



SALES AGREEMENT

THIS SALES AGREEMENT is between Konica Minolta Healthcare Americas, Inc. ("KMHA") and _____ (the "Customer"), and sets forth the terms and conditions which govern, in part, the business relationship between KMHA and Customer, and upon which KMHA sells its products and services to Customer (the "Terms").

This Agreement is generally divided into three subparts. The first part sets forth KMHA's standard terms and conditions for the sale of KMHA products and services to Customer. The second part deals with and sets forth the terms and conditions of KMHA's sale of software-based products and services to Customer and the licensing the use of the software to Customer. The third part sets forth certain miscellaneous terms and conditions which further govern the parties' business relationship, but which do not deal directly with the sale of KMHA product or services, or the licensing of KMHA software.

In addition to the foregoing, certain exhibits will be appended hereto from time to time and shall be incorporated herein by reference. Should there be any discrepancy between the terms of any such exhibit and this Agreement, the terms of the exhibit shall prevail. The specific exhibits which shall be appended hereto during the business relationship of KMHA and Customer are the following: (1) the Master Subscription Agreement; (2) the Quote; (3) the Service Level Agreement; and (4) the Statement(s) of Work.

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 will be deemed an acceptance by KMHA of any document with terms different from or additional to those contained or referenced herein.

Standard Terms and Conditions

- 1. 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 only for the products and services specified. **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 services and all verbal and written communication between KMHA and Customer are 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

2. Order Submissions and Acceptance. All orders for products and/or services from Customer shall be made using a Quote 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 Customer with respect to any Order Document that is not accepted by KMHA. KMHA shall notify Customer 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 Customer terms and conditions thereon, which are expressly rejected.

- a. **Purchase Order Requirement.** All orders must be accompanied by a valid Purchase Order (PO) containing a PO number. The PO must include the total cost as outlined in the applicable quote or contract, and the expiration date of the PO may not exceed ninety (90) days from the date of issuance. Any PO that does not reference the correct PO number or total cost or has an expiration outside of this ninety (90) day timeframe, will be considered invalid and unenforceable for the purposes of this agreement. This requirement is essential for the efficient processing of orders, proper invoices, and timely collection of accounts receivable.

3. Invoices, Payment, and Taxes.

- a. **Invoices.** KMHA shall provide Customer with invoices for the components of the KMHA products and services comprising the total purchase price and payment schedule set forth in the applicable Quote(s), which is(are) incorporated herein and made a part hereof.
- b. **Payment Terms.** Unless credit terms are agreed upon in writing between Customer and KMHA, or the sale is financed by a third-party financing entity and is subject to the terms of the agreement between Customer and that entity, payment for the KMHA products and services, and the timing thereof, shall be as set forth in the applicable Quote(s) 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. 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 this Agreement.
- c. **Third Party Bank/Payment Obligations.** If Customer’s purchase of KMHA’s products or services has been initially agreed to be financed by a third party financing entity, and should subsequent events cause said third party financing entity to withdraw its financing from Customer, or should said third party financing entity delay payment to KMHA, Customer shall remain obligated to pay KMHA directly for all products



and services provided up to the payment by said third party financing entity to KMHA in the event of a delay (which may be subject to a reconciliation), or up to the date of the withdrawal of financing should the financing be terminated, or for the entirety of the purchase of KMHA products and services should Customer elect to continue with KMHA directly. If done directly with KMHA, KMHA may require a credit review and a completed credit application.

- d. **Taxes.** All payments shall be exclusive of all taxes and duties, including without limitation sales, use, property, value added and other taxes, duties or levies on transactions made under the Agreement during the term. Customer shall pay 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 to Customer, exclusively of KMHA's income taxes. If a certificate of exemption or similar document is required to exempt Customer from sales or use tax liability, Customer shall obtain and furnish to KMHA evidence of such exemption with Customer's order in a form reasonably satisfactory to KMHA.
 - e. **Alterations.** Any alterations that are made to the specifications of a KMHA product from those stated in the Quote from Customer shall be at Customer's sole cost and expense.
 - f. **Enforceable Right.** KMHA shall have and enforceable right to payment for work performed to date at any point in the Term of this Agreement on a pro-rata basis. Should there be any delays in the implementation process caused by Customer due to circumstances within its control, and KMHA has allocated personnel to Customer's project, any such delay which lasts longer than fifteen (15) business days shall, beginning on the sixteenth (16th) business day, be subject to an additional fee for liquidated damages, and not as a penalty, for allocated but unused KMHA resources in the amount of five hundred dollars (\$500.00) per day until the project is resumed.
- 4. Delivery/Shipment.** All products shall be delivered FOB KMHA's shipping point designated by KMHA at the time the order is accepted by KMHA. If 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 reflected in the Customer's Order Form, where applicable. 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.
- 5. Risk of Loss.** 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 Customer upon delivery of the products to the transportation provider at the KMHA shipping point. Unless expressly agreed to in writing by KMHA, the FOB shipping 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 shipping point. Neither confiscation nor



destruction of, nor damage to any product shall release, reduce or in any way affect Customer's liability to KMHA.

Regarding software solutions and other intangible deliverables, "Risk of Loss" passes to the customer as the Services are performed. This includes, but is not limited to, the delivery of all software-related work, code, software development, documentation, implementation/professional services, project management, or any other agreed-upon deliverables.

KMHA will have the right to bill the Customer for all work as defined by the SOW.

- 6. Acceptance of KMHA Products.** "Acceptance" of KMHA Products by Customer shall be deemed to have occurred when KMHA and Customer, in good faith, that the Product(s) is/are (a) operating according to Specifications, and (b) ready for clinical use. In addition, Customer shall have the option, at its expense, to test the Product(s) to confirm the safety, reliability, and performance of the Product(s) and to perform corollary or parallel testing to verify the accuracy of the Product(s)' performance. Unless otherwise agreed to by KMHA, Customer shall accept or reject Products within thirty (30) days after the date of Successful Installation or delivery. "Successful Installation" shall mean that KMHA and Customer have agreed that the installation of the Product(s) was successful, or the Product(s) is/are being used by Customer with a usage of an excess of twenty-five (25) exams per day for seven (7) consecutive days and is/are ready for clinical use.

7. Warranty and Limitations of Warranty.

- a. KMHA warrants to Customer 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 unexpired 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, Customer shall be charged at KMHA's current rates for parts, labor and transportation.

- d. Customer must use reasonable care to avoid hazards. KMHA expressly disclaims any responsibility for loss or damage caused using any KMHA products other than in accordance with proper operation procedures. No warranty is provided by KMHA for any products sold or provided to 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 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.
8. **Warranty-Expendable Products ("Consumables").** KMHA warrants that, at the time of delivery to Customer, Consumables manufactured and sold by KMHA to 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 PARTICULAR PURPOSE WITH RESPECT THERETO.
9. **Damages and Liability.** KMHA'S AGGREGATE LIABILITY TO 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 occurred.

10. 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. Customer and its 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. Customer and its business partners shall limit access to the Proprietary Information of KMHA to those persons who have a need to know such information 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.

11. Intellectual Property Rights. Customer, its 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. Customer, its business partners, and vendors 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 Customer or its business partners 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.

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

Software Terms and Conditions/Grant of Software License



13. Software Terms. This section of the Agreement deals with the license of KMHA software (the “Licensed Programs”) to Customer.

14. Site Preparation and Cyber Security.

- a. Site Preparation. Customer is solely responsible, at its cost and expense, for (a) preparing the site for installation; (b) storing the Licensed Programs after delivery but prior to installation; (c) moving the Licensed Programs from their delivery point to the installation site; and (d) unless otherwise agreed by KMHA in writing, the actual installation of the Licensed Programs, as applicable, in accordance with the manufacturer’s and/or KMHA’s specifications. In connection with the Licensed Programs, Customer may require server software, additional cabling and additional network infrastructure (including but not limited to servers, T1 connections, routers, bridges, and Ethernet hub and drops) to properly install, operate and maintain the Licensed Programs. The installation of such cabling and network infrastructure and all costs and expenses associated therewith are the sole responsibility of Customer. In addition, Customer should anticipate that additional fees for its telecommunication provider’s line installation (to facilitate remote service by KMHA) and access may be incurred in connection with the installation, operation and maintenance of the Licensed Software. Customer shall be solely responsible for providing KMHA with such access and for paying all costs and expenses associated therewith.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, KMHA DOES NOT OFFER ANY WARRANTY WITH RESPECT TO ANY LICENSED PROGRAMS, OR ANY OTHER MATERIAL OF ANY KIND, PROVIDED TO CUSTOMER AND ASSUMES NO LIABILITY FOR THE FITNESS OR ADEQUACY OF THE PREMISES OR THE UTILITIES AVAILABLE AT THE PREMISES IN WHICH ANY PRODUCT OR LICENSED PROGRAMS ARE TO BE INSTALLED, USED OR STORED OR WHERE ANY SERVICES ARE TO BE PROVIDED.

ACCORDINGLY, CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS KMHA AND ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES AND CLAIMS ARISING OUT OF THE CONDITION OF SUCH PREMISES OR UTILITIES.

CUSTOMER ACKNOWLEDGES THAT THE KMHA SOFTWARE IS AN ADVISORY DEVICE AND IS NOT DESIGNED TO SUBSTITUTE FOR THE PRIMARY DEFENSES



AGAINST DEATH OR INJURY DURING SURGICAL, MEDICAL LIFE SUPPORT OR OTHER POTENTIALLY HAZARDOUS APPLICATIONS WHICH WILL CONTINUE TO BE THE SKILL, KNOWLEDGE AND EXPERIENCE OF THE USERS OF THE KMHA LICENSED PROGRAMS.

THE OBLIGATIONS OF EACH PARTY HERETO ARE EXPRESSLY STATED IN THESE TERMS AND ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, WITHOUT LIMITATION, TO THE FULLEST EXTENT ALLOWABLE BY LAW. THIS EXCLUSION OF ALL OTHER WARRANTIES EXTENDS TO IMPLIED WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

- b. Cyber Security. As between the Customer and Covered Entity under HIPAA, Customer has the responsibility to protect the Customer PACS system (Exa server) and all interconnecting networks that house PHI data (not applicable to systems using a private cloud service to store and transmit PHI). Customer shall ensure it has the appropriate physical security and cybersecurity deployed to safeguard PHI data from breach or ransomware. These measures should be aligned to Customer's risk acceptance and privacy rule standards, under the HIPAA regulatory requirements, from the Department of Health and Human Services ("HHS").

These safeguards are (but not limited to):

- 1) Reasonable perimeter security (area access restrictions);
- 2) Appropriate network segmentation;
- 3) Multiple firewalls and routers;
- 4) Data encryption at any points of PHI. "at rest" and "in transit;"
- 5) Appropriate endpoint protection. AV / Malware protection, Endpoint Detection and Response EDR;
- 6) An appropriate Disaster Recovery and Business Continuity (DRBC) plan that is tested regularly to ensure it will work properly in the event of ransomware attack or system failure.

15. KMHA Licensed Programs Warranty and Limitations of Warranty. KMHA warrants to Customer that each Licensed Program provided to Customer under this Agreement shall conform substantially to KMHA's then current user manual for such Licensed Program. Customer's EXCLUSIVE REMEDY, and KMHA's SOLE OBLIGATION with respect to any Licensed Program shall be to use commercially reasonable efforts to correct any defects

and supply Customer with a corrected version of such Licensed Program as soon as reasonably practicable after Customer has notified KMHA of such nonconformity. Customer shall give KMHA prompt written notice of such noncompliance discovered through testing or other use, together with any available details that may reasonably assist KMHA to effect a cure without additional cost or expense to Customer. KMHA's warranty obligations with respect to any Licensed Program shall be void if such Licensed Program or Product is modified, reconfigured, or altered in any way by or through Customer without the express prior written consent of KMHA.

Licensed Programs may contain or be derived from portions of materials provided by third party suppliers under license to KMHA. Such third-party suppliers may enforce any of the provisions of the Agreement to the extent that such third-party supplier's materials are affected. KMHA shall not be liable for the performance or non-performance of materials provided by third party suppliers to KMHA. Should a third-party supplier terminate its relationship with KMHA, KMHA will seek a reasonable alternative solution for the materials affected by such termination. Customers' use of obsolete or non-conforming materials from third party suppliers, contrary to the recommendation of KMHA, shall be at its own risk and liability.

16. Data Process Roles and Customer Data. As between Customer and KMHA, Customer is the entity that determines the purposes and means of processing personal data and KMHA is the data processor. Customer shall control the categories of data subjects and personal data processed under this Agreement. KMHA has no knowledge, or control over, of the personal data that Customer provides for processing. Customer is solely responsible for the accuracy, quality, and legality of the Customer Data and how Customer acquired the Customer Data. Customer is responsible for providing notices, obtaining consents, and satisfying any other requirements for KMHA to use the Customer Data to perform its obligations under this Agreement. Customer shall not provide KMHA with any data which is regulated by the United States Health Insurance Portability and Accountability Act unless Customer has entered into a Business Associate Agreement with KMHA. In certain instances, stored data may be corrupted, inaccessible, or the source storage device is unable to provide the data as originally stored. When this occurs, KMHA shall make every reasonable effort to restore the data to its original state, if corrupted, or retrieve the data, if inaccessible or the source storage device is unable to provide the data as originally stored. The corrupted or irretrievable data will be removed as a deliverable in this Scope of Work. In case where KMHA cannot restore or retrieve the data, KMHA shall not be held liable for the restoration, retrieval, or integrity of the data. If Customer's hardware (excluding any hardware owned by KMHA) or personnel have caused the data to be corrupt or irretrievable, KMHA will not be responsible or liable for such corrupt or irretrievable data.

17. Remote Management Tools. Customer shall have an ongoing obligation to provide reasonable access (both remote and on-site if necessary) to its facilities (and any room or area necessary), and to the KMHA Licensed Programs for KMHA personnel to respond to



operational problems or issues raised by Customer to KMHA, or to perform necessary maintenance, updates or upgrades to the KMHA Licensed Programs. Should Customer fail to allow KMHA access to its facilities to address operational or maintenance issues, KMHA will not be responsible for any resulting operational or maintenance problems related to Customer's failure to permit such access.

18. Grant of Software License. Subject to the terms of the agreement and KMHA's receipt of all applicable fees, to the extent that the agreement includes any Licensed Programs, the following terms shall apply:

- a. Rights Granted. KMHA grants to Customer a non-exclusive, non-transferable license to:
 - i. Use such Licensed Programs solely for Customer's own internal business purposes on the Designated System(s) and only in accordance with the Documentation;
 - ii. Use the Documentation provided with such Licensed Programs to support Customer's authorized Use of such Licensed Programs;
 - iii. Use only the number of KMHA software licenses as provided in the Customer Order Form;
 - iv. Copy such Licensed Programs and Documentation for archival and backup purposes. No other copies of such Licensed Programs or Documentation shall be made in whole or in part. All copies of such Licensed Programs and Documentation shall include all copyright, trademark, restricted rights and other proprietary notices as originally provided therein;
 - v. Transfer and Use such Licensed Programs on backup equipment, but only if Customer's Designated Equipment is not operative, provided that Customer promptly informs KMHA of such transfer in writing; and
 - vi. Exchange such Licensed Programs from Customer's current platform to a new platform ("Transfer Platform"), provided that: (1) Customer is then subscribing for KMHA's support services and is current in the payment of its support services fees; (2) the Transfer Platform requested by the Customer is commercially available from KMHA; (3) the Customer's Licensed Programs on the current platform have been maintained at a current revision level (no more than two prior releases back); (4) the same number of copies of such Licensed Programs will be accessed on the Transfer Platform by the same number of Concurrent Users, Named Users or Servers as were accessed under the originally licensed platform; and (5) Customer makes such request in writing (subject to KMHA's acceptance), and pays the applicable exchange fee. Customer shall remove the Licensed Programs from the originally licensed platform at the time of transfer and shall discontinue any use of the transferred Licensed Programs on the originally



licensed platform after such Licensed Programs have been transferred to the Transfer Platform.

- b. Restrictions. Customer, directly or indirectly, alone or with any other party, shall not:
 - i. Distribute, transfer, resell, rent, lease, sublicense or loan the Licensed Programs or the Documentation, or any portion thereof, to any other party;
 - ii. Make the Licensed Programs or the Documentation available to others in a service bureau arrangement or for any similar commercial time-sharing or third-party training use;
 - iii. Disassemble, reverse engineer, decompile, or modify the Licensed Programs;
 - iv. Transfer the Licensed Programs or Documentation to any third party for outsourcing or any other purpose without the express prior written consent of KMHA; or
 - v. Create derivative works based upon any of the Licensed Programs;
- c. Third Party Software. Any Licensed Programs which are licensed by KMHA from a third party ("Third Party Software") and are sublicensed to Customer under the Agreement shall be subject to the terms and conditions of the applicable third party's license accompanying the Third-Party Software.
- d. Location of Designated Equipment. Customer may relocate the Designated Equipment, provided that Customer promptly informs KMHA of the subsequent location in writing.
- e. Concurrent Users. Access to the Licensed Programs at any given time may not exceed the maximum number of Concurrent users to which Customer is entitled based on the total number of Concurrent User licenses obtained by Customer.
- f. Named Users. Customer access to the Licensed Programs is limited to those employees of Customer who have been named users.
- g. Reservation of Rights. Any license granted under the Agreement only grants to Customer the right to use the Licensed Programs during the Term set forth in the Customer Order Form and such license is in effect. All materials and intellectual property created or generated by KMHA in connection with the performance of Support and Services hereunder shall be the sole and exclusive property of KMHA. Except as expressly provided herein, KMHA reserves all right, title and interest in and to the Licensed Programs, Documentation, Updates and materials created or generated by KMHA in connection with the performance of Support and Services hereunder. Without limiting any prohibition provided herein, Customer hereby assigns to KMHA all of Customer's right, title and interest in and to any and all



derivative works of the Licensed Programs, Documentation and materials created or generated by KMHA in connection with the performance of Support and Services hereunder.

- h. Audit Rights. KMHA may, at its expense, conduct an audit, during Customer's normal business hours, of Customer's use of the Licensed Programs and Documentation to verify compliance with the terms of the Agreement.

19. Confidentiality and Restrictions on Disclosure as to KMHA Licensed Programs

- a. Use of Proprietary Information.
 - i. The receiving party will protect all Proprietary Information of the disclosing party as strictly confidential to the same extent it protects its own Proprietary Information, and not less than a reasonable standard of care. Receiving party will not disclose any Proprietary 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. Customer will not disclose this Agreement or any pricing to any third party.
 - ii. Proprietary Information of either party disclosed prior to execution of the Agreement will be subject to this section.
 - iii. In the event of legal proceedings relating to Proprietary 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 Proprietary 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.
- b. Exceptions. The restrictions on use or disclosure of Proprietary Information will not apply to any Proprietary Information that:
 - i. is independently developed by the receiving party without reference to the disclosing party's Proprietary Information,
 - ii. is generally available to the public without breach of the Agreement by the receiving party,
 - iii. at the time of disclosure, it was known to the receiving party free of confidentiality restrictions, or
 - iv. the disclosing party agrees in writing is free of confidentiality restrictions.



- c. **Publicity.** Neither party will use the name of the other party in publicity activities without the prior written consent of the other.

20. Licensed Software Indemnification.

- a. **Intellectual Property Infringement.** KMHA will, at its own cost and expense, defend any action brought against Customer with respect to any claim that the design or manufacture of any Product or the use of any Licensed Program furnished to Customer under the Agreement constitutes an infringement of any United States patent, copyright, Trademark or other lawfully protected intellectual property right. Subject to the provisions of this Section, KMHA will pay damages either awarded by a court of last resort or paid, in KMHA's sole discretion, by way of settlement, which are based on such claim of infringement, provided that Customer promptly notifies KMHA in writing of such claim and gives KMHA full authority, information and assistance in defending or settling such claim.
- b. **Remedies.** If any such Product or Licensed Program is held to constitute an infringement or violation of any such proprietary rights and Customer's use thereof is or may reasonably be expected to be enjoined, then KMHA will, in its sole discretion and at its own cost and expense, either procure a license which will protect Customer against such claim without cost to Customer, or replace such Licensed Program with a non-infringing Product or Licensed Program.
- c. **Exclusions.** KMHA EXPRESSLY EXCLUDES from any liability hereunder, and Customer shall hold KMHA harmless from and against any expenses, losses, costs, damages or liabilities resulting from, any alleged infringement of any U.S. patent, copyright, trademark or other intellectual property right (1) arising from a use or combination of any Product or Licensed Program with other equipment, processes, programming, applications or materials not furnished to Customer by KMHA; (2) based upon items made with the Licensed Programs furnished under the Agreement; and/or (3) arising out of compliance by KMHA with Customer's designs, specifications or instructions.

THE FOREGOING STATES KMHA'S ENTIRE LIABILITY FOR ANY CLAIM BASED UPON ALLEGED INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS.

- d. **Claims Brought Against KMHA.** Customer will defend KMHA against claims brought against KMHA, 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 this Agreement. Customer will indemnify KMHA against all damages



finally awarded against KMHA, its Affiliates or subcontractors (or the amount of any settlement Customer enters) with respect to these claims.

e. Third Party Claim Procedure.

- i. 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.
- ii. The party that is obligated to defend a claim will have the right to fully control the defense.
- iii. 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.

21. Limitation of Liability as to Licensed Software.

- a. Unlimited Liability: Neither party will exclude or limit its liability for damages resulting from:
 - i. the parties' obligations under the previous section,
 - ii. unauthorized use or disclosure of Confidential Information,
 - iii. either party's breach of its data protection and security obligations that result in an unauthorized use or disclosure of personal data,
 - iv. death or bodily injury arising from either party's gross negligence or willful misconduct, or
 - v. any failure by Customer to pay any fees due under the Agreement.
- b. Exclusion of Damages. Subject to subpart(a):
 - i. neither party will be liable to the other party for any special, incidental, consequential, or indirect damages, loss of goodwill or business profits, work stoppage or for exemplary or punitive damages.
- c. Risk Allocation. This Agreement allocates the risks between KMHA and Customer. The fee for the Licensed Programs reflects this allocation of risk and limitations of liability.

22. Product Changes.

- a. KMHA reserves the right to amend the Licensed Programs offered at any time, provided that KMHA will give Customer a minimum of thirty (30) days prior notice if such amendment shall affect any undelivered Licensed Programs that is the subject of an outstanding sales quotation.

23. Termination.

- a. Termination by KMHA. In the event Customer (i) commits a breach of any material obligation of the Agreement, (ii) is in default of any covenant or condition set forth herein, or (iii) becomes insolvent or bankrupt, or receivership proceedings are initiated by or against Customer, and if such breach is not cured within thirty (30) days after written notice from KMHA, KMHA may (i) forthwith terminate the agreement and any license granted herein upon written notice, (ii) require Customer to immediately pay all fees currently due and owing, any payments currently due and owing pursuant to the terms hereof, and any amounts due and owing for work performed by KMHA to the date of termination, not currently due to be paid, on a pro-rata basis, (iii) require the immediate return of all KMHA Licensed Programs in the possession of Customer or a certification in writing that all copies of any KMHA Licensed Programs have been destroyed, and (v) pursue any other remedy existing in law or in equity.
- b. Termination by Customer In the event KMHA commits a breach of any material obligation of the agreement, (ii) is in default of any covenant or condition set forth herein, or (iii) becomes insolvent or bankrupt, or receivership proceedings are initiated by or against KMHA, and if such breach is not cured within thirty (30) days after written notice from Customer, Customer may terminate the agreement and any licensed granted herein upon written notice. Such termination shall not relieve Customer of any of its payment obligations under this Agreement or any other agreement dealing with the KMHA products and/or services provided to Customer. Upon any such termination, Customer shall (i) discontinue use of the KMHA Licensed Programs and (ii) immediately return all KMHA Licensed Programs in Customer's possession or certify in writing that all such copies have been destroyed. In the absence of any for cause termination event by KMHA, Customer shall not terminate this Agreement, without cause, after all of the KMHA work, other than training, has been completed without a material issue. Should Customer still seek to terminate this Agreement without cause in this instance, the Agreement shall be deemed breached by Customer.

Miscellaneous Provisions

24. 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.

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



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

27. Offshore Service Personnel. Support is primarily provided by U.S.-based personnel but may be augmented by offshore personnel who are employees of KMHA, not third-party contractors. KMHA maintains the highest standard of service regardless of the location of the support staff.

U.S.-based after-hours and weekend support is available at an additional charge and can be provided upon prior agreement between the Customer and KMHA. Pricing for these services will be outlined separately and will depend on the nature and duration of the support required.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. Right to Injunctive Relief. Customer acknowledges that Customer's breach of its obligations with respect to KMHA's proprietary rights will cause irreparable injury to KMHA and will entitle KMHA to seek injunctive or other equitable relief.



- 34. 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 it is provided.
- 35. Electronic Signature.** Electronic signatures that comply with applicable law are deemed original signatures.
- 36. Regulatory Matters.** KMHA Proprietary Information is subject to export control law of the United States. Customer will not submit KMHA Proprietary Information to any government agency for licensing consideration or other regulatory approval, and will not export KMHA Proprietary Information to countries, persons or entities if prohibited by export laws.
- 37. Assignment.** Without KMHA's prior written consent, Customer may not assign or transfer this Agreement (or any of its rights or obligations) to any party.
- 38. 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 this Agreement.
- 39. Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement between KMHA 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.
- 40. 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.
- 41. Definitions.**
- a. "Concurrent User(s)" means the maximum number of users (e.g., persons having access through a single terminal workstation, personal computer and/or via an interface from an extended system) with an active session against a specific Licensed Program (including but not limited to KMHA databases) at the same time. In Customer environments which utilize multiplexing software and/or hardware, the number of Concurrent Users is the maximum number of persons or interface processes accessing the Licensed Program at the multiplexing front end at the same time. A shared by multiple terminal workstations, personal computers and/or via external interfaces at the same time.



- b. "Customer Data" means any data that Customer provides to KMHA through the Licensed Programs.
- c. "Designated Equipment" means the Server, terminal workstations, personal computers and/or associated equipment identified as part of the Designated System by the Customer.
- d. "Designated System(s)" means the Designated Equipment, operation system and associated networks designated by Customer pursuant to the Agreement.
- e. "Documentation" means explanatory and informational materials concerning the Licensed Programs, in printed or electronic format, which KMHA has released for distribution to end users with the Licensed Programs. "Documentation" does not include source code.
- f. "Internal Business Purpose" means Customer's internal business purposes, which includes permitting unaffiliated physicians, business users and clinicians to use the viewing functionality of the KMHA Licensed Programs.
- g. "Licensed Programs" means those machine-readable computer software programs including but not limited to the applications, databases and interfaces which are owned or distributed by KMHA and licensed to Customer under the Agreement. Licensed Programs and Updates are provided hereunder to Customer in object code form only.
- h. "Named Users" means Customer's designated users of a specific Licensed Program (including but not limited to KMHA databases) who are the only individuals authorized to access such Licensed Program.
- i. "Proprietary Information" as to the KMHA Licensed Programs means (1) the Licensed Programs and Documentation; (2) any other information relating to the Licensed Programs received by Customer from KMHA which is identified by KMHA as proprietary or confidential; (3) the terms of the Agreement; (4) each party's written, technical, business, financial or marketing information which are clearly marked as proprietary or confidential. Oral disclosures of confidential or proprietary information will be deemed Proprietary Information hereunder if reduced to writing, clearly marked as proprietary or confidential and provided by the disclosing party to the receiving party within thirty (30) days following such disclosure.
- j. "Server" means a Designated System configured with the Licensed, Programs to support an authorized number of Concurrent Users.



- k. "Updates" means maintenance releases, improvements, major software releases and enhancements which are generally provided by KMHA to customers who are eligible to receive maintenance support services, provided, however, that "Updates" shall not include new, separate product offerings.
- l. "Upgrade" means a new release of any of KMHA's proprietary Licensed Programs set forth in the agreement which includes modifications, improvements or amendments to such Licensed Programs.
- m. "Use" means (1) copying or transferring any portion of any Licensed Program from storage units or media into the random access memory of Customer's computer equipment; (2) executing any portion of any Licensed Program by way of a terminal workstation, personal computer, external interface, or as a Concurrent User for any purpose; and (3) accessing any Designated System for the purpose of obtaining or preparing information or data created through the execution of a Licensed Program.

IN WITNESS WHEREOF, the parties have executed this Sales Agreement as of the date(s) set forth below.

Konica Minolta Healthcare Americas, Inc.

Customer



KONICA MINOLTA

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____