



**Konica Minolta REACT  
SOFTWARE TERMS AND CONDITIONS**

**1. Term and Termination.**

**1.1 Term.** This REACT Agreement will become effective on the date that it is signed by the Customer, and will continue in effect through the completion or termination of this REACT Agreement.

**a. Termination.** In the event that either Customer or Konica Minolta materially breaches any of its obligations or covenants under this REACT Agreement, the other party may terminate the REACT Agreement, by not less than thirty (30) days prior written notice given to the breaching party, if the breach complained of is not cured within such thirty (30) day period.

**1.2 Obligations Upon Termination.** Upon termination of the REACT Agreement, Customer will pay to Konica Minolta all amounts owed with respect to the terminated REACT Agreement through the date of termination.

**2. Acceptance of Deliverables.** Upon delivery by Konica Minolta of the REACT Solution (the "Product") to Customer, Customer will have thirty (30) days from the date of receipt of the Product to evaluate, review and test such Product ("**Test Period**") in accordance with the specifications and test criteria set forth in the REACT Agreement and Product specifications. In the event that Customer believes that the Product do not conform in any material respect to the specifications or the test criteria set forth in the REACT Agreement, then Customer will notify Konica Minolta in writing within the Test Period setting forth in reasonable detail the reason or reasons why Customer believes that such Product do not conform. Customer will identify all non-conformities of the Product within a single written notice of rejection, unless non-conformity prevents Customer from evaluating, reviewing and testing the entire Product. Customer may reject the Product only for their failure materially to conform to either the specifications or test criteria set forth in the REACT Agreement. Further, if Konica Minolta has not received a written notice of rejection of the Product within the Test Period, then such Product will be deemed to be accepted by Customer. If Customer delivers to Konica Minolta written notice of rejection of the Product within the Test Period, then Konica Minolta will have thirty (30) days from the date of receipt of a written notice of rejection to either (a) correct the non-conformities that Customer identifies in the written notice, or (b) develop a plan mutually agreeable to Customer and Konica Minolta to correct the non-conformities that Customer identified in the written notice within a period of time agreed to by the parties in the plan, but in no event will such period of time be less than thirty (30) days. Konica Minolta will use commercially reasonable efforts to correct such non-conformities and, upon correction, Konica Minolta will resubmit the corrected Product to Customer for evaluation, review, and testing and the procedure set forth above will be repeated. Such procedure will continue until the earlier of (i) the expiration of the Test Period without delivery of a written notice of rejection by Customer, or (ii) the date written notice of acceptance is delivered to Konica Minolta by Customer.

**3. Compensation.**

**3.1 Fees Payable to Konica Minolta.**

(a) The fees to be paid by Customer to Konica Minolta will be set forth in that REACT Agreement. Payment terms are Net 30 Days from the date of the invoice. Konica Minolta may invoice Customer in advance for any recurring service. Customer is responsible for all applicable taxes arising from the services. Konica Minolta may suspend service if Customer fails to pay any undisputed invoice within thirty (30) days of receipt. Unpaid invoices will be subject to a monthly service charge which is the lesser of one and one-half percent (1 ½%) per month or the highest rate allowed by law.

(b) Konica Minolta reserves the right to adjust the fees if (i) the supported environment materially changes, such as a change in the number of end-users, workstations, servers, network elements supported, warranty or hardware maintenance coverage or other changes in the IT infrastructure, or (ii) the level of support Customer requires changes. Konica Minolta anticipates costs for providing services will increase annually. Accordingly, Konica Minolta reserves the right to increase fees on the anniversary date of this REACT Agreement. Konica Minolta shall provide at least thirty (30) days prior notice of any fee increases.

**3.2 Currency.** Customer's payments will be made in U.S. dollars.

**3.3** All amounts specified on the REACT Agreement, unless otherwise stated on the REACT Agreement, are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the delivery by Konica Minolta to Customer of any product or service, all of which Customer will be responsible for and will pay in full, except for taxes based on Konica Minolta's net income.

**3.4 Disputes.** If either party disputes the accuracy or applicability of a fee, charge or credit, such party shall notify the other party of such dispute as soon as practicable after the discrepancy has been discovered. The parties shall investigate and seek to resolve the dispute in good faith. If the parties are not able to resolve the dispute within ten (10) days after receipt of notice of a disputed item, either party may exercise any rights and remedies it may have under this REACT Agreement and applicable law. Any undisputed amounts in an invoice containing a disputed charge shall be paid by Customer and any undisputed credit amounts shall be promptly credited by Konica Minolta. Unpaid monies and unapplied credit amounts that are in dispute pursuant to this section will not be considered a basis for monetary default under this REACT Agreement during the period in which the resolution of the dispute is in progress.

**3.5 Interest on Past Due Amounts.** Any amount owed by Customer under any REACT Agreement that is not paid when due will bear interest at a rate equal to the lower of (a) 12% per annum, or (b) the maximum rate permitted by applicable law.

#### 4. Software.

4.1 Firmware and operating system software (collectively, "Base Software"), software used to maintain the required hardware components, together with all attachments, accessories, replacements, replacement parts, substitutions, additions, and repairs and/or diagnose its failures or substandard performance ("Diagnostic Software"), and software that allows Customer to interact with the Product ("Application Software") are embedded in, reside on, or may be loaded onto the Product. Title to the Diagnostic Software shall at all times remain solely with Konica Minolta, and Customer agrees that its acquisition of the Product does not grant it a license or right to use the Diagnostic Software in any manner and that unless separately licensed by Konica Minolta to do so, Customer will not use, reproduce, distribute, or disclose the Diagnostic Software for any purpose (or allow third parties to do so). Konica Minolta grants Customer a limited, personal, nonexclusive, non-transferable, and non-sublicensable license to use the Base Software and Application Software for internal business purposes for the Term specified in the Statement of Work within the United States, its territories, and possessions only on or with the Product with which (or within which) it was delivered. Customer has no other rights to the Base Software or Application Software and, in particular, may not: (i) reverse compile, reverse engineer, prepare derivative works of, decompile or disassemble any portion of the Base Software or Application Software or otherwise attempt to derive source code or object code from the Base Software or Application Software; (ii) make copies of the Base Software or Application Software except for backup and archival purposes; (iii) use the Base Software or Application Software to operate in or as a time-sharing, outsourcing, service bureau, application service provider or managed service provider environment; (iv) use the Base Software or Application Software other than in accordance with the Agreement; (v) use the Base Software or Application Software as a stand-alone application or other than as part of the integrated Product; (vi) change any proprietary rights notices which appear in the Base Software or Application Software; (vii) modify the Base Software or Application Software; (viii) access the Base Software or Application Software for purposes of monitoring its availability, performance or functionality, or for any benchmarking or competitive purposes; (ix) work around, avoid or disable any technical limitations in the Base Software or Application Software, or use any tool to enable features or functionalities that are otherwise disabled in the Base Software or Application Software; (x) activate any software delivered with or within the Product in an inactivated state; or (xi) allow others to engage in the same or similar conduct. Title to the Base Software and Application Software and all copyrights and other intellectual property rights in it shall at all times reside solely with Konica Minolta. Konica Minolta may terminate Customer's license for any Base Software and Application Software immediately if Customer no longer uses or possesses the Product. Customer represents and warrants that it is not (a) located in a country that is subject to any United States or United Nations trade restrictions or which has been designated by the United States government or United Nations list of prohibited or restricted parties. Any maintenance and support for the Base Software or Application Software shall be provided by Konica Minolta or an entity acting on its behalf. THE BASE SOFTWARE AND APPLICATION SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT THE BASE SOFTWARE OR APPLICATION SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, BE EFFECTIVE, ACCURATE, OR RELIABLE, OR MEET CUSTOMER'S EXPECTATIONS.

4.2 The Base Software, Diagnostic Software, and Application Software are collectively referred to in this Agreement as the "Software".

#### 5. Confidential Information; Intellectual Property Rights.

5.1 **Nondisclosure of Confidential Information.** Each party acknowledges that it will have access to certain confidential information of the other party, including but not limited to confidential information concerning the other party's business, plans, customers, technology, and products, and other information held in confidence by the other party ("**Confidential Information**"). Confidential Information will include all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should reasonably be considered confidential. Each party agrees that it will not use in any way, for its own benefit or the benefit of any third party, except as expressly permitted by, or required to achieve the purposes of, this REACT Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information, and will take commercially reasonable precautions to protect the confidentiality of such information, but in any event, precautions at least as stringent as it takes to protect its own Confidential Information.

5.2 **Exceptions.** Information will not be deemed Confidential Information if such information: (a) is known to the receiving party prior to receipt from the disclosing party; (b) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this REACT Agreement by the receiving party; or (d) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or applicable law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

#### 6. Limitation of Liability.

6.1 **Insurance; Waiver of Subrogation.** (a) CUSTOMER AGREES THAT KONICA MINOLTA IS NOT AN INSURER AND THAT KONICA MINOLTA IS NOT PROVIDING IT WITH INSURANCE OF ANY TYPE. THE AMOUNTS CUSTOMER PAYS KONICA MINOLTA ARE NOT INSURANCE PREMIUMS AND ARE NOT RELATED TO THE VALUE OF CUSTOMER'S PROPERTY, ANYONE ELSE'S PROPERTY LOCATED IN CUSTOMER'S PREMISES, OR ANY RISK OF DEATH, INJURY, DISEASE, ILLNESS, OR LOSS AT CUSTOMER'S PREMISES. INSTEAD, THE AMOUNTS KONICA MINOLTA CHARGES CUSTOMER ARE BASED SOLELY UPON THE VALUE OF THE PRODUCT KONICA MINOLTA PROVIDES AND UPON THE LIMITED LIABILITY KONICA MINOLTA ASSUMES UNDER THIS AGREEMENT. IF CUSTOMER WANTS INSURANCE TO PROTECT AGAINST ANY RISK OF LOSS AT ITS PREMISES, IT AGREES TO PURCHASE IT. IN THE EVENT OF ANY LOSS, DAMAGE, DEATH, INJURY, DISEASE, OR ILLNESS, CUSTOMER AGREES TO LOOK EXCLUSIVELY TO ITS INSURER AND NOT TO KONICA MINOLTA TO COMPENSATE IT OR ANYONE ELSE. CUSTOMER RELEASES AND WAIVES FOR ITSELF AND ITS INSURER ALL SUBROGATION AND OTHER RIGHTS TO RECOVER AGAINST KONICA MINOLTA ARISING AS A RESULT OF THE PAYMENT OF ANY CLAIM FOR LOSS, DAMAGE, DEATH, INJURY, DISEASE, OR ILLNESS.

6.2 **No Guaranty, No Liability.** KONICA MINOLTA'S PRODUCT DOES NOT CAUSE AND CANNOT ELIMINATE OCCURRENCES OF THE EVENTS THEY MAY BE USED TO DETECT OR AVERT, INCLUDING, BUT NOT LIMITED TO, FIRES, FLOODS, BURGLARIES,

ROBBERIES, ASSAULTS, BATTERIES, CIVIL RIGHTS VIOLATIONS, ABDUCTIONS, DISEASE, ILLNESS, AND OTHER MEDICAL PROBLEMS. KONICA MINOLTA'S PRODUCT IS NOT A MEDICAL DEVICE AND CANNOT DIAGNOSE OR TREAT DISEASE, ILLNESS, OR OTHER MEDICAL PROBLEMS. ONLY A LICENSED MEDICAL PROFESSIONAL CAN DETERMINE WHETHER AN INDIVIDUAL A DISEASE, ILLNESS, OR OTHER MEDICAL PROBLEM. ALL WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED BY KONICA MINOLTA AND WAIVED BY CUSTOMER. KONICA MINOLTA MAKES NO WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THAT THE PRODUCT PROVIDED WILL DETECT OR AVERT SUCH INCIDENTS OR THEIR CONSEQUENCES. KONICA MINOLTA DOES NOT UNDERTAKE ANY RISK THAT CUSTOMER OR ITS PROPERTY, OR THE PERSON OR PROPERTY OF OTHERS, MAY BE SUBJECT TO INJURY OR LOSS IF SUCH AN EVENT OCCURS. THE ALLOCATION OF SUCH RISK REMAINS WITH CUSTOMER, NOT KONICA MINOLTA. CUSTOMER RELEASES, WAIVES, AND PROMISES NOT TO SUE OR BRING ANY CLAIM OF ANY TYPE AGAINST KONICA MINOLTA OR ITS EMPLOYEES FOR LOSS, DAMAGE, DEATH, INJURY, DISEASE, OR ILLNESS RELATING IN ANY WAY TO THE PRODUCT OR SERVICES PROVIDED BY KONICA MINOLTA.

**6.3 Exclusive Remedy.** IT IS IMPRACTICAL AND EXTREMELY DIFFICULT TO DETERMINE THE ACTUAL DAMAGES, IF ANY, THAT MAY RESULT FROM A FAILURE BY KONICA MINOLTA TO PERFORM ANY OF ITS OBLIGATIONS. UNDER NO CIRCUMSTANCES WILL CUSTOMER ATTEMPT TO HOLD KONICA MINOLTA OR ITS EMPLOYEES LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR PERSONAL INJURY OR DAMAGES TO PROPERTY. IF, NOTWITHSTANDING THE PROVISIONS OF THIS SECTION 6, KONICA MINOLTA OR ITS EMPLOYEES IS FOUND LIABLE FOR LOSS, DAMAGE, DEATH, INJURY, DISEASE, OR ILLNESS UNDER ANY LEGAL THEORY RELATING IN ANY WAY TO THE SERVICES AND/OR PRODUCT PROVIDED BY KONICA MINOLTA, KONICA MINOLTA'S LIABILITY TO CUSTOMER SHALL BE LIMITED TO A SUM EQUAL TO 10% OF THE AMOUNT PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT OR \$500, WHICHEVER IS GREATER, AND KONICA MINOLTA'S EMPLOYEES' LIABILITY TO CUSTOMER SHALL BE LIMITED TO \$1. THIS AGREED-UPON AMOUNT IS NOT A PENALTY. RATHER, IT IS CUSTOMER'S SOLE REMEDY. UPON CUSTOMER'S REQUEST, KONICA MINOLTA MAY AGREE TO ASSUME LIABILITY BEYOND WHAT IS PROVIDED FOR IN THIS SECTION 6 BY ATTACHING AN AMENDMENT TO THIS CONTRACT SETTING FORTH THE EXTENT OF KONICA MINOLTA'S LIABILITY AND THE ADDITIONAL CHARGES TO CUSTOMER.

**6.4 Application.** THE PROVISIONS OF THIS SECTION 6 APPLY NO MATTER HOW THE LOSS, DAMAGE, DEATH, INJURY, DISEASE, ILLNESS, OR OTHER CONSEQUENCE OCCURS, EVEN IF DUE TO THE PERFORMANCE OR NONPERFORMANCE BY KONICA MINOLTA OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR FROM NEGLIGENCE (ACTIVE OR OTHERWISE), STRICT LIABILITY, VIOLATION OF ANY APPLICABLE CONSUMER PROTECTION LAW, OR ANY OTHER THEORY OF LIABILITY OR ALLEGED FAULT ON THE PART OF KONICA MINOLTA, ITS AGENTS, OR ITS EMPLOYEES.

**6.5 Indemnity.** IF ANY OTHER PERSON, INCLUDING CUSTOMER'S SUBROGATING INSURER, MAKES ANY CLAIM OR FILES ANY LAWSUIT AGAINST KONICA MINOLTA OR ITS EMPLOYEES IN ANY WAY RELATED TO THE PRODUCT OR SERVICES PROVIDED BY KONICA MINOLTA TO CUSTOMER, CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD KONICA MINOLTA AND ITS EMPLOYEES HARMLESS FROM ANY AND ALL SUCH CLAIMS AND LAWSUITS, INCLUDING THE PAYMENT OF ALL DAMAGES, EXPENSES, COSTS, AND ATTORNEYS' FEES. CUSTOMER'S DUTY TO DEFEND IS SEPARATE AND DISTINCT FROM ITS DUTY TO INDEMNIFY AND HOLD HARMLESS AND ARISES FROM THE ASSERTION OF A CLAIM OR DEMAND AGAINST KONICA MINOLTA OR ITS EMPLOYEES AND REGARDLESS OF WHETHER KONICA MINOLTA OR ITS EMPLOYEES HAS BEEN FOUND LIABLE OR WHETHER KONICA MINOLTA OR ITS EMPLOYEES HAS INCURRED ANY EXPENSE.

**6.6 Time to Bring Claim or Suit.** NO SUIT OR ACTION SHALL BE BROUGHT AGAINST KONICA MINOLTA OR ITS EMPLOYEES MORE THAN ONE (1) YEAR AFTER THE DATE OF THE INCIDENT THAT RESULTED IN THE LOSS, DEATH, INJURY, DISEASE, ILLNESS, OR DAMAGE, OR THE SHORTEST DURATION PERMITTED UNDER APPLICABLE LAW IF GREATER THAN ONE (1) YEAR.

**6.7 Benefit to Others.** THE PROVISIONS OF THIS SECTION 6 SHALL APPLY TO AND BENEFIT KONICA MINOLTA AND ITS AGENTS, EMPLOYEES, CONTRACTORS, SUBSIDIARIES, DEALERS, AFFILIATES, PARENTS (BOTH DIRECT AND INDIRECT), AND OTHER PARTNERS.

**6.8 Basis of Bargain.** Customer acknowledges that Konica Minolta has set its fees and entered into this REACT Agreement in reliance on the limitations of liability and damages and disclaimers of warranties set forth in this Scope and that the same form an essential basis of the bargain between Konica Minolta and Customer.

**7. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR A REACT AGREEMENT, KONICA MINOLTA DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, PERTAINING TO THE PRODUCT OR SERVICES PROVIDED BY IT TO CUSTOMER, OR ANY SOFTWARE PROVIDED BY KONICA MINOLTA TO CUSTOMER, INCLUDING BUT NOT LIMITED TO ANY AND ALL WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

**8. Force Majeure.** If either party is prevented from performing any of its obligations under this REACT Agreement, except the payment of money, because of any event beyond its reasonable control ("Force Majeure Event"), the affected party will be excused from performance for the duration of the Force Majeure Event; provided that the party whose performance has been impaired by the Force Majeure Event (a) promptly notifies the other party of the existence and nature of the Force Majeure Event and its anticipated effect on the performance of the notifying party under this REACT Agreement; (b) promptly undertakes and thereafter diligently pursues any commercially reasonable action necessary to remove the effect of the Force Majeure Event, to the extent that the Force Majeure Event in question is of a nature such that its effects may be remedied by commercially reasonable action; and (c) keeps the other party informed during the duration of such Force Majeure Event of all facts pertaining thereto, including but not limited to the progress of the notifying party in remedying the same, if applicable.

**9. Independent Contractor.** The parties shall at all times be independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between us. Neither party shall have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**10. Assignment.** This Statement of Work may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No consent shall be required where an assignment is made (i) pursuant to a merger or change of control or (ii) to an assignee of all or substantially all of the party's assets. Any purported assignment in violation of this section shall

be void.

11. **Miscellaneous.** This REACT Agreement will be construed in accordance with, and governed by, the laws of the State of New York, without giving effect to any choice of law doctrine that would cause the law of any other jurisdiction to apply. Any legal action between the parties arising out of or related to this REACT Agreement shall be adjudicated by binding arbitration in New York City, New York. The prevailing party in any such action shall be entitled to an award of reasonable attorney's fees and costs in addition to any other award or recovery to which such party may be entitled. No legal action, regardless of form, may be brought by either party against the other more than one (1) year after the cause of action has arisen. This REACT Agreement embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by any party hereto that is not embodied in this REACT Agreement, and no party will be bound or liable for any alleged representation, promise, inducement or statement not so set forth in this REACT Agreement. Terms and conditions set forth in any purchase order, or any other form or document of Customer, which are inconsistent with, or in addition to, the terms and conditions set forth in this REACT Agreement, are hereby objected to and rejected in their entirety, regardless of when received, without further action or notification by Konica Minolta, and will not be considered binding on Konica Minolta unless specifically agreed to in writing by it. No waiver by either party of any breach or default of any of the covenants or agreements contained in this REACT Agreement will be deemed a waiver as to any subsequent or similar breach or default. No right or remedy granted by this REACT Agreement upon either party is exclusive of any other right or remedy granted by this REACT Agreement or by law or in equity provided or permitted. All notices, requests, demands, and other communications required or permitted to be given under this REACT Agreement will be in writing and will be conclusively deemed to have been duly given (a) when hand delivered to the other party; or (b) three business days after the same have been deposited in a United States post office with certified or registered mail return receipt requested postage prepaid and addressed to the parties as set forth on the cover page of this REACT Agreement; or (c) the next business day after the same have been deposited with a national overnight delivery service reasonably approved by the parties (Federal Express and DHL WorldWide Express being deemed approved by the parties), postage prepaid, addressed to the parties as set forth on the cover page of this REACT Agreement with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery service provider. A party may change the address of such party for purposes of this Section by giving the other party written notice of the new address in the manner set forth above. Any notice or communication required or permitted to be given under this REACT Agreement shall be in writing and addressed to Konica Minolta Business Solutions U.S.A., Inc., Attn: Legal Department, 100 Williams Drive, Ramsey, NJ 07446. This REACT Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. No amendment, modification, or supplement to this REACT Agreement will be binding unless it is in writing and signed by the party sought to be bound thereby. The parties agree (a) that facsimile or electronic signature shall be accepted as original signatures; and (b) that the REACT Agreement, or any document created pursuant to the REACT Agreement, may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. In any legal proceeding relating to the REACT Agreement, the parties waive their right to raise any defense based on the execution of the REACT Agreement in counterparts or the delivery of such executed counterparts by copy, facsimile, or electronic delivery.

Customer hereby accepts this REACT Agreement and Terms and Conditions.

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**Customer (Name and Signature)**

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**Date**