

Date: \_\_\_\_\_

### For Internal Use

 Maintenance: ☐ with Equipment Order ☐ Maintenance Only ☐ Billed by KMBS ☐ Billed by Lease Company ☐ Dealer Serviced

Sales Rep Number

Sales Rep Name

Sales Rep Email Address

Sales District

Originating:

Order Taking:

Servicing:

Processed

☐ Branch ☐ Windsor

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

**102. Equipment Services:** 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 <http://kmbs.konicaminolta.us>.

**103. Equipment Exchange:** Equipment exchange will be used for Equipment 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:** Preventive 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, KMBS may need to confirm the Equipment is 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 services are provided as part of a managed services agreement, KMBS requires a designated Customer contact(s) to confirm 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 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 employees or designated agents are 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. If any 3<sup>rd</sup> party software or services are included at the time of sale, those warranties would be covered under the 3<sup>rd</sup> party end user license agreement or the master agreement between the 3<sup>rd</sup> party and KMBS.

**306. Solution Integration:** Solution integration with print output devices covered under this or another 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 Customer's location. Level 1 support is only available when level 0 supports are 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:** 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 3<sup>rd</sup> 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):** 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:** 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:** 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 (level 2 encryption – comparable to 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 of 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, KMBS may increase the maintenance base and usage charges. The annual increase in the maintenance and base usage charges will not exceed 10%.

**702. Aggregate Meter Billing:** Increases in the maintenance and base usage charges for contracts with aggregate meter billing 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:** 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. NO CASH PAYMENTS ACCEPTED. Accepted manners of payment are by major credit card, check made payable to KMBS, or ACH transfer.

**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 or other uses deemed illegal or infringing on the copyrights of others. Customer also warrants Equipment will be used directly by the Customer and will not be made available for resale without the express written consent of KMBS.

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

**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 Konica Minolta Business Solutions U.S.A., Inc., 500 Day Hill Rd., Windsor, CT 06095 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. LIMITATIONS ON RECOVERY: 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 SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, DAMAGES DUE TO LOSS OF DATA OR INFORMATION OF ANY KIND, LOSS OF OR DAMAGE TO REVENUE, PROFITS OR GOODWILL, DAMAGES DUE TO ANY INTERRUPTION OF BUSINESS, DAMAGE TO CUSTOMER'S COMPUTERS OR NETWORKS, EVEN IF KMBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES RESERVE THE RIGHT TO RECOVER CONTRACT DAMAGES ALLOWED VIA THIS AGREEMENT. KMBS'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO 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 ALLEGED 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 and 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:** This Agreement may be executed in any number of counterparts and each fully executed counterpart shall be deemed an original. The parties agree (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. In any legal proceeding relating to this Agreement, the parties waive their right to raise any defense based on the execution of this Agreement in counterparts; or the delivery of such executed counterparts by copy, facsimile, or electronic delivery; or KMBS's acceptance of orders electronically.

**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's gross negligence or willful misconduct.