

## **MBS Service Agreement Terms and Conditions**

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

- I. Incorporation by Reference.** These MBSSATOC incorporate by reference the MBSSA. The terms "Period of Coverage", "Corporate Client", "Contract Coverage Dates", "Equipment to be Serviced," "Client Environment", "Base Rate," "Frequency," "Clicks", "Bundled Clicks," "Cost Per," "Quantity", "Base Billing", and "B&W", and "Color", "Seat Based" refer to information as provided in the MBSSA.
- II. Effective Dates.** These effect dates of this agreement are for the period of time listed under "Period of Coverage" in the MBSSA.
- III. Payment for Services.** Client agrees to pay MBS a sum for Compensation for Services as calculated and due as set out below.
  - A. Pay Period Determination.** MBS will calculate a sum for services for each Frequency as selected in the MBSSA. "(hereafter, "Pay Period")
  - B. Calculation and Payment of Compensation for Services**
    - i.** MBS shall receive a sum for services according to the Rate and Client Click Compensation as calculated below.
      1. MBS will receive compensation in an amount equal to the Base Rate listed in the MBSSA.
      2. Additionally, MBS will receive compensation in an amount equal to the Frequency Client Click Compensation for each Pay Period as calculated below:
        - a.** Client Clicks will be determined by meter or MBS estimation for the applicable Pay Period as indicated in **Meter**.
        - b.** The Compensation Per Click shall the applicable Cost Per on the MBSSA.
        - c.** Frequency Client Click Compensation shall be Client Clicks times Compensation per Click.
    - ii.** Clients total clicks for all Frequencies combined (cumulative) in excess of applicable Quantity will be charged at the rate determined by **Overage Clicks**.
    - iii. Overage Clicks**
      1. Client is purchasing Clicks as indicated in Quantity on the MBSSA.
      2. Clicks in excess of Quantity shall incur an overage charge based on the number of clicks times the Overage Rates as set out below:
        - a.** Overage Rates for Sharp Products:
          - i.** Black and White: \$0.02 per page
          - ii.** Color: \$0.13 per page
        - b.** Overage Rate for Other Products:
          - i.** Black and White: \$0.03 per page
          - ii.** Color: \$0.13 per page

- C. **Payment Directed to Third Party.** MBS may direct Client to pay all or a portion of Compensation for Services to a third party.
  - D. **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.
  - E. **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.
  - F. **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.
  - G. **Non-Refundable.** Payments made pursuant to this Agreement are not refundable nor creditable for any reason whatsoever.
- IV. 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.
- V. Scope of the Work.** Client desires to enter into this Agreement for services to equipment as set out below.
- A. **Equipment to Be Serviced.** The only equipment that MBS will maintain under this Agreement is Equipment to be Serviced as listed on MBSSA. (The, "Serviced Equipment"). No service and/or goods external to the Serviced Equipment are covered by this Agreement.
  - B. **Installation.** MBS will install Serviced Equipment at Client's place of business.
    - i. Serviced Equipment will be deemed installed if it can accomplish a successful print, copy, and scan.
    - ii. Serviced Equipment will be maintained in working order for the Period of Coverage, unless damaged or destroyed due to a cause not covered under this Agreement.
  - C. **Routine Maintenance.** Service calls will be performed at no extra charge for labor performed during MBS Normal Business Hours, provided such service call is limited to routine, remedial, or preventive maintenance and is for Serviced Equipment.
    - i. **Overtime.** MBS shall receive a sum equal to an Overtime Charge for service calls made outside MBS Normal Business Hours.
      - 1. MBS Normal Business Hours are 8:30 a.m. to 5:00 p.m. New York City time, Monday through Friday, not including MBS Holidays.
    - ii. **Overtime Charge Calculation.** Overtime Charge shall be an initial \$150 fee for plus an additional \$175 per hour (including the first).
  - D. **No Special Maintenance.** MBS is not responsible for special maintenance options including, but not limited to, external copy monitors and/or coin operating equipment, computers of any kind including, but not limited to, servers, Controllers connecting the Serviced Equipment to networks, and/or computers.



- J. **Other Causes of Damage to Serviced Equipment Not Covered.** This Agreement shall not apply to lost or damaged Serviced Equipment that is damaged or lost due to abuse, misuse, failure of to follow MBS suggested use instructions, or acts of third parties.
  - i. Any requests for MBS to preform repairs or replacement resulting from the foregoing shall be result in an additional charge paid by the Client.
- K. **Operator Performance.** The operator's manual for the Serviced Equipment defines specific operator responsibilities and it is the obligation of the Client to perform such operator responsibilities. Operator performance is the sole responsibility of the Client. Performance by MBS of normal operator functions is not included in this Agreement and may be subject to additional charge.
  - i. Any requests for MBS to preform normal operator functions shall be result in an additional charge paid by the Client.
  - ii. **Termination for Unavailability of Consumables.** MBS may, at its sole discretion, terminate this Agreement upon 24 hours-notice in the event a part or consumable for the Serviced Equipment is not reasonably and regularly available to MBS.
    - 1. **Pro-Rated Refund for Advance Payments Following Termination.**  
In the event of termination, the Client shall be due to prorated refund based upon any advance payments made under this Agreement.
- L. **Reconditioning.** If, in the opinion of MBS, a reconditioning is necessary because normal repairs and replacement of parts cannot maintain the Serviced Equipment in satisfactory operating condition, MBS may submit a cost estimate of needed repairs for reconditioning which shall be in addition to the maintenance charges. If the Client does not authorize such work, MBS may in its sole discretion, terminate this Agreement.
- M. **Unauthorized Serviced Equipment Move.** If it is determined by MBS that the Serviced Equipment stated in this Agreement is moved without the knowledge and/or consent of MBS, the Client shall be responsible for any and all charges incurred due to damages caused by the movement of Serviced Equipment. This Agreement may be terminated in MBS's sole discretion in the event the Serviced Equipment is moved to a location outside of any area regularly serviced by MBS.
- N. **Installations.** Installations are managed by Client Environment as listed on the MBSSA. 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.
- O. **Egregious Usage.** MBS may offer "unlimited service" on our document or print technologies with certain bundles or packages. In such circumstances unlimited is defined as within reason or on a per user basis. As such MBS reserves the right to charge in the event of the egregious usage on the part of the Client. Any "unlimited service" offer must be explicitly stated on the MBSSA.

## VI. 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.

- VII. 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.
- VIII. 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.
- IX. 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.
- X. 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.
- XI. Entire Agreement.** These MBSSATOC and the MBSSA 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 MBSSA and these MBSSATOC.
- XII. 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.

- XIII. 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.
- XIV. 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.
- XV. Assignment of Rights in the Event of a Merger or Consolidation.** If MBS merges, consolidates, or engages in another transaction which leads to a change of control to another Corporation, LLC, or other business entity, MBS's rights under this Agreement will automatically assign to the surviving company.
- XVI. No Waiver**
- A. 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.
- XIX.** Client agrees that MBS is not responsible for any outstanding debts or liabilities owed or any promises made in the form of monies exchanged, debts to be paid or equipment owed, written or verbally expressed by any employees or owner of GEM Office Technologies. Further, the Client will in no way hold MBS responsible or liable for any prior agreements whether written or verbally agreed upon with GEM Office Technologies.