

CONTRACT
MAINTENANCE AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

ENDICOTT MICROFILM INC.

THIS AGREEMENT (the "Contract") is made and entered into this 3rd day of June, 2011, by and between Cuyahoga County, Ohio ("the County") on behalf of the Cuyahoga County Information Services Center and **Endicott Microfilm Inc.**, ("Endicott"), an Ohio corporation, having principal place of business at 642 High Street, Hamilton, Ohio 45011. (the "Provider")

WHEREAS, the County has a present need for Countywide Maintenance Service of Kodak Scanning Equipment; and

WHEREAS, Endicott as an authorized Kodak Maintenance Vendor for Kodak Equipment; and

WHEREAS, the County desires to avail itself of continued maintenance service of Kodak Scanning Equipment and Endicott as an authorized dealer agent of Kodak Equipment, is willing to provide such service to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Endicott and the County agree as follows:

ARTICLE I – AGREEMENT AND TERM

1.1 **Scope of Agreement.** During the term of this Contract, Endicott as an authorized distributor of Kodak Scanning Equipment, and the lowest bidder, awarded under ORC 125.04 (C) shall provide countywide maintenance service to the County for equipment listed on Schedule A. In the event that a discrepancy exists between the terms of Schedule A and this agreement, the terms of this agreement will be controlling and binding.

1.2 **Term.** The term of this Contract shall commence as of July 1, 2011; and, unless earlier terminated in accordance with the provisions of this Contract, shall continue in effect for one year from the date of commencement (7/1/11 – 6/30/12). This contract shall be in an amount not to exceed One Hundred Forty Eight Thousand Three Hundred Sixty Four Dollars and Ninety Nine Cents (\$148,364.99).

ARTICLE II – SCOPE OF WORK

2.1 Rendering of Services. Endicott hereby agrees to render maintenance service as listed on Schedule A and shall in no event exceed the amount of this contract shall be in an amount not to exceed One Hundred Forty Eight Thousand Three Hundred Sixty Four Dollars and Ninety Nine Cents (\$148,364.99).

ARTICLE III – PAYMENT AND INVOICING

3.1 Payment. During the term of this contract, the County shall pay the costs associated with the Maintenance Service 30 Days Net, upon receipt of said invoice from Endicott.

3.2 Invoicing. Endicott shall to invoice the County for the Maintenance and Support upon execution of this agreement.. Endicott shall submit original invoice(s) to the following address:

Cuyahoga County Information Services Center
Business Department
1255 Euclid Avenue, 4th floor
Cleveland, Ohio 44115

ARTICLE IV - INDEMNITIES AND LIABILITIES

4.1 Indemnification. Endicott shall agree to release, indemnify and to hold harmless Cuyahoga County, any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for its gross negligence or willful misconduct under this contract.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

5.1 Dispute Resolution.

a) In the event of any dispute or disagreement between Endicott and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Endicott or the County hereunder, which cannot be resolved in the normal course of business, then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be

fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

5.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. Endicott, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

5.3 Termination for Financial Instability. In the event that Endicott becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Endicott of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

5.4 Termination for Convenience. The County may terminate this Contract or any order under this Contract for its convenience and without cause. Any notice of termination will be effective 30 days after the Contractor receives it. If the termination is for the convenience of the County, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before termination.

ARTICLE VI – MISCELLANEOUS

6.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Information Services Center
ATTN: Jeff Mowry, CIO
1255 Euclid Avenue, 4th Floor
Cleveland, Ohio 44115

In the case of Endicott:

Endicott Microfilm Inc.
Attn: Zandy Hood
642 High Street
Hamilton, Ohio 45011

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

6.2 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.

6.3 Social Security Act. Endicott shall be and remain an independent Endicott with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by the Endicott for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said Endicott also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

6.4 Assignment. Neither party shall assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the other party.

6.5 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the Cuyahoga County Executive before compensation for the services or products set forth in this contract can be provided. In the event that services are provided by Endicott prior to the execution of this agreement by the Cuyahoga County, the same will be provided at Endicott's risk, and payment therefore cannot, and will not, be made unless and until this agreement is approved by Cuyahoga County, Ohio. Upon approval by the County Executive of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

6.6 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification, change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

6.12 Force Majeure. Endicott shall not be liable for any failure to perform, or delay in performing Service for County to the extent that such failure or delay results from causes beyond its reasonable control including, without any limitation, any act of God, war, revolution, riot, civil commotion, labor strike or any applicable governmental or judicial law or regulation, order or decree.

ARTICLE VII – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

7.1. Electronic Signature. By entering into this Contract, Endicott, its officers, employees, subcontractors, sub-grantees, agents or assigns, to conduct this transaction by means electronic by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the original document.

7.2 Compliance with O.R.C. Endicott further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

IN WITNESS WHEREOF, THE County and Endicott have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

ENDICOTT MICROFILM INC.

CUYAHOGA COUNTY, OHIO

BY: 

BY: 
Edward FitzGerald, County Executive

Fed. TIN: 26-0006125

Endicott Microfilm Inc.
643 High Street
Hamilton Ohio 45011
Zandy Hood
513-868-8424

Quote Date: 4/26/2011
Valid through: 6/25/2011

Model	Serial #	Support Level Description	Quantity	List Price	Unit Cost	Ext. Cost
Kodak Document Writer 4800	10412426, 11800576, 12057846	1 Year Next Business Day onsite, post warranty	3	\$6,199.00	\$5,145.17	\$15,435.51
Kodak 3500D	11997650, 11997882, 11998055,	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty		\$3,070.00	\$2,548.10	\$7,644.30
Kodak i610	12837082, 12837540, 12836102, 12837104, 12837542, 12836417, 12836414, 12836416, 12836419, 12836420, 12836421, 12836615, 12836858, 12839018, 12839017	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	15	\$3,290.00	\$2,730.70	\$40,960.50
						\$0.00
Kodak i9620	12248681, 12355383	1 Year Next Business Day onsite, two preventative maintenance visit, post warranty	2	\$6,632.00	\$6,504.56	\$11,009.12
Kodak i620	12719490, 12719770, 12721726, 12830005, 12719556, 12719523, 12832027	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	7	\$3,780.00	\$3,137.40	\$21,961.80
Kodak i660	12742330, 12742360, 12742564, 12742565, 12742566	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	5	\$6,580.00	\$5,461.40	\$27,307.00
Kodak i280	12390615	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	1	\$1,292.00	\$1,072.36	\$1,072.36
Kodak 2500	4157-4047, 4157-406	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	2	\$1,494.00	\$1,240.02	\$2,480.04
Kodak i280	12818589	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	1	\$1,292.00	\$1,072.36	\$1,072.36
Kodak Proster Archive Processor	12358824	1 Year Next Business Day onsite, two preventative maintenance visit, post warranty	1	\$3,400.00	\$2,822.00	\$2,822.00
Kodak Sunrise Speedscan	12120603	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	1	\$9,500.00	\$7,885.00	\$7,885.00
Kodak Microfiche Attachment	MUF160061109109	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	1	\$3,500.00	\$2,905.00	\$2,905.00
Kodak Microfilm Reader Attachment	MRF4600609B1064	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	1	\$3,500.00	\$2,905.00	\$2,905.00
Kodak Aperture Attachment	MAC24007050A101	1 Year Next Business Day onsite, one preventative maintenance visit, post warranty	1	\$3,500.00	\$2,905.00	\$2,905.00
*Equipment Must Be in Good Working Condition Prior to Service Agreement Start Date						
TPC						
All pricing is based upon a twelve (12) month pre-paid contract unless otherwise noted						
NOTES:						
Contract Term 12 months						
Scanner Consumable Parts are not covered under manufacturer's warranty or Vendor's Service Agreement						
				Total =	\$148,364.99	
				(Applicable taxes & shipping charges not included)		

Target effective dates: _____ (contract will begin 30 days after receipt of signed proposal and valid purchase order or payment)

* Actual effective dates will appear on our Contract Confirmation card.

Reference P.O. # : _____
Terms are NET 30 Days

Please Attach Hard Copy of PO

ALL PURCHASE ORDERS MUST STATE PAYMENT TERMS AS NET 30 DAYS

Accepted By:

(legally authorized signature)

Because our organization does not issue purchase orders, please use this signed quote as authorization to invoice with prior credit approval

(print name & title)

(date)

Payment Terms are NET 30 Days with approved credit and valid Purchase Order

applicable for your shipping address. If your purchases are tax exempt, please fax a valid resale/exemption/direct pay certificate immediately

product or service will be shipped. Without this documentation, our billing system will charge tax where applicable.

CUSTOMER LOCATION LIST CUYAHOGA COUNTY OHIO

Location	Clerk of Court-Criminal 1200 Ontario Street 2nd Floor Cleveland Ohio 44113		
Contact	Dennis Lengyel		COST
	4800 Kodak archive writer	serial# 10412426	\$5,145.17
	i610 Kodak	serial# 12837082	\$2,730.70
	i610 Kodak	serial# 12837540	\$2,730.70
		TOTAL	\$10,606.57

CLERK OF COURTS - CIVIL 1200 ONTARIO STREET 1ST FLOOR CLEVELAND OHIO 44115

Contact	Wayne Lovelace	Cost
i610 Kodak	serial# 12836102	\$2,730.70
i610 Kodak	serial# 12837104	\$2,730.70
i610 Kodak	serial# 12837542	\$2,730.70
i9620 Kodak Archive Writer	serial# 12248681	\$5,504.56
	TOTAL	\$13,696.66

CUSTOMER LOCATION LIST CUYAHOGA COUNTY OHIO

Location	Common Pleas 1200 Ontario Street General Div. 11th floor		
Contact	Tom Amaut		Cost
	i610 Kodak	serial# 12836858	\$2,730.70
	2500 Kodak	serial# 4157-4047	\$1,240.02
	2500Kodak	serial# 4157-4066	\$1,240.02
		TOTAL	\$5,210.74

CUSTOMER LOCATION LIST CUYAHOGA COUNTY

Location Prosecutor 1200 Ontario Street Cleveland Ohio 44113

Contact Greg Sherman

Cost

i620 Kodak	serial# 12830005	Project General Division	\$3,137.40
i620 Kodak	serial# 12719556		\$3,137.40
i620 Kodak	serial# 12719523		\$3,137.40
i260 Kodak	serial# 12818589		\$1,072.36

TOTAL \$10,484.56

CUSTOMER LOCATION LIST CUYAHOGA COUNTY OHIO

Location Children and Family Services 3955 Euclid Ave. Cleveland Ohio 44115

Contact	Robert Lier	Cost
i610 Kodak	serial#12836417	\$2,730.70
i610 Kodak	serial# 12836414	\$2,730.70
i610 Kodak	serial# 12836416	\$2,730.70
i610 Kodak	serial# 12836419	\$2,730.70
i610 Kodak	serial# 12836420	\$2,730.70
i610 Kodak	serial# 12836421	\$2,730.70
i610 Kodak	serial# 12836615	\$2,730.70
3500D Kodak	serial# 11997650	\$2,548.10
3500D Kodak	serial# 11997882	\$2,548.10
3500D Kodak	serial# 11998055	\$2,548.10
TOTAL		\$26,759.20

CUSTOMER LOCATION LIST CUYAHOGA COUNTY OHIO

Location Board of Elections 2925 Euclid Ave. 2nd floor Cleveland Ohio 44115

Contact	Robin Roy		Cost
	i620 Kodak	serial# 12832027	\$3,137.40
		Total	\$3,137.40

CUSTOMER LOCATION LIST CUYAHOGA COUNTY OHIO

Location	Common PLEAS/PROBATION 1276 West 3rd Street 6th Floor		
Contact	Phillp Zeltz		Cost
	i610 Kodak	serial# 12839018	\$2,730.70
	i610 Kodak	serial#12839017	\$2,730.70
		Total	\$5,461.40

CUSTOMER LOCATION LIST CUYAHOGA COUNTY OHIO

Location	Recorders office	1219 Ontario Street	Cleveland ohio 44113		Cost	Department total
Contact	Jerome Gibson					
	i280 Kodak	Serial# 12390615	project	record management	\$1,072.36	\$1,072.36
	i620 Kodak	serial# 12719490	project	project scanning	\$3,137.40	
	i620 Kodak	serial# 12719770			\$3,137.40	
	i620 Kodak	serial# 12721726			\$3,137.40	\$9,412.20
contact	Larry Patterson					
	4800 Kodak Archive Writer	serial# 11800876	project	daily work	\$5,145.17	
	4800 Kodak Archive Writer	serial# 12057846			\$5,145.17	
	i660 Kodak	serial# 12742330			\$5,461.40	
	i660 Kodak	serial# 12742565			\$5,461.40	
	Archive Processor Kodak	serial# 12358824			\$2,822.00	\$24,035.14
	9620 Kodak Archive Writer	serial# 12355383	project	special projects	\$5,504.56	
	i660 Kodak	serial# 12742360			\$5,461.40	
	i660 Kodak	serial# 12742564			\$5,461.40	
	i660 Kodak	serial# 12742566			\$5,461.40	\$21,888.76
	Sunrise Speedscan	serial# 12120603	project	film	\$7,885.00	
	Sunrise Microfiche Att: ttch.	serial# muf16006110b109			\$2,905.00	
	Sunrise 16/35 roll film Atch.	serial# mrf4600609b1064			\$2,905.00	
	Sunrise Aperture card Atch.	serial# mac4007050a101			\$2,905.00	\$16,600.00
			TOTAL		\$73,008.46	

EASTMAN KODAK COMPANY
Kodak Service and Support
Standard Maintenance Service Terms and Conditions

Eastman Kodak Company ("Kodak") and you, the customer ("Customer") enter into these Standard Maintenance Service Terms and Conditions (the "Agreement") and agree that the terms and conditions of this Agreement will apply to the provision of services by Kodak for the products defined below located in the United States, Hawaii and Alaska (a ten percent (10%) premium applies in Alaska).

Generally, the mainframe and all components of a Product (as defined herein) that are mechanically, electronically, or remotely interconnected must be inspected, tested and adjusted as one operating unit to diagnose and correct malfunctions effectively. Therefore, if a Product is covered under an Agreement, all interconnected components of that Product must also be covered by warranty or the same level of service that is provided under this Agreement.

The term of the Agreement between Customer and Kodak shall be for one year, unless otherwise specified in writing. The terms and conditions set forth below plus the description of services and charges contained in the Kodak invoice and the provisions of the Agreement shall govern the relationship between the parties. Any additional or inconsistent terms and conditions included in the Customer's purchase orders shall be deemed null and void and of no effect.

1 Products. Products covered by this Agreement are commercial office equipment manufactured by Eastman Kodak Company ("Kodak Products") or by Other Manufacturers ("OEM Products") and together with the Kodak Products, the "Products", non-make or model specific, used by customers in an office environment.

2 Customer Responsibilities. Customer will designate an authorized representative for the purpose of interacting with Kodak's service personnel. The Customer representative and the Customer must:

- a) provide initial problem-solving assistance to site users;
- b) coordinate all requests for assistance and act as liaison with Kodak service personnel;
- c) perform appropriate problem analysis and corrective actions by following troubleshooting instructions and remedial actions as prescribed by Kodak;
- d) maintain system and Product documentation and install software updates, maintenance upgrades and patches supplied by manufacturers;
- e) perform preventative maintenance and error recovery procedures as defined in the individual Products' users manual;
- f) supply consumable items or other components that are replaced due to normal wear and/or as specified in the relevant manufacturer's manual(s);
- g) provide service personnel with immediate access to the Products when service is requested;
- h) when necessary, supply and maintain modem and communication software approved by Kodak which satisfies the respective manufacturer's Product specifications;
- i) keep the site environmental ranges within the specifications set forth by the manufacturer of the relevant Product;
- j) provide continuous and appropriate resource availability during problem resolution.

Failure to meet these obligations may result, at Kodak's sole option, in the imposition of additional charges at prevailing Per-Call rates or immediate termination of this Agreement upon notice to Customer.

2.1 Customer Software (if applicable). Prior to service commencing on computers with hard drives, Customer is responsible for creating a back-up copy of the file from the hard drive. Kodak is only responsible for formatting (if required) and transferring those files deemed necessary for formatting as more precisely outlined in the formatting procedures for specific Products. Customer is responsible for restoring data. Kodak shall not be held liable for any damages arising from or relating to the loss of data, any software or any other information contained on a computer or similar device, or contained in or stored on a Product.

2.2 Product Condition. Customer warrants that the Products covered by this Agreement (a) are in proper operating condition, (b) are without any unauthorized modifications, (c) have all safety features in working condition, and (d) have been maintained in accordance with manufacturer's Product performance specifications. Kodak reserves the right to inspect the Products and site installation to confirm that Products meet those conditions. At Kodak's discretion, the inspection and any repairs necessary to bring the Products up to those conditions shall be treated as Per-Call Service. If at any time Customer fails to maintain the Products in proper operating condition as described above, Kodak may cancel this Agreement immediately upon written notice to Customer.

3 How to Obtain Service. In order to obtain service, Customer must call Kodak's Customer Support Center at 1-800-356-3263 and provide the Product's K-number or serial number, which number shall be located on the respective Product(s).

4 Types of Service.

4.1 Telephone Support. Kodak will provide toll-free telephone support between 8:00 a.m. and 5:00 p.m., Customer local time.

4.2 On-Site Service. Kodak will provide on-site service between 8:00 a.m. and 5:00 p.m. Customer local time. On-Site Service includes adjustments and/or replacement of parts required to maintain the Product operating consistently within individual manufacturer's published specifications.

4.3 Periodic Maintenance. Periodic Maintenance ("PM") services will consist of routine maintenance services required to keep the Products in proper operating condition. The actual number of PMs to be performed is dependent upon the service plan purchased by Customer and is indicated on the service invoice. Additional scheduled PMs may be purchased to supplement coverage.

4.4 Extended Hours. Depending upon local service capabilities, available extended hour plans include 5-, 6-, and 7-day, 8-, 16-, and 24-hour options at additional cost. Kodak will use commercially reasonable efforts to provide Service outside of Agreement Hours as shown below. Any such service performed will be billed at prevailing Kodak Per-Call Overtime rates.

4.5 Holidays. Services will not be provided on holidays (including New Years, Memorial, Independence, Labor, Thanksgiving and Christmas days) and Kodak holidays; however service may be available on a best efforts basis at prevailing Per-Call Holiday rates.

4.6 Response Time: Kodak's objective is to provide service during Kodak's normal working hours, within the following time frames:

Kodak Product	
Distance from Kodak Service City	Within Agreement Hours
Zone 1 (0 to 50 miles)	4 Hours
Zone 2 (51 to 100 miles)	4 Hours
Zone 3 (101 to 200 miles)	Next Business Day
Over 200 miles	Contact Kodak
OEM Product	
Distance from Kodak Service City	Within Agreement Hours
Zone 1 (0 to 50 miles)	Next Business Day
Zone 2 (51 to 100 miles)	Next Business Day
Zone 3 (101 to 200 miles)	Next Business Day @ 12% uplift
Over 200 miles	Contact Kodak
OEM Product Priority	
Distance from Kodak Service City	Within Agreement Hours
Zone 1 (0 to 50 miles)	4 Hours @ 12% uplift
Zone 2 (51 to 100 miles)	4 Hours @ 12% uplift
Zone 3 (101 to 200 miles)	Next Business Day @ 12% uplift
Over 200 miles	Contact Kodak

Kodak will use its best commercial efforts to meet its response time objectives, provided however Kodak is not liable for any failure to do so.

4.7 Advanced Unit Replacement ("AUR") Support (if applicable). In some cases, if Kodak determines a Product is not operating consistently within manufacturer's specifications, Kodak will provide next day AUR subject to availability of courier service. Kodak will use reasonable efforts to ensure that the replacement Product will perform at the minimum specifications of the current Product, but may not be the exact make and model. When AUR support is necessary, Kodak will ship the replacement unit to Customer's location, transportation prepaid. Upon delivery of a replacement unit, Customer must place the malfunctioning unit in the shipping case, apply the labels enclosed in the shipping case and call the carrier for pickup within 5 business days after receiving the AUR. Kodak will pay the return transportation charges. If Customer does not return the malfunctioning unit within 10 business days after receipt of the AUR, Customer will be invoiced the list price of the unit and shall immediately pay such invoice.

4.8 Depot Service (if applicable). If Kodak determines the Product is not operating consistently within manufacturer's specifications, Kodak will instruct the Customer regarding shipment of the Product to Kodak for repair. Kodak will repair the Product, if possible, and return the Product to Customer.

4.9 Software Product.

a. Kodak will provide Maintenance Upgrades, Software Patches and telephone assistance of a technical nature on licensed Kodak Software Product only. Kodak may issue Maintenance Upgrades or Patches and/or provide for on-site services necessary to correct errors that significantly affect software performance

In accordance with Kodak's Software Product operating specifications. Unless Product documentation states otherwise, support will be provided for the current and previous Version Release of the Licensed Kodak Software Product. For Licensed Kodak Software Product, maintenance Upgrades and Patches are at no charge and include one copy of the user's manual and/or changes.

b. Kodak reserves the right to develop new features and functionality improvements, which will be offered to Customers as Version Releases under a separate price schedule. Kodak Capture Pro software must not have a lapse in maintenance coverage in order for the user to download from Version Releases.

c. Kodak will provide the same revision level of firmware and/or drivers on any replacement hardware part or subsystem (drives, library controller, etc) within the library, during a "break fix" service call. Kodak will not provide direct software/firmware patches and upgrades for OEM Products, including patch analysis, recommendation, management and implementation of software, patches, drivers, and firmware versions for tape storage products and/or systems.

d. All software and/or changes are subject to the terms and conditions of the Kodak Software License Agreement that was in effect at the time the software is licensed from Kodak. License Terms are applicable as long as the software is being used, even if maintenance services are no longer available.

e. Some Kodak Software Products are licensed under a Renewable Software License Agreement which includes an annual license fee that grants Customer a "Right to Use" the software and to receive the maintenance services defined above as long as maintenance services are available. Customer shall refer to the applicable software license to determine its exact rights.

4.10 Parts. Items as referenced in the manufacturer's manual(s) required to maintain Products operating consistently within manufacturer's published specifications may not be included in this Agreement and will be invoiced separately. Parts or components replaced by Kodak will be either new or remanufactured to manufacturer's new product standards. Parts removed from the system and replaced at no charge become the property of Kodak. NOTE: If Kodak determines that Parts needed to maintain or repair equipment are not available, Kodak will cancel the Agreement and issue a prorated credit for any remaining prepaid coverage.

4.11 Consumables. If Customer also purchases consumables from Kodak under this Agreement, Kodak will provide consumables to Customer in an amount equal only to a manufacturer-recommended one-year supply, without charge to the Customer. Customer must purchase all requirements for consumables beyond such one-year supply at the prices charged by Kodak. Any Agreement including consumables is a fixed term contract and may not be cancelled by Customer at any time prior to the end of the term, except in the case of a breach by Kodak.

6 Property of Kodak. Maintenance material, tools, documentation, diagnostics and test equipment provided by Kodak shall remain the exclusive property of Kodak.

6 Limitations. The Services outlined in these terms are Kodak's only obligation. Kodak will not be responsible for any indirect, incidental, consequential or special damages arising under this Agreement, including but not limited to damages resulting from the sale, use, improper functioning or inability to use the Products and/or related software, regardless of the cause, nor will Kodak be responsible for damages of any nature that are not caused by Kodak or are caused by circumstances out of Kodak's control. Such damages for which Kodak will not be responsible include, but are not limited to, loss of revenue or profit, loss of data, downtime costs, loss of use of the Product, cost of any substitute Product, facilities or services. This limitation of liability will not apply to claims for injury to persons or damage to tangible property caused by the sole negligence of Kodak or by persons under its complete direction or control.

7 This Agreement does not cover, and Kodak shall not be responsible for:

- a) operating system services (e.g., database maintenance/recovery, product integration or application support);
- b) system administration services (e.g., system restarts, error monitoring and reporting basic system matters, including restoring the database);
- c) network system administration (e.g., installation of new software packages, maintenance of user and group accounts, solving network problems, performing system maintenance functions, monitoring networks, installing application software, maintaining configurations);
- d) consultation services;
- e) version release or software support to other than licensed Kodak Software Products;
- f) Product installation, set-up, configuration or other non-repair services;
- g) cable and installation of cable runs or any acquisition of permits;
- h) Customer training;
- i) circumstances beyond Kodak's control (such as customer overriding, bypassing or defeating interlock switches on Products or devices sold by Kodak or any other 3rd party);
- j) problems due to failure of Customer to conform to site specifications provided in the user documentation, or provided by the manufacturer;
- k) time spent in localizing Product not at the specified location or waiting for Product availability;
- l) relocation of Product or service associated with relocation;
- m) seasonal hibernation (de-installation) and reactivation (re-installation);
- n) service or parts associated with any unauthorized modifications, attachments or service;
- o) rebuilding or reconditioning of Product;

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- p) misuse or abuse of Product; and/or
- q) failure to follow operating instructions provided by the manufacturer.

Kodak may provide, at its sole discretion, service in the above referenced situations under the Per-Call terms and at prevailing Per-Call rates.

8 Confidentiality of Customer Data. Kodak does not wish to receive any confidential information of Customer in the course of providing maintenance services, and Customer is expected to take all reasonable precautions to avoid disclosing any of its confidential information or that of its customers, employees or clients ("Confidential Information") to Kodak; and its employees or contractors. However, in the event that Kodak's employees or contractors become exposed to Confidential Information, Kodak will ensure that such information is protected against unauthorized disclosure using the same degree of care, but no less than a reasonable degree of care, as Kodak uses to protect its own information of a like nature.

9 Cancellation. Except as provided in Sections 2.0, 2.2, 4.10 and 4.11 above, this Agreement may be canceled by either Customer or Kodak upon 30 days prior written notice. An early cancellation fee equal to any discount received may be charged for cancellation. Kodak will issue a prorated credit for any remaining prepaid Agreement coverage. Customer will be charged for any service provided when Product is not covered by an Agreement at prevailing Per-Call rates.

10 Taxes. Sales and use taxes will be billed if applicable.

11 Billing and Terms of Payment. Commercial and some government billings are in advance and prices will vary depending upon billing arrangements (annual, quarterly, etc.) and a premium may apply. Where government arrears billing is available, billings occur at the end of the cycle, including renewals.

Payment terms are net 30 days from date of invoice, except for renewals, which are due by the renewal date.

If payment has not been received by the due date, Kodak may, at its sole discretion,

- a) cancel the invoice for non-payment. If the invoice is cancelled for non-payment, Customer shall be liable for the greater of:
 - (i) the prorated value of the annual service rate of the invoice or
 - (ii) Per-Call charges for any service performed by Kodak,
 OR
- b) place the Customer on Service hold.

12 Renewals. Nine (9) weeks prior to the expiration of this Agreement, Customer will be sent an invoice for the renewal of this Agreement, if Kodak so elects to renew. This invoice will be an offer for the same level of coverage as the current Agreement at the prices then in effect, with payment due on the expiration date of the current Agreement. Payment of this invoice will be considered Customer's acceptance of coverage for the new contract term.

13 Product Use. Prices for Agreements based on use will be determined by the previous year's service history. If a year's worth of history is not available, the use will be annualized. The renewal price paid for an Agreement is based on the past year's usage, and will be adjusted accordingly. If use of the Product changes, the price will change accordingly when applicable. Product operated on multiple shift (more than eight hours per day) may be subject to an extra charge and will be re-billed immediately at the pro-rated amount.

14 Force Majeure. With the exception of any payments due hereunder, neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of cause(s) beyond the control and without fault or negligence of the non-performing party. Such cause(s) may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics and unusually severe weather, material shortages, strikes or similar labor disruptions.

15 Termination

- a.) Either party may terminate this Agreement without cause upon thirty (30) days prior written notice.
- b.) Either party may terminate this Agreement immediately if the other party ceases to conduct its operations in the normal course of business, becomes insolvent, or files for or becomes the subject of a bankruptcy petition, or is placed in receivership.
- c.) Kodak may terminate this Agreement immediately if Customer attempts to assign this Agreement without Kodak's prior written consent.

16 Effect of Termination or Expiration

Each party will remain liable under this Agreement for any obligations incurred prior to the effective date of termination or expiration.

17 No Liability for Termination

To the full extent allowed by any applicable law, Customer agrees that it will have no rights to damages or indemnification of any nature due to any expiration, rightful termination, or non-renewal of this Agreement by Kodak. Customer waives any right or claim it may have under local law or otherwise to receive any payment from Kodak for expiration, termination, or non-renewal, whether for actual, consequential, indirect, special or incidental damages, costs or expenses, whether foreseeable or unforeseeable.

18 Governing Law

This Agreement will be governed by and construed in accordance with the substantive laws of the State of New York as applied to agreements entered into between two residents of the State of New York, without regard to its conflict of laws principles.

19 Use of Other Party's Name

Except as necessary to perform their obligations under this Agreement, neither party may make any reference to the other party, its trademarks or trade names in advertising, public announcements, or promotional materials without express written permission from the other party.

20 Severability

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement remains in effect, the legality, validity and enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision the parties shall negotiate in good faith to add a provision similar in terms to such illegal, invalid or unenforceable provision as may be possible.

21 Waiver of Default

Any failure of either party at any time, or from time to time, to require or enforce the strict keeping and performance by either party of any of the terms and conditions of this Agreement shall not constitute a waiver by either party of a breach of any such terms or conditions in the future and shall not affect or impair such terms or conditions in any way, or the right of either party at any time to avail itself of such remedy as it may have for any such breach of any term or condition. No waiver of any right or remedy hereunder shall be effective unless expressly stated in writing by the waiving party.

22 Independent Contractor

Customer shall act as an independent contractor and nothing herein shall be construed to make Customer, or any of its employees, officers, directors or representatives, the agent employee or servant of Kodak.

23 Assignment

Neither party may assign this Agreement without the prior written consent of the other party. Any attempted assignment, whether by divestiture, operation of law, change of control, merger, or otherwise, in contravention of the above shall be null and void and of no force or effect. Either party, however, may assign this Agreement without the other party's consent to any third party which acquires all or substantially all of that portion of the business assets of the assigning party to which this Agreement pertains whether by merger, reorganization, acquisition, sale or otherwise.

24 Forum

All actions arising out of or related to this Agreement must be filed in a court of competent jurisdiction in the State where the Services are delivered.

25 Entire Agreement/Amendment.

This Agreement may be amended or supplemented only by the express agreement of the parties, in writing and signed by each party. This Agreement and the terms and conditions set forth in the original equipment warranty, which are incorporated herein, represents the entire agreement and supersedes all prior agreement and understandings, whether written or oral, with respect to the subject matter of this Agreement.