



SOFTWARE LICENSE AGREEMENT

THIS AGREEMENT between Konica Minolta Health Americas, Inc. ("**KMHA**") and [**licensee ("Customer")**] deals with the license of KMHA software (the "Licensed Programs") from KMHA to Customer pursuant to the terms set forth herein and for the contracted period.

1. **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 PRODUCT, SERVICES OR 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 SUPPLEMENTAL 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.

2. **Warranty and Limitations of Warranty.** KMHA warrants to Customer that during the 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 KMMI 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. Customer's 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.



3. **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 agreement;

(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's 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 while the Agreement and such license are 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 in the Agreement, 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.

4. Confidentiality and Restrictions on Disclosure. Except as specifically permitted under the Agreement, Customer shall not disseminate, disclose or otherwise provide or make available the Licensed Programs or the Documentation, or any portion or any copy thereof, to any third party. Customer shall erase or destroy all Proprietary Information of KMHA contained on media prior to disposing of such media.

5. Intellectual Property Indemnity.

(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, 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.

6. Product Changes.

(a) KMHA reserves the right to amend the Licensed Software 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 Digital Product or Licensed Software that is the subject of an outstanding sales quotation.

7. 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) "Designated Equipment" means the Server, terminal workstations, personal computers and/or associated equipment identified as part of the Designated System by the Customer.

(c) "Designated System(s)" means the Designated Equipment, operation system and associated networks designated by Customer pursuant to the Agreement.



(d) "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.

(e) "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.

(f) "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.

(g) "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.

(h) "Proprietary Information" 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.

(i) "Server" means a Designated System configured with the Licensed, Programs to support an authorized number of Concurrent Users.

(j) "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.

(k) "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.

(l) "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.