

MBS IT Service Agreement Terms and Conditions

These MBS IT Service Agreement Terms and Conditions (hereafter, "MBSITSATOC" are incorporated by reference into the MBS IT Service Agreement (hereafter, "MBSITSA") by and between the Corporate Client listed in the MBSITSA (hereafter, "Client") and Managed Business Solutions, LLC (hereafter, "MBS") to collectively form one singular agreement. (Hereafter, the "Agreement").

I. Incorporation by Reference.

- A. These MBSITSATOC incorporate by reference the MBSITSA. The terms "Period of Contract," "Client Environment," "Corporate Client," "Total One Time Fee," and "Total Monthly Fee" refer to information as provided in the MBSITSA.
- B. These MBSITSATOC also incorporates by reference Exhibit A: Services, Minimum Standards & Exclusions

II. Effective Dates. The effective dates of this Agreement are for the time period listed under "Period of Contract" in the MBSITSA.

III. Payment for Services. Client agrees to pay MBS a sum for compensation for services as in the amount of the Total One Time Fee (one time) as well as in the amount listed under "Total Monthly Fee" (recurring monthly).

- A. **Payment Directed to Third Party.** MBS may direct Client to pay all or a portion of Compensation for Services to a third party.
- B. **Maintenance Increases.** During the course of this Agreement MBS reserves the right to increase rates no more than twice per calendar year at MBS's discretion due to increased maintenance costs.
- C. **Payments Due. Late Fees.** Payment for Services is due within net 30 days of MBS's invoice. A late fee of 1.5% of the amount due shall apply to any late payments. An additional late fee of 1.5% of the amount due shall apply for each additional 30 days that pass without MBS receiving payment.
- D. **Termination for Non-Payment.** If Client defaults in the payment of any charges or other amounts due under this Agreement or any other invoice(s) due to MBS, its affiliates and/or directed third parties and fails to cure such default within 10 (ten) days after receiving written (including, but not limited to electronic mail) notice specifying such default, then MBS may in its sole discretion terminate this Agreement as of a date specified in such notice.
- E. **Non-Refundable.** Payments made pursuant to this Agreement are not refundable nor creditable for any reason whatsoever.

IV. Services Provided. MBS shall provide client services as described in Exhibit A: Services, Minimum Standards & Exclusions.

- A. **Installations.** Installations are managed by Client Environment as listed on the MBSITSA. MBS reserves the right to add additional charges for services rendered at time of installation that go beyond the agreed upon scope of work as listed on Client Environment.

V. Support & Data

- A. Client is responsible for protecting Client's data from any and all losses. Including but not limited to theft, and/or breach.
 - i. It is the recommendation of MBS that all data scanned from and/or stored on any device (such devices include but not limited to floor model MFPs, desktop MFPs, and standalone scanners) sold by MBS be backed up and

those backups be brought off Client's premises.

- B. Client shall in no way hold MBS liable for loss or theft of data for any cause whatsoever, including but not limited to MBS technician repair, accident, theft, neglect, acts of third parties, war, act of terrorism, fire, lighting strike, water casualty, electrical spike, abuse, or misuse by Client or any other natural or artificial force.
- C. The Help Desk provides support to all faculty, staff, and administrative personnel who require assistance in the following areas, but not limited to:
 - Computer Disposal
 - Data Network/Infrastructure
 - Desktop Hardware/Software
 - E-Mail Accounts and Access
 - Hardware/Software Installation
 - Hardware/Software Inventory
 - Internet Access
 - Network Storage
 - Printer Setup/Maintenance
 - Scanning Services
 - Computer Security
 - Technology Consultation
 - Technology Replacement and installations

D. HOURS OF OPERATION

Help Desk services are available during the following hours of operation:

Monday-Friday	8:00 a.m. to 6:00 p.m. (Over the Phone & In-person)
After hours and Weekends	As needed (Over the Phone)

E. METHODS FOR REQUESTING ASSISTANCE/SERVICE

- Phone: Call the Help Desk (908) 842-0000
- Voice Mail: Leave a message on the Help Desk Voice Mail (908) 842-0000
- E-Mail: Send a message with a detailed description of the request for service to service@metrombs.com

F. REMOTE DESKTOP ACCESS & MANAGEMENT

Depending on the availability of the technical resources, Help Desk staff will make every effort to resolve issues at the time of the service call by using remote access tools. This will allow a Support Analyst to access the caller's desktop remotely for the purpose of expediting the resolution of the call. The caller can view the activity on the local monitor as it occurs. The Support Analyst will request and receive the

caller's consent before accessing the machine remotely. If consent is not given, the call will be assigned the appropriate level of priority.

VI. Confidentiality. Each Party agrees that, absent the express prior written consent of the other Party to the contrary

- A. It will use Confidential Information (as defined below) belonging to the other Party solely for the purposes permitted under this Agreement and its Exhibits, and
- B. It will not disclose Confidential Information belonging to the other to any third party other than its employees, regulators, trading partners and/or agents reasonably requiring such Confidential Information for purposes of this Agreement and who are bound by obligations of nondisclosure and limited use at least as stringent as those contained herein. Each Party will promptly inform the other Party if it becomes aware of an unauthorized use or disclosure of the Confidential Information of the other Party. If a Party becomes subject to a legal requirement to disclose the Confidential Information of the other Party, then the Party receiving the disclosure request shall, prior to making disclosure thereunder, give prompt notice to the other Party so that the other Party may seek a protective order at its expense
 - a. For purposes hereof, "Confidential Information" shall mean (i) the terms and conditions of this Agreement, and (ii) any and all information belonging to a Party, whether stored in written, electronic, representational or physical form, which is not at the relevant time (x) known generally to the public through no act or omission in violation of this Agreement or in violation of another duty of confidentiality to such Party, (y) furnished to the disclosing Party by a third party having the lawful right to do so, or (z) known to the disclosing Party prior to disclosure hereunder (as established by written documentation thereof).
 - b. Confidential Information further expressly includes, but is not limited to, trade secrets, software and procedures manuals and documentation, computer programs, data file content and organization, financial data, marketing plans, customer lists and customer account information and similar information to the extent it is within the scope of the preceding sentence and any information or documentation designated by the disclosing Party as Confidential.

VII. End User Licenses. Client agrees to comply with the terms and conditions of all end user license agreements accompanying any hardware or plug-ins to such hardware distributed in connection with this Agreement. All end user licenses shall immediately terminate on the date that this Agreement expires or is otherwise terminated.

VIII. Variable Monthly Usage Fees. The cost for Services based on the usage by Client and other variable factors shall be computed at the rates stated in the Service Quote and shall be payable monthly, using a cut-off date selected by MBS, in arrears, plus all applicable taxes, tariffs, governmental assessments, surcharges and fees (collectively, the "Usage Fee(s)").

IX. Credit Inquiries. Client authorizes MBS to make inquiries and to receive information about Client's credit experience from others, enter this information in Client's file, and disclose such information concerning Client to appropriate third parties for reasonable business purposes. MBS reserves the right, in its sole discretion, to refuse to provide Services based upon lack of creditworthiness, or in the alternative to require a security deposit that will be returned to Client, without interest thereon, upon the expiration or termination of this Agreement

assuming all amounts due MBS have been paid in full. MBS shall have the right to offset against the security deposit, in part or in full, for any amounts due MBS.

X. Client Conduct.

A. Prohibited Uses. Client shall not use the Services, directly or indirectly: for any unlawful purposes; use of the Services for transmission or storage of any information, data or material in violation of any United States federal, state or local regulation or law is prohibited, such limitation shall include, without limitation, posting or disseminating content which is obscene, unlawful, threatening, defamatory, or infringes upon the intellectual property rights of any third party;

(i) to post, transmit or disseminate objectionable information, including, without limitation, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, state, federal or international law or regulation;

(ii) to access any other person's computer, hardware or data without the knowledge and consent of such person;

(iii) to upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way, information, hardware or other material obtained through the Services which is protected by copyright or other proprietary rights without obtaining permission from the owner(s);

(iv) to maliciously and purposefully damage the Services rented to Client by MBS.

(v) to service, alter, modify or tamper with the the Services or permit any other person to do the same unless such person is authorized by MBS to do so;

(vi) to resell the Services or otherwise charge others to use the Services; the Services is for Client's use only and Client agrees not to use the Services for any other business enterprise in competition with MBS;

(vii) to connect the Services to any computer outside of Client's Premises; and

(viii) to allow or provide access to adult content material to anyone under the age of 18 years.

XI. Termination.

MBS reserves the right to immediately terminate this Agreement if Client engages in any of the activities listed in Section X above or if Client uses the Services contrary to this Agreement.

This Section XI shall in no way limit MBS' rights of termination pursuant to this Agreement. MBS may terminate this Agreement immediately should Client violate any of the terms of this Agreement. MBS may also terminate this Agreement, without cause, by providing Client with written notice of such termination no later than thirty (30) days before the date of termination. In the event that MBS terminates this Agreement for any reason other than Client's violation of the provisions of Section X, Service Fees and other charges will continue to accrue through the date of termination, but all prepaid Service Fees and charges for cancelled Service will be refunded. If termination is due to violation of the provisions of Section X, the termination amount will be equal to the number of months remaining in the Term times the

amount of the monthly Fixed Service Fee.

Termination by Client. The Term of this Agreement shall automatically renew for a period equal to the initial term on each anniversary unless written notice of cancellation is received by MBS thirty (30) days prior to the end of each Term. For all other Services billed by a Fixed Service Fee, Client may only terminate prior to the end of the Term stated in the Services Quote by giving written notice to MBS and by payment of a Fixed Service Fee Termination Amount equal to the number of months remaining in the Term times the amount of the monthly Fixed Service Fee ("Fixed Service Fee Termination Amount"). For Services billed pursuant to Usage Fees Client may only terminate prior to the end of the Term stated in the Service Quote by giving written notice to MBS and by payment of a Usage Fee Termination Amount equal to the number of months remaining in the Term times the average of the prior three (or if less than three months have elapsed, using the actual number of months elapsed) month's Usage Fees ("Usage Fee Termination Amount"). All such types of Termination Fees described herein shall collectively or individually be known as Termination Fee(s). ANY TERMINATION NOTICE RECEIVED BY MBS WHICH IS NOT ACCOMPANIED BY THE APPLICABLE TERMINATION FEE AND RETURN OF ANY EQUIPMENT TO THE MBS OFFICES LOCATED AT 960 MACARTHUR BOULEVARD, MAHWAH, NEW JERSEY 07430 WILL RESULT IN TERMINATION TO BE NULL AND VOID.

- XII. Return of Equipment.** Upon termination, Client will ensure the return of all Equipment to MBS. If the Equipment is not returned, Client agrees to pay the Manufacture's Suggest Retail Price (MSRP) prorated over a five year term. In other words, if the current MSRP for the Equipment is \$200 and Client fails to return the Equipment after a one year term, Client will be billed \$180 for the Services. If Client fails to return Equipment after a four year term, Client will be billed \$40 for the Services. MBS shall have the right to charge such amounts to Client's Visa, MasterCard or other credit card, or to electronically debit Client's bank account.
- XIII. Attorney's Fees.** Client agrees to indemnify, defend and hold harmless MBS against all claims and expenses (including reasonable attorneys' fees) resulting from Client's use of the Services, including, without limitation, the activities listed in Section IX above, or from any other violation of MBS policies by Client. This provision shall survive the expiration or other termination of this Agreement.
- XIV. Force Majeure.** MBS shall have no liability, including as set forth in this Section, for interruption of Services due to circumstances beyond MBS' control, including, without limitation, acts of God, flood, natural disaster, regulation or governmental acts, fire, civil disturbances, strike or weather.
- XV. Access.** Client will permit MBS its employees, agents, contractors and representatives to access Client's Premises during regular business hours to remove any materials furnished by MBS.
- XVI. Privacy Policy.** Client agrees that MBS and/or its agents may, from time to time, collect information regarding Client's use of the Services and activities on the Internet. Client agrees that such information may be shared with third parties provided that (i) MBS does not disclose any personally identifiable information to others except, as allowed by law and (ii) otherwise complies with applicable privacy laws. Client expressly grants MBS the right to disclose information relating to Client and/or Client's account in response to a subpoena issued in a civil or criminal investigation, litigation, court order or a civil investigation by a

governmental entity.

XVII. Relationship of the Parties. It is agreed that the Parties shall be independent contractors and that the relationship between the Parties shall not constitute a partnership, joint venture, or agency. Neither Party shall have the authority to make any statements, representations, or commitments of any kind, or to take any action, which shall be binding on the other Party, without the prior consent of such other Party.

XVIII. Liability.

A. Exclusions. UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT OR OTHERWISE PROHIBITED BY LAW, NEITHER MBS, IT'S OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS, NOR ANY OWNER OR MANAGER OF THE BUILDING OR LAND IN WHICH CLIENT'S PREMISES IS LOCATED SHALL HAVE ANY LIABILITY TO CLIENT OR TO ANY THIRD PARTY FOR:

(i) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF EARNINGS OR LOSS OF BUSINESS OPPORTUNITIES, RESULTING DIRECTLY OR INDIRECTLY OUT OF, OR OTHERWISE ARISING IN CONNECTION WITH, THE USE OF THE SERVICES BY CLIENT OR ANY OTHER USE OF THE MBS EQUIPMENT OR HARDWARE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE RESULTING FROM OR ARISING OUT OF CLIENT'S RELIANCE ON OR USE OF THE SERVICES OR HARDWARE, OR THE MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSION OR ANY FAILURE OF PERFORMANCE OF THE SERVICES OR HARDWARE; OR

(ii) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES OR COSTS (INCLUDING LEGAL FEES) RESULTING DIRECTLY OR INDIRECTLY OUT OF, OTHERWISE ARISING IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE SERVICES OR HARDWARE, OR SERVICE OR A THIRD PARTY INFRINGES UPON THE COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, CONFIDENTIALITY, PRIVACY OR OTHER INTELLECTUAL PROPERTY RIGHTS OR CONTRACTUAL RIGHTS OF ANY THIRD PARTY.

B. Application. The liability limitations set forth in this Section apply to the acts, omissions and negligence of MBS (and its officers, directors, employees, agents, contractors and representatives) which, but for this provision, would give rise to a cause of action in contract, tort or any other legal doctrine. However, the liability limitations set forth in this Section shall apply to liability for personal injury or death only to the extent applicable law does not prohibit such limitation.

C. No Third Parties. No third party owner or manager of Client's building or land is a party to this Agreement. Thus, no such owner or manager shall be responsible for, nor shall be liable for, the quality of the Services.

- XIX. Sole Remedies.** Client's sole and exclusive remedies under this Agreement are as set forth in this Agreement
- XX. Indemnification.** Client will defend, hold harmless, and indemnify MBS, its officers, employees, and agents from any and all costs, expenses, losses, damages, or liabilities based on a claim that MBS technology or marks infringe upon any intellectual rights of a third party and from any and all property damages, personal injury claims or claims for indirect, actual, special, pecuniary, compensatory, statutory or punitive damages, costs, reckonings, awards, or judgments including all fines, penalties, arising from this Agreement.
- A. **Client Time Limit.** No action arising out of or relating to this Agreement or the transactions it contemplates may be commenced against MBS more than 12 months after the basis for such claim could reasonably have been discovered.
- XXI. Warranties.** MBS MAKES NO REPRESENTATIONS AND GRANTS NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, UNDER THIS AGREEMENT, AND MBS SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR ANY WARRANTY AS TO THE VALIDITY OF ANY PATENTS OR THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES UNDER THIS AGREEMENT.
- XXII. Entire Agreement.** These MBSITSATOC and the MBSITSA collectively represent the entire Agreement by and between the Parties and supersedes any prior understanding or representation of any kind, whether made orally or in writing, which precedes the date the Agreement was signed by Client.
- A. **Amendments.** This Agreement may only be modified in writing and any modification must be signed by Client and MBS.
- B. **Copy Provided.** By acceptance of these terms Client acknowledges receipt or opportunity to receive a duly executed duplicate copy of the MBSITSA and these MBSITSATOC.
- XXIII. Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- XXIV. Governing Law.** The laws of the State of New Jersey (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, validity, performance (including the details of performance), and enforcement.
- A. **Venue.** A party bringing a legal action or proceeding against the other party arising out of or relating to this Agreement or the transactions it contemplates must bring the legal action or proceeding in any court of the State of New Jersey sitting in Bergen County. Each party to this Agreement consents to the exclusive jurisdiction of the courts of the State of New Jersey sitting in Bergen County and its appellate courts, for the purpose of all legal actions and proceedings arising out of or relating to this Agreement or the transactions it contemplates.

- XXV. Assignment.** Client may not assign any of its rights under this Agreement or delegate any performance under this Agreement, except with the prior written consent of MBS.
- XXVI. No Waiver.** None of the terms of this Agreement shall be deemed to have been waived by any act or acquiescence of either Party. Only an additional written Agreement can constitute waiver of any of the terms of this Agreement between the Parties. No waiver of any term or provision of this Agreement shall constitute a waiver of any other term or provision of the same provision on a future date. Failure of either Party to enforce any term of this Agreement shall not constitute waiver of such term or any other term.
- XXVII. Headings.** The section and paragraph headings appearing in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- XXVIII. Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, which together will form a single agreement. This Agreement may be signed electronically.
- XXIX. Prevailing Party.** In the event of a dispute between the parties hereto with respect to this Agreement, the party against whom such dispute is substantially adversely determined by a court of competent jurisdiction shall pay the reasonable costs and expenses (including attorneys' fees and disbursements) incurred by the substantially prevailing party in connection with such dispute.