



STANDARD TERMS AND CONDITIONS

1. Standard Terms. The following set forth the terms and conditions which govern, in part, its business relationships, and upon which Konica Minolta Healthcare Americas, Inc. ("KMHA") sells products and services (the "Terms"). These Terms may be supplemented by KMHA supplemental terms and conditions, as appropriate, which deal with KMHA services, digital products and software. These supplemental terms and conditions, when appended hereto, shall be incorporated herein and be a part of these Terms as if the same document. All KMHA quotations are subject to these Terms. Any additional terms or conditions that may be agreed to on the face of a quotation, proposal or purchase agreement, provided that such document has been signed or initialed by a duly authorized officer of KMHA, shall also be subject to these Terms. In the case of any conflict between these Terms and any other document properly constituting part of the Agreement, the terms on such other document shall control. KMHA objects to and shall not otherwise be bound by any additional or different terms, whether in writing or otherwise, in any other communication to KMHA. These Terms are for the benefit of KMHA and its customers and business partners, and not for the benefit of any third party. Notwithstanding any contrary provision in any other communication or writing, no action by KMHA (such as delivery of any product), the rendering of any services or the commencement of work on specialty products for will be deemed an acceptance by KMHA of any document with terms different from or additional to those contained or referenced herein.

2. Prices. KMHA's prices, quotations, and proposals are subject to change without notice. Unless otherwise stated in writing by KMHA, all prices quoted are exclusive of transportation charges, taxes, and insurance. Typographical errors are subject to correction by KMHA. Prices quoted are for the products specified only. **UNLESS OTHERWISE SPECIFIED IN WRITING, ALL QUOTATIONS ARE FIRM FOR A PERIOD OF THIRTY (30) DAYS, EXPIRE THIRTY (30) DAYS AFTER THE DATE THEREOF, AND CONSTITUTE OFFERS.** A sales quotation for KMHA products and all verbal and written communication between KMHA and a customer is confidential and may not be reproduced, disclosed or transmitted in any manner without first obtaining KMHA's express written permission. Budgetary quotations and estimates are provided for preliminary information only and shall not constitute offers, or impose any responsibility or liability upon KMHA of any kind or nature whatsoever.

3. Invoices, Payment, and Taxes.

(a) **Invoices.** KMHA shall render an invoice to a customer for the purchase price set forth in the quotation or proposal upon shipment of the KMHA products to the customer. Typographical errors shall be subject to correction by KMHA.

(b) **Payment Terms.** Unless credit terms are agreed upon in writing by KMHA, payment for Products is due upon delivery. Payments by approved credit customers shall be due in full within thirty (30) days from the date of the relevant invoice. Past due balances shall be subject to a 1.5% per month (18% per year) service charge, or the highest rate permitted by applicable law, if less. KMHA reserves the right to require an initial deposit from an approved credit customer. If Customer fails to pay any KMHA invoice when due, or otherwise breaches these Terms, KMHA shall be entitled to the reasonable costs (including attorney's fees) incurred in collection or otherwise enforcing the Agreement.

(c) **Taxes.** All payments shall be exclusive of all taxes and duties, including without limitation sales, use, value added and other taxes, duties or levies on transactions made under the Agreement. KMHA shall be paid by customers an amount equal to any tax or duty that KMHA is required to collect upon the sale or delivery of the KMHA products or services by said customers, exclusive of KMHA's income taxes. If a certificate of exemption or similar document is required to exempt a customer from sales or use tax liability, such customer shall obtain and furnish to KMHA evidence of such exemption with customer's order in a form reasonably satisfactory to KMHA.

(d) **Alterations.** Any alterations that are made to the specifications of a KMHA product from those stated in the initial order from a customer shall be at such customer's sole expense.

4. Order Submissions and Acceptance. All orders for Products by a customer shall be made using a purchase order, purchase letter or other similar document (each, an "Order Document"). No Order Document shall be binding upon KMHA until it has been accepted by KMHA in writing, and KMHA shall not have any liability to a customer with respect to any Order Document that is not accepted by KMHA. KMHA shall notify customers of any rejection of an Order Document and of the assigned delivery date for accepted orders within ten (10) business days of KMHA's receipt of the Order Document. KMHA's acceptance of any Order Document shall not constitute acceptance of any terms and conditions thereon, which are expressly rejected.

5. Delivery. All products shall be delivered FOB KMHA's shipping point designated by KMHA at the time the order is accepted by KMHA. If a customer specifies the carrier to be used, shipment may be made on a collect basis by KMHA. Products shall be scheduled for shipment in accordance with KMHA's applicable shipping sequence. KMHA shall not be liable for any damages or penalties arising from any delays in delivery or for any failure to give notice of any delivery delay.

6. Risk of Loss/Passage of Title. Unless otherwise agreed to by KMHA in writing, all transportation shall be at Customer's sole cost and expense. Risk of loss and damage shall pass to the customer upon delivery of the products to the transportation provider at the FOB point. Unless expressly agreed to in writing by KMHA, the FOB point shall be the KMHA loading dock from which the Products are shipped. "Delivery" shall occur when the products are received by the transportation provider at the FOB point. Neither confiscation nor destruction of, nor damage to any product shall release, reduce or in any way affect a customer's liability to KMHA. Title to any product shall pass to a customer upon the later the Delivery of the product to the customer or the customer's payment in full of the all amounts owed on the applicable invoice.

7. Performance. KMHA shall not be liable in any way for any failure to perform its obligations when such failure or delay is due to acceptance of prior orders, technical difficulties, acts of God, labor disputes, failures of materials or facilities, acts of war or terrorism, curtailment of or failure to obtain sufficient electrical or other energy supplies, compliance with any laws, regulations or orders, whether valid or invalid, from any governmental body or instrumentality, or any other circumstance or causes beyond KMHA's reasonable control.

8. Acceptance of the KMHA Products. The furnishing by KMHA of its products to a customer shall constitute acceptance of those products **UNLESS** the customer delivers written notice of a defect or nonconformity to KMHA within thirty (30) days of the date on which such products are delivered to the customer. Notwithstanding the foregoing, any use of any product or service by the customer, its agents or contractors, for any business purpose, after it has been delivered or provided to the customer, shall constitute acceptance of that product or service by the customer.



9. Warranty and Limitations of Warranty.

(a) KMHA warrants to its customers that, during the applicable warranty period each standard product manufactured by KMHA shall be free of defects in materials and workmanship.

(b) Unless otherwise specified by KMHA or otherwise reduced to writing and expressly approved by an authorized officer of KMHA in writing, the warranty period for standard KMHA products shall be one (1) year from the installation completion date.

(c) Customer's EXCLUSIVE REMEDY, and KMHA's SOLE OBLIGATION under the foregoing warranty shall be, with respect to the KMHA products, to repair or, at KMHA's option, replace such products, or any defective portion thereof. Notwithstanding the foregoing, KMHA may, as an alternative, elect to refund an equitable portion of the purchase price of the affected product. Items expendable in normal use ("Consumables") are not covered by the foregoing warranty. All warranty replacement or repair of parts shall be limited to product malfunctions, which, in the reasonable opinion of KMHA, are due or traceable to defects in original material or workmanship. All replaced parts shall become the property of KMHA. All obligations of KMHA under this warranty shall cease in the event of abuse, misuse, accident, alteration, or neglect of the KMHA product. In-warranty repaired or replacement parts are warranted only for the remaining un-expired portion of the original warranty period applicable to the repaired or replaced parts or ninety (90) days, whichever is greater. After the expiration of the applicable warranty period, customers shall be charged at KMHA's then current rates for parts, labor and transportation.

(d) All customers must use reasonable care to avoid hazards. KMHA expressly disclaims any responsibility for loss or damage caused by the use of any KMHA products other than in accordance with proper operation procedures. No warranty is provided by KMHA for any products sold or provided to a customer by KMHA which are not manufactured or produced by KMHA, and any manufacturer's warranty for such products, if any, shall be assigned to such customer without recourse to KMHA.

(e) KMHA DOES NOT WARRANT THAT ANY PRODUCT OR THE FUNCTIONS PERFORMED BY ANY PRODUCT WILL MEET THE REQUIREMENTS OF ANY OF ITS CUSTOMERS, OR THAT THE OPERATION OF ANY SUCH PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE.

(f) THE WARRANTIES SET FORTH IN THE AGREEMENT ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, USE OR APPLICATION, OR ARISING FROM A COURSE OF DEALING, WHICH ARE EXPRESSLY DISCLAIMED, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF KMHA, UNLESS SUCH OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING BY AN AUTHORIZED OFFICER OF KMHA. STATEMENTS MADE BY ANY PERSON, INCLUDING REPRESENTATIVES OF KMHA, WHICH ARE INCONSISTENT OR IN CONFLICT WITH THE TERMS OF THE AGREEMENT SHALL NOT BE BINDING UPON KMHA UNLESS REDUCED TO WRITING AND SIGNED BY AN AUTHORIZED OFFICER OF KMHA.

10. Warranty-Expendable Products ("Consumables"). KMHA warrants that, at the time of delivery to a customer, Consumables manufactured and sold by KMHA to a customer will be free of defects in material and workmanship and will conform to KMHA's specifications therefor or other specifications expressly agreed to in writing by KMHA. KMHA SHALL HAVE NO OTHER OR FURTHER RESPONSIBILITY THEREFOR WHATSOEVER, AND KMHA DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT THERETO.

11. Damages and Liability. KMHA'S AGGREGATE LIABILITY TO A CUSTOMER IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE TOTAL OF ALL PAYMENTS, IF ANY, RECEIVED BY KMHA FOR THE PRODUCT(S) OR SERVICES FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH IS THE SUBJECT OF THE CLAIM OR DISPUTE. KMHA SHALL NOT BE LIABLE TO CUSTOMER OR ITS AFFILIATES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF OR IN CONNECTION WITH THE PRODUCTS OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATIONS HEREUNDER OR OTHERWISE RELATED HERETO, INCLUDING (WITHOUT LIMITATION) LOST PROFITS OR LOST DATA RESULTING FROM DELAYS, LACK OF FUNCTIONALITY, NON-DELIVERIES, MIS-DELIVERIES, SERVICE INTERRUPTIONS OR DAMAGES TO CUSTOMER'S BUSINESS. IN ADDITION, KMHA SHALL NOT BE RESPONSIBLE SHOULD ANY HARDWARE SUPPLIED BY CUSTOMER OR PREPARED FOR THE INSTALLATION OF SOFTWARE NOT MEET ACCEPTABLE STANDARDS OF PERFORMANCE. No action, regardless of form, arising out of, or in any way connected with the Products furnished by KMHA may be brought by Customer more than two (2) years after the date on which the cause of action accrued.

12. Confidentiality. "Proprietary Information" means all information that the disclosing party designates as confidential or which ought to be considered as confidential from its nature or from the circumstances surrounding its disclosure. All customers and business partners, and KMHA, agree not to disclose to any third party any Proprietary Information disclosed to it by the other party without the prior written consent of the disclosing party. Customers and business partners shall limit access to the Proprietary Information of KMHA to those persons having a need to know such information in order to fulfill the purposes and intent of the business relationship. Each party shall hold the Proprietary Information of the other party in confidence and strictly for, and on behalf of the other party. A party's Proprietary Information shall not include information that (1) is or becomes publicly available through no act or omission of the other party; (2) was in the other party's lawful possession prior to the disclosure; (3) is lawfully and rightfully disclosed to the other party by a third party without restriction on use or disclosure; or (4) is independently developed by the other party.

13. Intellectual Property Rights. All customers, business partners and vendors of KMHA acknowledge and agree that all rights in and to the KMHA product(s), and all patents, copyrights, trade secrets, trademarks, trade names, and any other forms of intellectual property associated therewith, will be and remain the sole and exclusive property of KMHA. Customers and business partners of KMHA will not remove, cover or deface the KMHA name or any of KMHA's trademarks included on any of the product(s), nor will any customer or business partner have any right to use the KMHA name or any of KMHA's trademarks, or any name or mark confusingly similar thereto, in connection with its use of the KMHA product(s) without the express written consent of KMHA.

14. Assignment or Encumbrance of KMHA Products. Until such time as all payments have been made for the KMHA products, a customer shall not assign, transfer, pledge, hypothecate, mortgage, charge, encumber or otherwise dispose of the KMHA products without the prior written consent of KMHA.

15. Binding Agreement. These Terms are binding upon all successors, administrators, trustees and permitted assigns of Customer.

16. HIPAA. KMHA acknowledges that it may be a Business Associate of customers for HIPAA purposes. KMHA's and any customer's joint obligations under HIPAA shall, if applicable, be set forth in a separate Business Associate Agreement entered into by both KMHA and such customer.

17. Termination. This Service Agreement is made effective the last date of signature herein (the "Effective Date") and shall end no later than the indicated term indicated herein. Customer may terminate this Service Agreement without cause upon sixty (60) days written notice to KMHA. Customer will not be billed for the



remaining cost nor will be issued a refund for the remainder of the billing cycle. If Customer has prepaid in whole, any unused fees, shall be refunded to Customer by KMHA.

18. Miscellaneous.

(a) **Severability.** If any part, provision, or clause of the Agreement, or the application thereof to any person or circumstance, is held invalid, void or unenforceable, such holding shall not affect and shall leave valid all other parts, provisions, clauses or applications of the terms and conditions remaining, and to this end the terms and conditions contained herein shall be treated as severable.

(b) **Notices.** Legal notices and communications given by the parties to one another shall be given in writing and delivered via return receipt mail or express delivery service to the parties' respective business addresses or to such other address as the parties' may substitute by giving notice to one another in accordance with this provision.

(c) **Amendments.** No modification or amendment of the Agreement or waiver of any provision of the Agreement will be valid unless in writing and signed by Customer and KMHA and specifically stating that it is a modification or amendment hereto.

(d) **Governing Law.** The Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey without regard to conflicts of law principles.

(e) **Waiver of Jury Trial.** THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ALL OF THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY IN ANY PROCEEDING BROUGHT TO ENFORCE OR DEFEND ANY OF THESE TERMS. NO PARTY SHALL SEEK TO CONSOLIDATE ANY PROCEEDING IN WHICH THE RIGHT TO A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER PROCEEDING IN WHICH THE RIGHT TO A TRIAL BY JURY CANNOT BE OR HAS NOT BEEN WAIVED.

(f) **Dispute Resolution and Forum Selection.** All disputes or legal proceedings related to the products or services provided by KMHA shall be brought in the appropriate State or Federal Courts of New Jersey.

(g) **Product Changes.** KMHA reserves the right to amend the Products offered at any time; provided that KMHA provides customers with a minimum of thirty (30) days prior notice if such amendment shall affect any undelivered product that is the subject of an outstanding invoice.

(h) **No Waiver.** No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver granted hereunder must be in writing and shall be valid only in the specific instance in which provided.



TERMS AND CONDITIONS FOR CLOUD BASED SERVICE AGREEMENTS

1. **DEFINITIONS:** Capitalized terms used in this document are defined in the Glossary.

2. USAGE RIGHTS AND RESTRICTIONS:

2.1 **Activation:** This Agreement shall be effective only when first signed by Customer and accepted and signed by a duly authorized officer of Konica Minolta Healthcare Americas, Inc. ("KONICA MINOLTA").

2.2 **Grant of Rights:** Subject to the terms and conditions of this Agreement, KONICA MINOLTA hereby grants to Customer a non-exclusive, non-transferable, time limited and world-wide right to access the Cloud Service (including its implementation and configuration), Cloud Materials and Documentation solely for Customer's and its Affiliates' internal business operations. Permitted access and restrictions of the Cloud Service also apply to Cloud Materials and Documentation.

2.3 **Authorized Users:** Customer may permit Authorized Users to access the Cloud Service. Access is limited to the Usage Metrics and volumes stated in the Order. Access credentials for the Cloud Service may not be used by more than one individual but may be transferred from one individual to another if the original user is no longer permitted to use the Cloud Service. Customer is responsible for breaches of the Agreement caused by any Authorized or Unauthorized User.

2.4 **Subscription Restrictions:** Customer agrees not to, itself, through or allow, any parent, subsidiary, affiliate, agent or other third party: (a) copy or use the Cloud Service in any manner except as expressly permitted in this Agreement; (b) transfer, sell, rent, lease, distribute, or sublicense the Cloud Service; (c) allow access or permit use of the Cloud Service by any third party except authorized third party contractors solely to provide services to Customer, provided that Customer shall be liable for all acts and omissions of such authorized third party contractors; (d) modify or create derivative works based upon the Cloud Service; (e) reverse engineer, disassemble, decompile the Cloud Service; derivative works, (f) transmit any content or data that is unlawful or infringes any intellectual property rights, or (h) circumvent or endanger its operation or security.

2.5 **Suspension of Cloud Service:** KONICA MINOLTA may suspend or limit access to the Cloud Service if continued use may result in material harm to the Cloud Service or its users. KONICA MINOLTA will promptly notify Customer of the suspension or limitation. KONICA MINOLTA will limit a suspension or limitation in time and scope as reasonably possible under the circumstances.

2.6 **Third Party Web Services:** The Cloud Service may include integrations with web services made available by third parties that are accessed through the Cloud Service and subject to terms and conditions with those third parties. These third-party web services are not part of the Cloud Service and the Agreement does not apply to them.

3. KONICA MINOLTA RESPONSIBILITIES:

3.1 **Provisioning:** KONICA MINOLTA provides access to the Cloud Service as described in this Agreement, the Order, the Cloud Materials and the Documentation.

3.2 **Support:** KONICA MINOLTA provides support for the Cloud Service as referenced in the Order.

3.3 **Security:** KONICA MINOLTA uses reasonable security technologies in providing the Cloud Service. As a data processor, KONICA MINOLTA will implement technical and organizational measures referenced in the Order to secure personal data processed in the Cloud Service in accordance with applicable data protection law.

3.4 Modifications:

(a) The Cloud Service may be modified by KONICA MINOLTA. KONICA MINOLTA will inform Customer of modifications by email, the support portal, release notes, Documentation or the Cloud Service. The information will be delivered by email if the modification is not solely an enhancement. Modifications may include optional new features for the Cloud Service, which Customer may use subject to the then-current Documentation.

(b) If Customer establishes that a modification is not solely an enhancement and materially reduces the Cloud Service, Customer may terminate its subscriptions to the affected Cloud Service by providing written notice to KONICA MINOLTA

within thirty days after receipt of KONICA MINOLTA's informational notice.

4. CUSTOMER AND PERSONAL DATA:

4.1 **Customer Data:** Customer is solely responsible for the Customer Data. Customer grants to KONICA MINOLTA a nonexclusive right to process Customer Data solely to provide and support the Cloud Service.

4.2 **Security:** Customer will maintain reasonable security standards for its Authorized Users' use of the Cloud Service. Customer will not conduct or authorize penetration tests of the Cloud Service without advance approval from KONICA MINOLTA. Customer will maintain, in connection with the operation of the Cloud Service, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.



4.3 Access to Customer Data:

(a) During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case KONICA MINOLTA and Customer will find a reasonable method to allow Customer access to Customer Data. Data restore and retrieval times will vary with the amount of data contained in the backup and your connection speed. This backup product does not include any hardware coverage of your server/pc. If your server or pc is damaged, a replacement would need to be purchased and configured prior to restoration of your data. If you do not also have a concurrent remote technical support contract, any data restoration activities will be subject to standard hourly labor rates. Single file restoration requests will be evaluated based on ease or difficulty of accessing specific records and timing will be provided. Entire data restoration is dependent on bandwidth and data restoration size. Timing for full recovery will be communicated after these factors are analyzed.

(b) At the end of this Agreement, KONICA MINOLTA will delete the Customer Data remaining on servers hosting the Cloud Service unless applicable law requires retention. Retained data shall be subject to the confidentiality provisions of this Agreement.

(c) In the event of third-party legal proceedings relating to the Customer Data, KONICA MINOLTA will cooperate with Customer and comply with applicable law (both at Customer's expense) with respect to handling of the Customer Data.

5. FEES AND TAXES:

5.1 Fees and Payment: Customer will pay fees as stated in the Order. Unless otherwise mutually agreed in an Order, KONICA MINOLTA will invoice Customer upon execution of the Order Form. If Customer does not pay invoices when due, KONICA MINOLTA may charge interest at up to one percent (1%) per month on the unpaid balance. After prior written notice, KONICA MINOLTA may also suspend Customer's use of the Cloud Service until payment is made. Customer cannot withhold, reduce or set-off fees owed nor reduce Usage Metrics during the Subscription Term. All Orders are non-cancellable and fees non-refundable.

5.2 Taxes: Fees and other charges imposed under an Order will not include taxes, all of which will be for Customer's account. Customer is responsible for all taxes, other than KONICA MINOLTA's income and payroll taxes. Customer must provide to KONICA MINOLTA any direct pay permits or valid tax-exempt certificates prior to signing an Order. If KONICA MINOLTA is required to pay taxes (other than its income and payroll taxes), Customer will reimburse KONICA MINOLTA for those amounts and indemnify KONICA MINOLTA for any taxes and related costs paid or payable by KONICA MINOLTA attributable to those taxes.

6. TERM/TERMINATION/RENEWAL:

6.1 Term: The Subscription Term is as stated in the Order.

6.2 Termination: A party may terminate the Agreement:

- (a) upon thirty days written notice of the other party's material breach unless the breach is cured during that thirty-day period,
- (b) as permitted under Sections 3.4(b), 7.3(b), 7.4(c), or 8.1(c) (with termination effective thirty days after receipt of notice in each of these cases), or
- (c) immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise materially breaches Sections 11 or 12.6.
- (d) as provided in 6.5 below.

6.3 Refund and Payments: For termination by Customer or an 8.1(c) termination, Customer will be entitled to:

- (a) a pro-rata refund in the amount of the unused portion of prepaid fees for the terminated subscription calculated as of the effective date of termination, and
- (b) a release from the obligation to pay fees due for periods after the effective date of termination.

6.4 Effect of Expiration or Termination: Upon the effective date of expiration or termination of the Agreement:

- (a) Customer's right to access the Cloud Service and all KONICA MINOLTA Confidential Information will end, and
- (b) Confidential Information of the disclosing party will be returned or destroyed as required by the Agreement, and
- (c) termination or expiration of the Agreement does not affect other agreements between the parties.

6.5 Renewal Options: Upon the expiration of the Subscription Term, Customer shall have the following options:

- (a) To terminate the Cloud Service upon expiration of the Subscription Term; or
- (b) To permit the Cloud Service to auto renew for an additional Subscription Term of the same length and using the same Service Level Agreement ("SLA"); or
- (c) To renew the Cloud Service for an additional Subscription Term using an amended SLA and, if applicable, for a Subscription Term of different length from the prior term.
- (d) Should Customer fail to renew the Cloud Service for additional term, Konica Minolta reserves the right to terminate same Cloud Services effective the day immediately following the agreement expiration date.

6.6 Survival: Sections 1, 5, 6.3, 6.4, 6.5, 8, 9, 10, 11, and 12 will survive the expiration or termination of the Agreement.



7. WARRANTIES:

7.1 Compliance with Law: Each party warrants its current and continuing compliance with all laws and regulations applicable to it in connection with:

- (a) in the case of KONICA MINOLTA, the operation of KONICA MINOLTA's business as it relates to the Cloud Service, and
- (b) in the case of Customer, the Customer Data and Customer's access to the Cloud Service.

7.2 Good Industry Practices: KONICA MINOLTA warrants that it will provide the Cloud Service:

- (a) in substantial conformance with the Documentation; and
- (b) with the degree of skill and care reasonably expected from a skilled and experienced global supplier of services substantially similar to the nature and complexity of the Cloud Service; and
- (c) to the extent of Customer's use of any third party product, KONICA MINOLTA hereby assigns to Customer all third party warranties and indemnities with respect to Customer's use of such third party software, to the fullest extent KONICA MINOLTA is permitted under the applicable third party license agreements.

7.3 Remedy: Customer's sole and exclusive remedies and KONICA MINOLTA's entire liability for breach of the warranty under Section 7.2 will be:

- (a) the re-performance of the deficient Cloud Service, and
- (b) if KONICA MINOLTA fails to re-perform, Customer may terminate its subscription for the affected Cloud Service. Any termination must occur within three months of KONICA MINOLTA's failure to re-perform.

7.4 System Availability:

- (a) KONICA MINOLTA warrants to maintain an average monthly system availability for the production system of the Cloud Service provided that Customer provides the required access.
- (b) Subject to Customer providing the required access, force majeure events and circumstances outside of the reasonable control of KONICA Minolta, in the event KONICA MINOLTA fails to meet a system availability level of at least 95% for two consecutive calendar months, Customer may terminate its subscriptions for the affected Cloud Service by providing KONICA MINOLTA with written notice within thirty days after the failure.

7.5 Warranty Exclusions: The warranties in Sections 7.2 and 7.4 will not apply if:

- (a) the Cloud Service is not accessed in accordance with the Agreement or Documentation; or
- (b) any non-conformity is caused by Customer, or by any product or service not provided by KONICA MINOLTA; or
- (c) any unauthorized or improper use or modification of the product or service, or any breach of these terms and conditions by Customer; or
- (d) any breach of applicable federal, state or local laws and regulations by Customer; or
- (e) the Cloud Service was provided for no fee.

7.6 Disclaimer: EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, KONICA MINOLTA PROVIDES THE CLOUD SERVICE TO CUSTOMER "AS IS" AND KONICA MINOLTA DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR USAGE OF TRADE. KONICA MINOLTA DOES NOT WARRANT THAT THE CLOUD SERVICE WILL OPERATE UNINTERRUPTED OR BE FREE FROM ERRORS OR THAT THE CLOUD SERVICE IS DESIGNED TO MEET CUSTOMER'S REQUIREMENTS. CUSTOMER AGREES THAT IT IS NOT RELYING ON DELIVERY OF FUTURE FUNCTIONALITY, PUBLIC COMMENTS OR ADVERTISING OF KONICA MINOLTA OR PRODUCT ROADMAPS IN OBTAINING SUBSCRIPTIONS FOR ANY CLOUD SERVICE.

8. INDEMNIFICATION:

8.1 Claims Brought Against Customer:

- (a) KONICA MINOLTA will defend Customer against claims brought against Customer by any third party alleging that Customer's access to the Cloud Service infringes or KONICA MINOLTA appropriates a patent claim, copyright, or trade secret right. KONICA MINOLTA will indemnify Customer against all damages finally awarded against Customer (or the amount of any settlement KONICA MINOLTA enters into) with respect to these claims.
- (b) KONICA MINOLTA's obligations under this Section 8.1 will not apply if the claim results from (i) Customer's breach of Section 2, (ii) access to the Cloud Service in conjunction with any product or service not provided by KONICA MINOLTA, (iii) access to the Cloud Service provided for no fee, (iv) any modification or alteration of the Cloud Service by Customer, or (v) open source software.
- (c) In the event a claim is made or likely to be made, KONICA MINOLTA may (i) procure for Customer the right to continue accessing the Cloud Service under the terms of the Agreement, or (ii) replace or modify the Cloud Service to be non-infringing without a material decrease in functionality. If these options are not reasonably available, KONICA MINOLTA or Customer may terminate Customer's subscription to the affected Cloud Service upon written notice to the other.



8.2 Claims Brought Against KONICA MINOLTA: Customer will defend KONICA MINOLTA against claims brought against KONICA MINOLTA, its Affiliates or subcontractors, by any third party dealing with or relating to Customer Data or any act or omission of Customer dealing with or relating to the Cloud Service or this Agreement. Customer will indemnify KONICA MINOLTA against all damages finally awarded against KONICA MINOLTA, its Affiliates or subcontractors (or the amount of any settlement Customer enters into) with respect to these claims.

8.3 Third Party Claim Procedure:

(a) The party against whom a third-party claim is brought will timely notify the other party in writing of any claim, reasonably cooperate in the defense and may appear (at its own expense) through counsel reasonably acceptable to the party providing the defense.

(b) The party that is obligated to defend a claim will have the right to fully control the defense.

(c) Any settlement of a claim will not include a financial or specific performance obligation on, or admission of liability by, the party against whom the claim is brought.

8.4 Exclusive Remedy: The provisions of Section 8 state the sole, exclusive, and entire liability of the parties, their Affiliates, Business Partners and subcontractors to the other party, and is the other party's sole remedy, with respect to covered third party claims and to the infringement or KONICA MINOLTA appropriation of third-party intellectual property rights.

9. LIMITATION OF LIABILITY:

9.1 Unlimited Liability: Neither party will exclude or limit its liability for damages resulting from:

(a) the parties' obligations under Section 8.1(a) and 8.2,

(b) unauthorized use or disclosure of Confidential Information,

(c) either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,

(d) death or bodily injury arising from either party's gross negligence or willful misconduct, or

(e) any failure by Customer to pay any fees due under the Agreement.

9.2 Liability Cap: Subject to Sections 9.1 and 9.3, the maximum aggregate liability of either party (or its respective Affiliates or KONICA MINOLTA's subcontractors) to the other or any other person or entity for all events (or series of connected events) arising in any twelve (12) month period will not exceed the annual subscription fees paid for the applicable Cloud Service directly causing the damage for that twelve (12) month period. Any "twelve-month period" commences on the Subscription Term start date or any of its yearly anniversaries.

9.3 Exclusion of Damages: Subject to Section 9.1:

(a) neither party will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of good

will or business profits, work stoppage or for exemplary or punitive damages, and

(b) KONICA MINOLTA will not be liable for any damages caused by any Cloud Service provided for no fee.

9.4 Risk Allocation: The Agreement allocates the risks between KONICA MINOLTA and Customer. The fees for the Cloud Service and Consulting Services reflect this allocation of risk and limitations of liability.

10. INTELLECTUAL PROPERTY RIGHTS:

10.1 KONICA MINOLTA Ownership: KONICA MINOLTA, and its Affiliates or licensors, own all intellectual property rights in and related to the Cloud Service, Cloud Materials, Documentation, design contributions, related knowledge or processes, and any derivative works of the same. All rights not expressly granted to Customer are reserved to KONICA MINOLTA and its licensors.

10.2 KONICA MINOLTA Application: The KONICA MINOLTA Application is and will remain the sole and exclusive property of KONICA MINOLTA and all right, title, and interest in the same is reserved by KONICA MINOLTA.

10.3 Work Product or Deliverables: All work product or deliverables based upon or derivative of the Cloud Service, Cloud Service, Cloud Materials, Documentation or the KONICA MINOLTA Application shall be the exclusive property of KONICA MINOLTA and all right, title, and interest in the same is reserved by KONICA MINOLTA. In no way shall any such work product or deliverables be considered as "work made for hire."

10.4 Customer Ownership: Customer retains all rights in and related to the Customer Data. KONICA MINOLTA may use Customer-provided trademarks solely to provide and support the Cloud Service.

10.5 Non-Assertion of Rights: Customer covenants, on behalf of itself and its successors and assigns, not to assert against KONICA MINOLTA, or its Affiliates or licensors, any rights, or any claims of any rights, in any Cloud Service, Cloud Materials, Documentation.

11. CONFIDENTIALITY:



11.1 Use of Confidential Information:

(a) The receiving party will protect all Confidential Information of the disclosing party as strictly confidential to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care. Receiving party will not disclose any Confidential Information of the disclosing party to any person other than its personnel, representatives or Authorized Users whose access is necessary to enable it to exercise its rights or perform its obligations under the Agreement and who are under obligations of confidentiality substantially similar to those in this Section 11. Customer will not disclose the Agreement or the pricing to any third party.

(b) Confidential Information of either party disclosed prior to execution of the Agreement will be subject to this Section 11.

(c) In the event of legal proceedings relating to the Confidential Information, the receiving party will cooperate with the disclosing party and comply with applicable law (all at disclosing party's expense) with respect to handling of the Confidential Information. The receiving party shall promptly notify the disclosing party of such legal proceedings so that the disclosing party has sufficient time to apply for applicable injunctive relief.

11.2 **Exceptions:** The restrictions on use or disclosure of Confidential Information will not apply to any Confidential Information that:

(a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information,

(b) is generally available to the public without breach of the Agreement by the receiving party,

(c) at the time of disclosure, was known to the receiving party free of confidentiality restrictions, or

(d) the disclosing party agrees in writing is free of confidentiality restrictions.

11.3 **Publicity:** Neither party will use the name of the other party in publicity activities without the prior written consent of the other, except that Customer agrees that KONICA MINOLTA may use Customer's name in customer listings or quarterly calls with its investors or, at times mutually agreeable to the parties, as part of KONICA MINOLTA's marketing efforts (including reference calls and stories, press testimonials, and site visits. Customer agrees that KONICA MINOLTA may share information on Customer with its Affiliates for marketing and other business purposes and that it has secured appropriate authorizations to share Customer employee contact information with KONICA MINOLTA.

12. MISCELLANEOUS:

12.1 **Severability:** If any provision of the Agreement is held to be invalid or unenforceable, the invalidity or unenforceability

will not affect the other provisions of the Agreement.

12.2 **No Waiver:** A waiver of any breach of the Agreement is not deemed a waiver of any other breach.

12.3 **Electronic Signature:** Electronic signatures that comply with applicable law are deemed original signatures.

12.4 **Regulatory Matters:** KONICA MINOLTA Confidential Information is subject to export control law of the United States. Customer will not submit KONICA MINOLTA Confidential Information to any government agency for licensing consideration or other regulatory approval, and will not export KONICA MINOLTA Confidential Information to countries, persons or entities if prohibited by export laws.

12.5 **HIPAA:** KONICA MINOLTA and Customer contemplate an arrangement whereby KONICA MINOLTA, as a Business Associate, provides services to Customer as a Covered Entity, and as a Business Associate, KONICA MINOLTA will create, receive, maintain or transmit Protected Health Information ("PHI") in order to provide these services. Customer, as a Covered Entity, is subject to the Privacy and Security Regulations governing the use and protection of PHI as set forth at 45 CFR Parts 160, 162 and 164. These regulations require that the Covered Entity and Business Associate enter into an agreement in order to comply with the aforementioned regulations. KONICA MINOLTA, as Business Associate, is prohibited from the use or disclosure of PHI if such agreement is not in place.

12.6 **Notices:** All notices will be in writing and given when delivered to the address set forth in an Order, with a copy to the legal department. Notices by KONICA MINOLTA relating to the operation or support of the Cloud Service and those under Sections 3.4 and 5.1 may be in the form of an electronic notice to Customer's authorized representative or administrator identified in the Order.

12.7 **Assignment:** Without KONICA MINOLTA's prior written consent, Customer may not assign or transfer the Agreement (or any of its rights or obligations) to any party. KONICA MINOLTA may assign the Agreement to any of its Affiliates.

12.8 **Subcontracting:** KONICA MINOLTA may subcontract parts of the Cloud Service or Consulting Services to third parties. KONICA MINOLTA is responsible for breaches of the Agreement caused by its subcontractors.

12.9 **Relationship of the Parties:** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created by the Agreement.

12.10 **Force Majeure:** Any delay in performance (other than for the payment of amounts due) caused by conditions beyond the reasonable control of the performing party is not a breach of the Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

12.11 **Governing Law and Venue:** The Agreement and any claims relating to its subject matter will be governed by and construed under the laws of the State of New Jersey, without reference to its conflicts of law principles. All disputes will be subject to the exclusive jurisdiction of the courts located within the State of New Jersey. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act (where enacted) will not apply to the Agreement.



Either party must initiate a cause of action for any claim(s) relating to the Agreement and its subject matter within one year from the date when the party knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).

12.12 Entire Agreement: The Agreement constitutes the complete and exclusive statement of the agreement between KONICA MINOLTA and Customer in connection with the parties' business relationship related to the subject matter of the Agreement. All previous representations, discussions, and writings (including any confidentiality agreements) are merged in and superseded by the Agreement and the parties disclaim any reliance on them. The Agreement may be modified solely in writing signed by both parties, except as permitted under Section 3.4. This Agreement shall prevail over terms and conditions of any Customer-issued purchase order, which will have no force and effect, even if KONICA MINOLTA accepts or does not otherwise reject the purchase order.

Glossary:

1.1 "Affiliate" of a party means any legal entity in which a party, directly or indirectly, holds more than fifty percent (50%) of the entity's shares or voting rights. Any legal entity will be considered an Affiliate as long as that interest is maintained.

1.2 "Agreement" means an Order, documents incorporated into an Order, and these terms and conditions.

1.3 "Authorized User" means any individual to whom Customer grants access authorization to use the Cloud Service that is an employee, agent, contractor or representative of:

- (a) Customer,
- (b) Customer's Affiliates, and/or
- (c) Customer's and Customer's Affiliates' Business Partners.

1.4 "Business Partner" means a legal entity that requires use of a Cloud Service in connection with Customer's and its Affiliates' internal business operations. These may include customers, distributors, service providers and/or suppliers of Customer.

1.5 "Cloud Service" means the KONICA MINOLTA Application, platform, and/or infrastructure computing resources provided by KONICA MINOLTA to Customer through any one or more of the following methods: software-as-a-service basis, platform-as-a-service basis, and infrastructure-as-a-service basis. Cloud Service may also include, without limitation, new and emerging technology offerings where the computing resources of the Customer are provided by Customer to KONICA MINOLTA.

1.6 "Cloud Materials" mean any materials provided or developed by KONICA MINOLTA (independently or with Customer's cooperation) in the course of performance under the Agreement, including in the delivery of any support or Consulting Services to Customer. Cloud Materials do not include the Customer Data, Customer Confidential Information or the Cloud Service.

1.7 "Confidential Information" means:

- (a) with respect to Customer: (i) the Customer Data, (ii) Customer marketing and business requirements, (iii) Customer implementation plans, and/or (iv) Customer financial information, and
- (b) with respect to KONICA MINOLTA: (i) the Cloud Service, Documentation, Cloud Materials and analyses under Section 3.5, and (ii) information regarding KONICA MINOLTA research and development, product offerings, pricing and availability.
- (c) Confidential Information of either KONICA MINOLTA or Customer also includes information which the disclosing party protects against unrestricted disclosure to others that (i) the disclosing party or its representatives designates as confidential at the time of disclosure, or (ii) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.

1.8 "Consulting Services" means professional services, such as implementation, configuration, custom development and training, performed by KONICA MINOLTA's employees or subcontractors as described in any Order Form and which are governed by the Supplement for Consulting Services or similar agreement.

1.9 "Customer Data" means any content, materials, data and information that Authorized Users enter into the production system of a Cloud Service or that Customer derives from its use of and stores in the Cloud Service (e.g. Customer-specific reports). Customer Data and its derivatives will not include KONICA MINOLTA's Confidential Information.

1.10 "Documentation" means KONICA MINOLTA's then-current technical and functional documentation as well as any roles and responsibilities descriptions, if applicable, for the Cloud Service which is made available to Customer with the Cloud Service.

1.11 "KONICA MINOLTA Application(s)" means the software product(s) owned by KONICA MINOLTA to which KONICA MINOLTA grants Customer access as part of the Cloud Services, including the Documentation and any improvements thereto."

1.12 "Order" means the ordering document for a Cloud Service that references these terms and conditions.

1.13 "Subscription Term" means the term of a Cloud Service subscription identified in the applicable Order.