



For office use only (Check one): Branch Windsor

S00056770
07/21/11 02:55 pm

KONICA MINOLTA

Premier Lease Agreement

APPLICATION NUMBER
3-79789007

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 HOPE OF DETROIT ACADEMY			STREET ADDRESS 4660 S. HAGADORN STE 500	
CITY EAST LANSING	STATE MI	ZIP 48823	PHONE* 517 203 3771	FAX
BILLING NAME (IF DIFFERENT FROM ABOVE)			BILLING STREET ADDRESS	
CITY EAST LANSING			STATE MI	ZIP 48823
EQUIPMENT LOCATION (IF DIFFERENT FROM ABOVE) 4443 CAMPBELL ST. DETROIT MI 48210			E-MAIL KIM.BARTON@LEONAGROUP.COM	

*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 CONFIDENCE GUARANTEE

Konica Minolta Business Solutions agrees to maintain the Equipment in good operating condition providing necessary maintenance service and parts for routine repairs. If our Service Representative is unable to repair the equipment covered under a Konica Minolta Business Solutions Service Agreement and this guarantee, we shall provide, at no charge, an equivalent replacement.



MAKE/MODEL NO./ACCESSORIES

SERIAL NO.

1 - BIZHUB 652

See attached schedule for additional Equipment / Accessories

TERM AND PAYMENT SCHEDULE

48 Monthly Payments of \$ 389.02
(mos.) (plus applicable taxes)

Security Deposit \$ _____
(plus applicable taxes)

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 6 (on reverse).

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

LESSOR ACCEPTANCE

Konica Minolta Premier Finance

DATED _____ LESSOR _____ SIGNATURE _____ TITLE _____

CUSTOMER ACCEPTANCE

HOPE OF DETROIT ACADEMY
FULL LEGAL NAME OF CUSTOMER (as referenced above)

X *Kim Barton*
SIGNATURE
Kim Barton
PRINT NAME

Finance Asst
TITLE

38-3485137
FEDERAL TAX I.D. #

CONTINUING GUARANTY

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 guaranty, you expressly consent to the jurisdiction of the court set out in paragraph 15 and agree to pay all costs, including attorneys fees incurred in enforcement of this guaranty. It is not necessary for us to proceed first against you before enforcing this guaranty. By signing this guaranty, you authorize us to obtain credit bureau reports for credit and collection purposes.

X

PRINT NAME OF GUARANTOR _____ SIGNATURE (NO TITLES) _____ DATED _____

See reverse side for additional terms and conditions

ORDER AGREEMENT

Check Applicable Box
 Purchase
 Lease
 Other: _____

INVOICE TO Account #		SOLD TO Account #		SHIP TO Account #	
Legal Name GE CAPITAL		Legal Name HOPE OF DETROIT ACADEMY		Legal Name HOPE OF DETROIT ACADEMY	
Attn Line 1		Attn Line 1		Attn Line 1	
Attn Line 2		Attn Line 2		Attn Line 2	
Street Address 1961 HIRST DR		Street Address 4660 S. HAGADORN STE 500		Street Address 4443 CAMPBELL ST.	
City MOBERLY State MO Zip 65270		City EAST LANSING State MI Zip 48823		City DETROIT State MI Zip 48210	
Tax Exempt <input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (Copy Required)		Tax Exempt # 38-3485137			
P.O. Required <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (Copy Required)		P.O. #		P.O. Expiration Date	

Payment Terms: SEE LEASE	Credit Card	Card Type _____	Name on Card _____	Check	Amount
		Authorized Credit Card Amount: _____	(plus applicable taxes)		Check #
		Credit Card # _____	Expiration Date _____		

Requested Delivery Date: 07/28/2011
 Maintenance Contract
 Accepted
 Declined

QTY	MATERIAL #	MATERIAL DESCRIPTION	SERIAL NUMBER	PRICE EACH	EXTENDED
1	A2WU011	BIZHUB 652			
1	7670525500	DELIVERY CHARGE - LEVEL TWO			
1	7670527700	INSTALLATION CHARGE - LEVEL TWO			
1	A0HRWY2	FS-527 FLOOR FINISHER			
1	7640014750	ESP POWER FILTER NEXT GEN PCS 1			
1	15LB	FK-502 FAX BOARD			
1	A0YAWY1	MK-720 MOUNT KIT			
1	7640015657	BIZHUB SECURE			

QTY	MATERIAL #	SUPPLY - MATERIAL DESCRIPTION	PRICE EACH	EXTENDED
1	A0TM132	TN-618 BLACK TONER (YIELD: 37,500)	N/A	
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	
			N/A	

Additional Charges:
 Network _____
 Removal _____
 Other _____

Additional Charges _____
TOTAL _____
 (TOTAL is exclusive of applicable taxes)

Pick-Up
 Requested Removal Date: 07/28/2011

QTY	MATERIAL #	MATERIAL DESCRIPTION	SERIAL NUMBER
1		600	57BE09268

Comments

If order is for a purchase of equipment, Customer's signature below acknowledges receipt of KMBS Sales Terms and Conditions "Schedule A" (Revised 03-30-09) and consent to their terms, which are incorporated into this agreement. If payment by credit card is indicated above, Customer hereby grants KMBS the authority to charge the Customer's credit card in the amount indicated (plus applicable taxes). KMBS assumes no responsibility to pick-up, return to any party, and/or resolve any financial obligations on any existing Customer equipment except as specifically stated in this Agreement or separately executed form. Not binding on KMBS until signed by KMBS Manager.

Customer Name Hope of Detroit Academy
 KMBS Representative [Signature]
 Date 7/21/11

Signature Kim Burton
 KMBS Manager _____
 Date _____

Title Kim Burton



EQUIPMENT REMOVAL AUTHORIZATION

Customer: HOPE OF DETROIT ACADEMY

Pick Up Address: 4443 CAMPBELL ST., DETROIT, MI, 48210

Equipment being removed from Customer's Location:

Make: <u>KONICA MINOLTA</u>	Model: <u>600</u>	Serial Number: <u>57BE09268</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: ERVIN LEASING Lease #: 43043-02

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 Storage of Equipment Less than 90 Days 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 to KMBS. Upon shipment of equipment, KMBS will invoice Customer \$ _____ for associated shipping charges.

End of Lease Return Storage of Equipment Greater than 90 Days Asset belongs to the Lease Company. KMBS agrees to hold the Equipment for Customer, at KMBS' cost for storage only, until Customer or Lease Company provides KMBS with a written Return Authorization Letter and Shipping Instructions, but in no event shall KMBS continue to hold the equipment after _____ ("Storage Termination Date"). Upon receipt of the leasing company's Return Authorization Letter and Shipping Instructions, KMBS will return equipment listed above to the respective leasing company. In the event KMBS does not receive a Return Authorization Letter and Shipping Instructions before the Storage Termination Date, KMBS will return the equipment listed above to Customer's location of pick up with no further obligation to KMBS. Upon shipment of equipment, KMBS will invoice Customer \$ _____ for associated shipping charges.

KMBS Market VP
Approval Required
for this option.

Comments:

In addition to the terms and conditions incorporated above, KMBS shall have no liability and Customer shall hold KMBS harmless for any damage or loss to the equipment listed above, regardless of cause, once it has left Customer's pick up location. The undersigned represents that he/she is an authorized representative of the Customer and has authority to bind Customer to this Agreement.

<p>Customer Name: <u>Hope of Detroit Academy</u> Signature: <u>Kim Barton</u> <small>Please print</small> Date: <u>7/21/11</u> Title: <u>Finance Asst</u></p>	<p>Konica Minolta Business Solutions U.S.A., Inc. Name: <u>Colleen Sherman</u> Signature: <u>Colleen Sherman</u> <small>Please print</small> Date: <u>7/21/11</u> Title: <u>SAEU</u></p>
---	--

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 _____



KONICA MINOLTA
Advantage CPC Maintenance Contract

Sold To: (legal name)		Ship To:	
Name: HOPE OF DETROIT ACADEMY	Account Number: _____	Name: HOPE OF DETROIT ACADEMY	Account Number: _____
Address Line 1: _____		Address Line 1: _____	
Address Line 2: _____		Address Line 2: _____	
Street Address: 4660 S. HAGADORN STE 500		Street Address: 4443 CAMPBELL ST.	
City: EAST LANSING	State: MI	Zip: 48823	
City: DETROIT	State: MI	Zip: 48210	
Tax Exemption	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes (Certificate required)	Tax Exemption Number: 38-3485137	
PO Required	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes (Copy required)	PO Number: _____	PO Expiration Date: _____

Advantage CPC Maintenance Plan

Cost Per Copy
 With Supplies Without Supplies - Purchased Separately

Effective Date: _____

Billing for CPC contract: Monthly Quarterly Annually

Overages billed: Monthly Quarterly Annually

Contract Term (Months): 12 24 36 48 60

Product Covered Under Contract:

Item	Model Description	Serial Number	Type	Start Meter Read	Monthly Min Volume	CPC	Monthly Min \$	Overage CPC
1	BIZHUB 652		C	0	0	0.00000	\$ 0.00	0.00000
			B/W	0	0	0.00850	\$ 0.00	0.00850
2			C					
			B/W					
3			C					
			B/W					
4			C					
			B/W					
5			C					
			B/W					
6			C					
			B/W					

Comments SERVICE LOCKED FOR 4 YEARS AND INCLUDED STAPLES.

Customer's signature below acknowledges receipt and consent to KMBS Advantage Maintenance Terms and Conditions "Schedule A" dated 02-01-10. Not binding on KMBS until signed by KMBS Manager.

Customer Name: Hope of Detroit Academy KMBS Representative: [Signature] Date: 7/21/11

Signature: Kim Barber Please Print 7/21/11 Date 7/21/11 KMBS Manager: [Signature] Date _____

Title: Finance ASST Authorized Representative of Customer

FOR INTERNAL USE

New Customer Maintenance w/ Equipment Order Maintenance Only Maintenance Billed by KMBS Maintenance Billed by Lease Company Dealer Serviced

PE #: _____ Agreement #: _____ Customer Code 1: _____

Promotion #: _____ Price Plan #: _____ Customer Code 2: _____

Subfleet #: _____ Customer Code 3: _____

Key Operator Contact: _____ Phone: _____ Email Addr: _____

Meter Read Contact: _____ Phone: _____ Email Addr: _____

Accounts Payable Contact: _____ Phone: _____ Email Addr: _____

Special Instructions: _____

Additional Documents Attached:
 Price Exception Tax Exempt Certificate
 Purchase Order Credit Application

	Sales Rep Number	Sales Rep Name (Please Print)	Sales Rep Email Address
Originating:	718102	COLLEEN SHERMAN	CSHERMAN@KMBS.KONICAMINOLTA.US
Order Taking:	718102	COLLEEN SHERMAN	CSHERMAN@KMBS.KONICAMINOLTA.US
Servicing:	718102	COLLEEN SHERMAN	CSHERMAN@KMBS.KONICAMINOLTA.US

Contract Processed: Windsor, CT Branch 718 - LANSING OKEMO (Branch Name) Sales District: 71801

KMBS ADVANTAGE MAINTENANCE TERMS AND CONDITIONS "SCHEDULE A"

(Revised 02-01-10)

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

information contained in the DNA in providing network integration services. KMBS reserves the right to assess additional charges for service due to Customer's modification of its network, software, or operating system(s).

- 1. PAYMENT:** Payment is due within thirty (30) days from the date of the invoice. Should the customer fail to make any payment due hereunder, or be or become insolvent or be a party to or acquiesce in any bankruptcy or receivership proceeding or any similar action affecting the affairs or property of Customer, or violate any aspect of this Agreement, KMBS may (1) refuse to continue to service the equipment or provide Consumable Supplies and may enter Customer's premises to recover any property or equipment owned by KMBS or (2) furnish service on a time, travel and material basis, without prejudice to any other remedies KMBS may have. If Customer fails to make any payment when due pursuant to this Agreement, there will be a service charge of one and one-half percent (1 1/2%) per month of the total amount due or the maximum legal interest rate allowed by law, whichever is less. Reasonable costs, including counsel fees, shall be recoverable by KMBS in the event collection activities, including litigation, are required to collect outstanding amounts due under this Agreement. NO CASH PAYMENTS ACCEPTED. Accepted manners of payment are by major credit card or checks made payable to KMBS.
- 2. METER READINGS:** Customer will provide accurate and timely meter readings at the end of each billing period in a manner prescribed by KMBS. KMBS charges for each copy or print, performed by the KMBS equipment included in this Agreement. A copy or print shall be defined as the generation of any document or image on the KMBS equipment. For purposes of this Agreement, all such uses of KMBS equipment shall be referenced herein as a "copy." KMBS shall have access to monitor the meter readings and if meter readings are not received in a timely manner, KMBS may obtain or estimate them and Customer agrees to pay for maintenance services based on estimated meter readings. Customer shall not alter or attempt to alter actual meter reading. Each 8 1/2" x 11" copy will be recorded as a single meter click. Each 11" x 17" copy will be recorded as a double meter click. Duplexed copies shall be counted at twice the rate of simplex copies. For models equipped with banner printing capabilities, the following meter click charges shall apply: 18" to 27" = 3 clicks; 27" to 36" = 4 clicks; 36" to 47" = 5 clicks.
- 3. SITE PREPARATION & ACCESS:** Customer shall ensure that equipment is placed in an environment that conforms with the manufacturer's specifications and requirements and will bear all cost and expense for any additional necessities required for installation such as telephone and electrical wiring, remodeling, and noise and power filters. Any electrical work external to the equipment (i.e. associated peripheral equipment, power, transmission and phone lines, and modems) and equipment line cord are not covered by this Agreement. Customer shall provide KMBS' personnel with free and full access to the equipment and any necessary operating time for the purposes of furnishing maintenance services. Customer shall arrange and insure that one of its employees is present at all times when KMBS personnel perform maintenance services. Relocation or make ready shipment of equipment is not covered by this maintenance Agreement. This service, when requested, will be at the then billable rate of KMBS.
- 4. COMMENCEMENT OF SERVICE:** The equipment must be in good condition on the commencement date of this Agreement. KMBS charges for parts and labor required to place the equipment in such condition unless covered under any applicable warranties or a continuous maintenance Agreement. KMBS will invoice the customer and this will be in addition to the price set forth on the front hereof.
- 5. ADDITIONAL EQUIPMENT:** No maintenance service for additional or substituted equipment will be provided by KMBS until it is accepted by KMBS, in writing, for coverage. KMBS reserves the right to adjust the coverage period for any additional or substituted equipment to assure common renewal dates.
- 6. SERVICE INCLUDED:** KMBS' obligations under this Agreement is to provide Basic Maintenance Service on the equipment covered by this Agreement. Basic Maintenance Service is defined as that level of maintenance necessary to maintain the equipment in normal operating condition as set forth in the equipment specifications. Basic Maintenance Services includes labor and/or routine remedial and preventive maintenance service as well as remedial parts and Consumables Supplies, if this option is selected, as defined in section 23. All part replacements shall be on an exchange basis with new or refurbished items. Emergency service calls will be performed at no extra charge during normal business hours. Unless otherwise indicated, normal business hours are 8:30 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays observed by KMBS. Overtime charges, at KMBS' then current rate, will be charged for all service calls outside normal business hours. In addition to, KMBS reserves the right to delete discontinued equipment from this Agreement if parts become unavailable for discontinued equipment.
- 7. PREVENTIVE MAINTENANCE:** Preventive Maintenance shall be performed on the equipment at the intervals defined by the Technical Service Manuals for the particular model. Preventive Maintenance will include cleaning, lubrication, adjustment, and may be made at the same time remedial service is being performed. KMBS technicians do not carry or deliver consumable supplies (toner, developer, etc.). It is the Customer's responsibility to have the necessary supplies available for the Technician's use.
- 8. vCARE MONITORING:** KMBS will deploy and enable its vCARE Solution, which is a Device Relationship Management (DRM) system that interacts with KMBS product(s) for the purpose of automated meter reading, technical performance monitoring, consumable and supply-level monitoring for replenishment, and product status (and as described in KMBS' Digital Needs Analysis). 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.
- 9. SELLER'S AGENTS:** Customer acknowledges that it has been advised that no employee, representative or agent of KMBS has any authority to bind KMBS to any affirmation, promise, representation, or warranty concerning any of the equipment or services. Unless an affirmation, promise, representation, or warranty is specifically set forth in this Agreement it does not form a basis of this bargain and shall not be enforceable against KMBS.
- 10. DISCLAIMER:** This Agreement does not cover service required due to malfunction of parts, attachments, or supplies of non-KMBS manufacture. When the use of a particular supply item may cause machine damage or require excessive servicing, KMBS, upon notice to Customer, will not continue remedial or preventive service for that equipment. By introducing supplies of differing manufacture into the KMBS equipment Customer accepts the responsibility to pay for any remedial or corrective service required. Any alterations, modifications or changes to the equipment by someone other than KMBS, including Customer, may result in termination of this Agreement. Without prior authorization, this Agreement does not apply to any equipment which ceases to be at the customer location described on the front side hereof. This Agreement does not apply to any equipment lost or damaged through accident, abuse, misuse, theft, neglect, acts of third parties, fire, water, casualty or any other natural force, and any loss or damage occurring from any of the foregoing is specifically excluded from this Agreement. Customer warrants and represents that the equipment will be used for business purposes, and not for personal, or household purposes.
- 11. AUTOMATIC RENEWAL:** Service on individual equipment shall automatically be extended for successive one year terms at the rates being charged by KMBS at the time of renewal unless Customer or KMBS provides the other party thirty (30) days written notice before the end of the current term of its intention not to renew this Agreement. Upon renewal, either party may cancel this Agreement, with or without cause, upon thirty (30) days written notice to the other party. Upon cancellation pursuant to this paragraph, Customer will be billed for service through the effective date of cancellation. In the event this Agreement is canceled or not renewed, Customer shall return any unused Consumable Supplies to KMBS. Should the Customer fail to return any unused Consumable Supplies, KMBS reserves the right to charge for any unused Consumable Supplies at the then current rate for such supplies.
- 12. EARLY TERMINATION CHARGE:** In the event Customer terminates prior to the expiration of the initial term of this Agreement without cause or in the event KMBS terminates this Agreement prior to the end of the initial term due to Customer's material breach, KMBS will bill and Customer will be responsible to pay an early termination charge as liquidated damages, and not as a penalty. Early termination charges will be calculated in the following manner: i) KMBS will average the three (3) most recent billing periods of KMBS maintenance to arrive at an average maintenance figure, then ii) multiply that figure by the number of remaining billing periods in the remaining unexpired term, and then iii) divide that number by two (2).
- 13. NETWORK INTEGRATION:** If Network Integration services are provided by KMBS, Customer warrants that the KMBS Digital Needs Analysis ("DNA") has been accurately completed and KMBS may rely on the
- 14. ASSIGNMENT:** Customer may not assign this Agreement, without KMBS' express written consent. In the event that KMBS assigns or subcontracts any of its obligations under this Agreement, KMBS shall remain primarily responsible to perform those obligations. Any claim or defense Customer may have relating to those obligations must be asserted against KMBS and not its assignee. KMBS may assign, without notice, any of its rights under this Agreement.
- 15. 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 100 Williams Drive, Ramsey, NJ 07446, Attention: Office of Direct Administration.
- 16. 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 a negligent or intentional act or omission by KMBS.
- 17. 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, AND MAINTENANCE, AND EXPRESSLY EXCLUDES ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 18. REMEDY LIMITATIONS:** The equipment may not be returned to KMBS without KMBS' written consent. 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 FOR ANY PROVEN BREACH OF THIS AGREEMENT (INCLUDING WARRANTY). THE PARTIES DO 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. KMBS SHALL NOT BE LIABLE FOR ANY DAMAGES, 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.
- 19. 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 courts of the state of New Jersey, consents to jurisdiction in that forum and waives the right to jury trial.
- 20. 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, civil commotion, labor dispute, or any other occurrence beyond its reasonable control.
- 21. 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.
- 22. ORIGINAL DOCUMENT:** Customer further agrees (a) that facsimile or electronic signatures 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 or 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.
- 23. SUPPLIES INCLUDED IN THE BASE/PRINT CHARGE:** If this option has been selected, KMBS (or designated servicer) will provide Customer with certain types and quantities of Consumable Supplies. Consumable Supplies are defined as the toner, staples, developer, copy cartridges and PM kits necessary to ensure that the equipment operates within the equipment specifications throughout the term of this Agreement. Customer agrees that the Consumable Supplies are KMBS property until used by Customer. Customer will use Consumable Supplies only with the contracted equipment and run them to their cease-function point. Customer shall not remove the Consumable Supplies from the location designated as Customer's address on the first page of this Agreement. Customer shall not sell, resell or otherwise transfer any Consumable Supplies to any other entity. Customer will return any unused Consumable Supplies to KMBS at the end of this Agreement. Customer will use reasonable care to store and protect KMBS Consumable Supplies located at Customer's location for Customer's convenience. Customer bears risk of loss of KMBS unused Consumable Supplies in the event of theft, fire or other mishap. Should Customer's use of Consumable Supplies exceed the Manufacturer's Recommended Yields for the applicable unit by more than 6% in any given month, or should KMBS, in its reasonable discretion, determine that Consumable Supplies are being abused in any fashion, Customer agrees that KMBS shall have the right to charge for any such excess or improper usage. The Manufacturer's Recommended Yields for the Consumable Supplies are set forth in <http://kmbs.konicaminolta.us>. Audit Rights: During the term of this Agreement and during the Sixty (60) day period immediately following the Term, KMBS shall have the right, upon reasonable notice or in connection with a maintenance call, to audit Customer's usage of Consumable Supplies. The audit will be conducted by comparing the records generated by the equipment to the Manufacturer's Recommended Yields. If the audit reveals that Customer has exceeded the Manufacturer's Recommended Yield for the applicable unit, then Customer shall promptly pay to KMBS an amount for the excess Consumable Supplies usage, based on the then current rate for the applicable Consumable Supply. KMBS reserves the right to charge Customer for shipping and handling charges incurred by KMBS for the delivery of any excess Consumable Supplies delivered to Customer.
- 24. 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.
- 25. DIGITAL SUPPORT SERVICE (DSS):** Provides Customer access to KMBS Digital Solution Center (DSC) telephonically or by electronic access. DSS includes technical support on items specified on the DSS Supported Products List including Digital Multi-Function Devices, General Office Applications, Graphic and Design Applications and Desktop Operating Systems. Customer may access expert level support by telephone or electronically. DSC support is available during the hours of 8:00a.m. to 6:00p.m. Eastern Time, Monday through Friday, excluding KMBS observed holidays. DSC hours are subject to change by KMBS. Customer system(s) must be in good working condition. DSS does not include parts or labor related to network/computer problems not directly involved in the printing or scanning network or fax workflow. Customer network changes, attachments or additions may require additional DSS charges. KMBS reserves the right to terminate DSS services in the event that any Customer changes, alterations or attachments make it impractical for KMBS to provide DSS. Customer is responsible for performing normal operator functions, system backups, virus scans, and network security functions on a regular basis.