

## **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 the Client Environment.

### **V. Renewal.** There shall be no extension or renewal of the terms of this Agreement unless mutually agreed to in writing (including, but not limited to, via electronic mail)

by all parties.

**VI. 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 the Client's premises.

B. The 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 the 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](mailto: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.

**VII. 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.

**VIII. 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.

**IX. 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 or personal injury claims, costs, reckonings, awards, or judgments including all fines, penalties, arising from this Agreement.

**X. Limitation of Liability.** MBS will not be liable for any indirect, special, consequential, or punitive damages (including lost profits) arising out of or relating to this Agreement or the

transactions it contemplates (whether for breach of contract, tort, negligence, or other form of action) and irrespective of whether the Client has been advised of the possibility of any such damage. In no event will MBS's liability exceed the total amount of this Agreement.

- A. **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.
- B. **Force Majeure.** MBS will not be liable for delays in performance or for non-performance due to unforeseen circumstances or causes beyond MBS's reasonable control.

**XI. 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.

**XII. 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 the 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.

**XIII. 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.

**XIV. 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.

**XV. Assignment.** The 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.

- XVI. 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.
- XVII. 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.
- XVIII. 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.