

RESOLUTION NO. 22-59

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Enter Into An Agreement With KBA Docusys To Extend The Lease Of Twelve Kyocera Multi-Function Printing Devices, Including All Service And Support For An Additional Twelve Months In The Amount \$4,548.00 Per Month Or \$54,576 Over The Course Of The Lease; And To Sign All Necessary Documents Pertaining To The Execution Of The Lease

WHEREAS, on July 23, 2019, the City Council approved a resolution authorizing the City Manager to enter into an agreement with KBA Docusys to extend the previous multi-function printing device ("MFP") lease by an additional twenty-four months at a cost of \$6,281 per month which expired in July 2021; and

WHEREAS, since the City was just beginning to re-staff offices in person after the COVID-19 shutdown, the City opted to convert the existing lease agreement with KBA Docusys to a month-to-month term to better evaluate the current condition of the machines and usage demand going forward; and

WHEREAS, the City desires to extend the life of the existing equipment because it still performs up to standards; and

WHEREAS, the City desires to reduce the monthly expenses associated with the lease of the devices; and

WHEREAS, City staff determined that KBA Docusys is qualified to provide service and support on the existing machines; now, therefore, be it

RESOLVED, by the City Council of the City of Emeryville hereby authorizes the City Manager to enter into an agreement with KBA Docusys to enter into a new twelve-month lease agreement with KBA Docusys in the amount of \$4,548 per month and sign all necessary documents pertaining to the execution of the lease.

Resolution No. 22-59
KBA Docusys MFP Lease
City Council Meeting | June 7, 2022
Page 2 of 2

ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 07, 2022, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez and Welch
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:
John Bauters
C7388D40E2C9450...
MAYOR

ATTEST:

DocuSigned by:
Sheri Hartz
FB7B5D0EAD6A4BE...
CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:
John Kennedy
2C834D62DB55467...
CITY ATTORNEY



A KYOCERA GROUP COMPANY

DocuPrint Plus Agreement

APPLICATION NO.

AGREEMENT NO.

32900 Alvarado-Niles Road, Suite 100 • Union City, CA 94587 • Phone: 510.214.4040 • Fax: 510.675.9272

 The words **User, Lessee, you** and **your** refer to **Customer**. The words **Owner, Lessor, we, us** and **our** refer to **KBA Document Solutions, LLC**.

CUSTOMER INFORMATION

FULL LEGAL NAME EMERYVILLE, City of			EQUIPMENT LOCATION (IF DIFFERENT)		
STREET ADDRESS 1333 PARK AVENUE		PHONE 510-450-7803	CITY	STATE	ZIP
CITY EMERYVILLE	STATE CA	ZIP 94608	FAX	FEDERAL TAX I.D. # 94-6000326	

EQUIPMENT DESCRIPTION

MAKE/MODEL/ACCESSORIES	SERIAL NO.	STARTING METER
KYOCERA 6535cidn	V6D6707187	
KYOCERA TA 3051ci	L856618450	
KYOCERA TA 3051ci	L856618447	
KYOCERA TA 3051ci	L856618560	
KYOCERA TA 5551ci	L896605198	
KYOCERA TA 5551ci	L896605141	
KYOCERA TA 5551ci	L896605208	
KYOCERA TA 5551ci	L896605151	
KYOCERA TA 5551ci	L896605161	
KYOCERA TA 5551ci	L896605145	
KYOCERA TA 5551ci	L896605160	
KYOCERA TA 6551ci	L816801933	
DOCUFLOW +PROPLUS		

☒ CHECK HERE FOR MULTIPLE PLACEMENTS - SEE ATTACHED SCHEDULE "A" OR BILLING SCHEDULE

TERM AND PAYMENT SCHEDULE

(The rent contract payment ("Payment") period is monthly unless otherwise stated.)

*plus applicable taxes

Months	Monthly Payment*	Inclusive Monthly Images		Overages Billed: <input type="checkbox"/> Monthly <input checked="" type="checkbox"/> Quarterly	
		Black & White Images	Color Images	Black & White Images	Color Images
12	\$ 4,548.00	20,000	10,500--T1-630/ T2-2100/T3-2100	\$.00121 per image*	\$.0121/.04848/.0847 per image*

INSURANCE & TAXES

You are required to provide and maintain insurance related to the Equipment, and to pay any property, use, and other taxes related to this Agreement or the Equipment (see paragraphs 2 and 4 on page 2 of this Agreement). If you are tax-exempt, you agree to furnish us with satisfactory evidence of your exemption.

UCC & MISCELLANEOUS

You agree that we will file Uniform Commercial Code ("UCC") documents and obtain credit bureau reports. You authorize us to sign any documents in connection with the Uniform Commercial Code on your behalf. You agree to pay a one-time fee, not to exceed \$159.00 for the purpose of filing the UCC documents.

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

CUSTOMER ACCEPTANCE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

EMERYVILLE City of	X		
Approved As To Form:			
CUSTOMER (as referenced above)	SIGNATURE	TITLE	DATED
 2C934D02DB55467...		PRINT NAME	

ACCEPTANCE OF DELIVERY

The undersigned hereby certifies that: (i) all of the above-described equipment (the "Equipment") has been delivered to the above-named customer (the "Customer") at the address indicated above, (ii) the Equipment has been installed, is fully operational and in good condition, and is unconditionally accepted.

EMERYVILLE City of	X		
CUSTOMER (as referenced above)		SIGNATURE	DATE OF DELIVERY

OWNER ACCEPTANCE

KBA Document Solutions, LLC			
OWNER	SIGNATURE	TITLE	DATED

1. AGREEMENT: For business purposes only, you agree to rent from us the goods, together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries (the "Equipment") and/or to finance certain licensed software and services ("Financed Items", which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, excluding equipment marked as not financed under this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name and address. This Agreement becomes valid upon execution by us. Unless otherwise stated in an addendum hereto, this Agreement will renew for 3-month term(s) unless you send us written notice at least 90 days (before the end of any term) that you want to return the Equipment. If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

2. RENT, TAXES AND FEES: You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover us for all closing costs. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

3. MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST: You agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. You grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. You will notify us within 30 days if your state of organization revokes or terminates your existence.

4. COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE: You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(s) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, you agree to one of the following options, the selection of which is at our sole discretion: (1) we may obtain insurance covering our interest (and only our interest) in the Equipment for the Agreement term and renewals. Any insurance we obtain will not insure you against third party or liability claims and may be cancelled by us at any time. You may be required to pay us an additional amount each month for the insurance premium and an administrative fee. The cost may be more than the cost of obtaining your own insurance; or (2) we may charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. **NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT.** We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and we have not otherwise agreed in writing, you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated residual value of the Equipment (both discounted at 3%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. All indemnities will survive the expiration or termination of this Agreement.

5. ASSIGNMENT: WE ARE THE OWNER OF THE EQUIPMENT. YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. You agree that we may sell or assign the Agreement without notice and the new Owner will have the same rights that we have now and will not have to perform any of our obligations. You agree that the new Owner will not be subject to any claims, defenses, or offsets that you may have against us.

6. DEFAULT AND REMEDIES: You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other lender, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition, or (e) any guarantor defaults under any guaranty for this Agreement. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or if less, the maximum charge allowed by law. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated residual value of the Equipment (both discounted at 3%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. **YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE.** Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 522 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

7. FAXED OR SCANNED DOCUMENTS, OR E-SIGNATURE, MISC.: You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission, or e-signature of the documents. The parties agree that the original of this Agreement for enforcement and perfection purposes shall be that copy which bears your faxed, scanned or original signature, and which bears our original signature and such original shall constitute "Tangible Chattel Paper" under the UCC. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

8. WARRANTY DISCLAIMERS: **YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. THIS AGREEMENT IS A NET AGREEMENT, YOU HAVE AN UNCONDITIONAL OBLIGATION TO MAKE ALL PAYMENTS AND YOU CANNOT WITHHOLD, SET OFF OR REDUCE SUCH PAYMENTS FOR ANY REASON. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.**

9. LAW, JURY WAIVER: Agreements, promises and commitments made by Owner, concerning loans and other credit extensions must be in writing, express consideration and be signed by Owner to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with the law of the state of the principal place of business of Owner or its assignee. You consent to jurisdiction and venue of any state or federal court in the state the Owner or its assignee has its principal place of business and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, **YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.**

10. MAINTENANCE AND SUPPLIES: The charges established by this Agreement include payment for the use of the Equipment, accessories, maintenance by supplier during normal business hours, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation, black toner and developer, and color toner and developer (if applicable). Paper and staples must be separately purchased by you. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you. This Agreement does not support any I.T. services and/or any third party software unless otherwise described on this Agreement.

11. OVERAGES AND COST ADJUSTMENTS: You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment. At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the Payment and the "cost per image" charge that exceeds the number of images originally designated in this Agreement ("Overages") by a maximum of 10% of the existing "cost per image" charge.

12. UPGRADE AND DOWNGRADE PROVISION: AFTER COMMENCEMENT OF THE AGREEMENT AND UPON YOUR WRITTEN REQUEST, AT OUR SOLE DISCRETION, WE MAY REVIEW YOUR IMAGE VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING THE EQUIPMENT TO ACCOMMODATE YOUR BUSINESS NEEDS.

13. TRANSITION BILLING: In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. The payment for this transition period will be based on the base minimum usage payment, prorated on a 30-day calendar month, and will be added to your first monthly Payment.