

THESE ARE THE TERMS AND CONDITIONS ON WHICH KODAK WILL SUPPLY THE CUSTOMER WITH EQUIPMENT, SUPPORT SERVICES AND/OR CONSUMABLES. THE CUSTOMER AGREES TO BE BOUND BY KODAK'S TERMS AND CONDITIONS BELOW.

## **Kodak's Sales Terms and Conditions**

### **1 Definitions, interpretation and conflicts.**

1.1 Where capitalized terms are used in the Agreement then the following definitions will apply, unless the context otherwise requires.

**"Agreement"** shall mean a Customer Agreement for Goods and Services (including attachments, applicable Schedules, these Kodak T&C's, and documents incorporated by reference which shall form part of it), signed by authorized representatives of Kodak and the Customer.

**"Applicable Law"** shall mean all laws of any country or territory as amended from time to time, which apply to the Products included in the Agreement including without limitation the following: constitutional law, civil law, common law, international law, equity, treaties, statutes, decrees, edicts, codes, orders, rules, ordinances and regulations of any local, municipal, territorial, provincial, federal, national or any other duly constituted governmental authority or agency including those relating to health, safety and the environment.

**"Certified Maintenance Technician"** and **"Certified Operator"** shall mean an individual who is currently certified by Kodak as having successfully completed all applicable certification training, at Customer's expense.

**"Completion of Installation"** shall mean, for Equipment and Software, that the Equipment and/or Software has been Delivered, installed and one test of the Equipment's operation has been successfully completed by Kodak except for self-installable Equipment and/or Software where it shall mean the date of Delivery by Kodak. For Prosper Presses, however, Completion of Installation shall refer to acceptance as set forth in the Schedule – Prosper Press Customer Acceptance Plan.

**"Confidential Information"** shall mean any information which is marked as confidential, or is by its nature clearly confidential including, without limitation, drawings, designs or manuals relating to the Products, any information relating to either Kodak or the Customer's services, operations, prices, plans or intentions, service information, design rights, trade secrets, market opportunities and business affairs or those of Kodak or Customer's customers and which is disclosed (whether in writing, verbally or by any other means including being observed during visits to premises) by the Disclosing Party, whether directly or indirectly, to the Receiving Party.

**"Consumables"** shall mean where the context permits, Digital Print Consumables, Inkjet Printing System Consumables and Prepress Consumables.

**"Consumables Period"** shall have the meaning given in condition 3.2 below.

**"Delivery"** shall mean for Goods DAP (Delivered At Place Incoterms® 2020) Customer's Site ground floor.

**"Digital Print Consumables"** or **"DP Consumables"** shall mean electrophotographic digital production press consumables including dry inks, developers, Operator Replaceable Components (ORC's), other non-reusable products and maintenance supplies.

**"Disclosing Party"** shall mean the Party disclosing Confidential Information.

**"Effective Date"** shall mean the effective date shown in the Agreement or, if no date is inserted, then the last date of signature of the Agreement by both Parties.

**"Equipment"** shall mean the hardware which the Customer is purchasing identified in Schedule, Equipment, Software and Professional Services and for hardware where the Customer is receiving Support Services, the hardware covered by a Support Plan, as identified in the Agreement.

**"Goods"** shall mean Equipment, Software, Consumables, Printheads and/or Parts.

**"Initial Consumables Period"** shall mean the initial period in which Kodak will provide Consumables to Customer as shown in the Schedule-Consumables, or if no initial period is shown then the period of 12 months from the Effective Date.

**"Initial Support Term"** shall have the meaning given in condition 3.3 below.

**"Inkjet Printing Systems Consumables"** or **"IPS Consumables"** shall mean fluids, filters, light bulbs, for Kodak inkjet printing systems.

**"Interdependent or Like Equipment"** means (i) hardware and software within the same workflow configuration with any of the Equipment at a Site or (ii) software which is resident on hardware provided by Kodak or (iii) workflow or software associated with hardware, provided by Kodak or (iv) equipment or software provided by Kodak at a Site that is from the same or related product family that performs a same or similar function using media or consumables that are of the same or similar format size.

**"Kodak T&C's"** shall mean these Sales Terms and Conditions.

**"Non Customer Replaceable Units"** shall mean components which are not replaceable by Customer without the assistance of Kodak.

**"Parts"** shall mean replacement parts used in the Equipment other than Consumables.

**"Party"** shall mean Kodak or Customer and **"Parties"** shall mean Kodak and Customer.

**"Person"** shall mean (a) any corporation, partnership, joint venture, joint stock company, association, trust, business trust, estate, unincorporated organization, or other business entity, (b) any government or agency, division or subdivision thereof, or (c) any individual.

**"Prepress Consumables"** shall mean media (including film, paper, plates, fabrics, plastics, digital media, transfer media, proofing media and other imageable substrates), inks, chemicals, filters, bulbs, and developers.

**"Printheads"** shall mean printheads, jetting modules and/or lineheads depending on the type of equipment.

**"Products"** shall mean where the context permits, Goods and Services.

**"Professional Services"** shall mean those services described in Schedule, Equipment, Software and Professional Services, which may include, without limitation: additional training (optional or mandatory) in addition to standard Training as defined in Schedule, Equipment, Software and Professional Services, Equipment modifications, start-up assistance, remote online support, optimization services, and other process improvement services.

**"Receiving Party"** shall mean the Party receiving Confidential Information.

**"Schedule"** shall mean a Schedule to the Agreement and shall include any attachments to the Agreement.

**"Service Fee"** shall mean the fee to be paid by Customer periodically to Kodak for Support Services as specified in the Agreement and in Schedule Support Services.

**"Services"** shall mean Support Services, Training, Start-up Assistance and Professional Services.

**"Site"** shall mean the Customer location where the Equipment and/or Software is installed by Kodak, or where not installed by Kodak where the Equipment and/or Software is delivered by Kodak, or where Kodak did not deliver the Equipment and/or Software where it originally resided.

**"Software Update"** shall mean a release of Software, in object code form, or firmware, which provides minor fixes, improvements and modifications to the Software or Equipment. Kodak software releases that are designated as updates will be identified A.B.x where the x designates the release as a Software Update.

**"Software Upgrade"** shall mean a release of Software, in object code form, or firmware, which adds new functionality and feature enhancements to the Software or Equipment. Kodak software releases that are designated as Software Upgrade will be identified A.B.x where the A & B designates the release as a Software Upgrade.

**"Software"** shall mean (a) software contained in the Equipment, (b) third party software embedded in Kodak's software or in the Equipment, (c) all software identified in the Agreement, (d) software made available to Customer as part of a Subscription Program (e) any Software Updates and Software Upgrades which are provided to Customer by Kodak, in its sole discretion, and (f) all user materials and other documentation.

**"Start-up Assistance"** shall mean operator production support provided by Kodak during installation as shown in Schedule, Equipment, Software and Professional Services.

**"Subscription Program"** shall mean any software agent or tool owned or licensed by Kodak that Kodak makes available to Customer as part of a subscription arrangement.

**"Support Commencement Date"** shall mean the commencement date for the supply of Support Services by Kodak as set out in the Schedule Support Services.

**"Support Plan"** shall mean a service offering that sets out the level of service entitlements purchased by Customer as described in detail in the Agreement.

**"Support Services"** shall mean Equipment and Software maintenance and support service as further described in Schedule Support Services.

**"Training"** shall mean classroom, onsite or remote training provided by Kodak in the use and operation of the Equipment and/or Software and (unless otherwise stated) the price of Training is included in the price of the Equipment and/or Software.

**"VAT"** shall mean value added tax chargeable under any Applicable Law and any other applicable taxes and duties or similar charges which shall be charged in accordance with the relevant Applicable Law in force at the time of making the relevant taxable supply.

**"Volume-Based Charges"** shall mean usage and/or pages printed charges (e.g., click, TIP and overage charges).

**1.2** Headings in the Agreement are for convenience only and will be given no effect in the interpretation of the Agreement.

**1.3** Words having the singular meaning include the plural meaning and vice versa.

**1.4** A reference to writing or written includes facsimile and email.

**1.5** Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2 Agreement.**

**2.1** Kodak agrees to sell and/or license to Customer and Customer agrees to purchase and/or license from Kodak the Products as identified in the Schedules on the terms and conditions set out or referred to in the Agreement.

**2.2** All purchase orders submitted by Customer will be of no effect unless and to the extent that they are accepted by Kodak in its sole discretion and provided they refer expressly to and are subordinate to the Agreement. Orders for Consumables may be subject to minimum order values and quantities (details available on request).

**2.3.** All orders shall be placed via the Kodak online ordering process where available. If online ordering process is available, orders via any other means (phone, facsimile, mail, e-mail, etc.) may be subject to a surcharge to reflect additional handling efforts for processing unless otherwise agreed between the Parties. Customer shall keep secure any passwords provided by Kodak for the use of such online systems.

**2.4** The terms of the Agreement contain the entire agreement between the Parties and cancel all previous terms of business between Kodak and Customer in relation to its subject matter. No other terms and conditions, whether written or oral, (including, without limitation, any terms or conditions which the Customer purports to apply under any purchase order, acknowledgement or any other document issued by the Customer) shall form part of the Agreement.

**2.5** The Customer shall ensure that all safety information provided by Kodak relating to the Products is passed on to the Customer's employees, contractors and representatives or Product users. The Customer shall not alter, mask or remove any safety information from the Goods.

**2.6** The Customer represents that it is purchasing the Products as a professional end-user.

**2.7** If Customer purchases Prepress Consumables hereunder, Customer shall provide Kodak on a quarterly basis with three month rolling estimates or such other information as Kodak shall reasonably request concerning its likely future requirements for the Prepress Consumables.

## **3 Agreement Term and Termination.**

**3.1** The Agreement shall be effective from and including the Effective Date and shall continue, unless earlier terminated as provided herein, until the end of the period in which Kodak is to provide Goods and/or Services hereunder.

**3.2** Kodak will provide Consumables to Customer during the Initial Consumables Period. Thereafter the period in which Kodak will provide Consumables to Customer shall automatically renew for additional periods of one (1) year each unless terminated by either Party by written notice to the other Party at least ninety (90) days prior to the end of the then current period. The Initial Consumables Period together with any extension shall be known as the "Consumables Period".

**3.3** The initial support term for the provision of Support Services (and any Support Plans under it) will be for the initial period commencing on the Support Commencement Date set out in Schedule Support Services and ending on the 12-month anniversary of the Support Commencement Date ("**Initial Support Term**"). Thereafter, Support Services shall automatically renew for successive 12-month periods at the Service Fee indicated in Schedule Support Services subject to price increases (see condition 4.3), unless either Party provides the other Party with written notice of termination in accordance with this condition 3.3. Either Party may terminate Support Services effective on or after the day following the Initial Support Term by providing the other Party with 90 days advance written notice. The Initial Support Term together with any extension shall be known as the "**Support Term**".

**3.4** The Subscription Program will commence upon the delivery of the license key and shall be for the initial term stated in the Schedule - Subscription Program ("**Initial Subscription Term**"). Thereafter, the Subscription Program shall automatically renew

for successive 12-month periods unless either Party provides the other Party with written notice of termination in accordance with this condition 3.4. Either Party may terminate the Subscription Program effective on or after the day following the Initial Subscription Term by providing the other Party with 90 days advance written notice. The Initial Subscription Term together with any extension shall be known as the "Subscription Term".

**3.5** Kodak may, by written notice to the Customer, terminate the Agreement or suspend the supply of Products immediately in the event: a) the Customer fails to make any payment due to Kodak or to a finance company financing the Equipment and/or Software within 14 days of the due date; b) of any insolvency or bankruptcy proceedings by or against Customer including appointment of a receiver; c) the Customer is in breach of any material provision of the Agreement, which is not rectified within 30 days of written notice requiring rectification; d) the Customer is in breach of any incurable, material provision of this Agreement; and/or (e) in the event of the occurrence of anything analogous or having a substantially similar effect to any of these preceding conditions or matters under the Applicable Law of any applicable jurisdiction, and to the procedures, circumstances and events which constitute any of those conditions or matters. Such termination shall be without prejudice to the Parties' accrued rights, provided that, subject to condition 16.1, Kodak may without liability cancel any outstanding orders and provided that Kodak shall not be liable for any termination damages or compensation however arising.

**3.6** If Customer cancels an order for Goods for any reason before shipment, Kodak shall be entitled to retain or invoice the Customer 10% of the value of the relevant cancelled order and any additional costs incurred by Kodak.

**3.7** If Kodak manufactures unique plates for Customer, then upon expiration or termination of the Agreement, Customer shall, within 5 days from the date of invoice, purchase all of Kodak's on-hand inventory of such unique plates and any associated raw materials.

#### **4 Price and Payment.**

**4.1** Price. Customer will pay the price of the Products as set out in the Schedules.

**4.2** Service Fee. The Service Fee to be paid by Customer is specified in the Schedules and, except as provided in the following sentences, shall be due and payable in full by the Customer to Kodak in advance of the period to which the relevant Support Services pertain. If the Service Fee includes Volume-Based Charges, such charges are billed in arrears and shall be due and payable in full by the Customer to Kodak by the date set forth in the invoice. Charges for any DP Consumables provided in connection with an instant rebate plan are billed when shipped and are payable in full by the Customer by the date set forth in the invoice.

**4.3** Support Services pricing changes. Support Services pricing (including any Volume-Based Charges) is subject to change, at any time following the Initial Support Term provided that Kodak gives Customer at least 30 days advance written notice in the manner as described in this condition 4.3. Kodak may provide such notice via email or by including price increase in the Kodak's invoice. Unless Customer disputes such price change by written notice to Kodak within five (5) days of receipt of invoice the price increase shall be considered accepted by Customer. If items are provided at list prices or at a discount off of list prices (including DP Consumables supplied in connection with certain Support Plans), Customer understands and acknowledges that list prices are subject to change without notice.

**4.4** Additional cost Items. Kodak reserves the right to charge Customer under a Support Plan for additional cost Items as follows:

- (i) Equipment and Software. Any costs incurred by Kodak resulting from Customer (1) changes to the configuration of the Equipment or Software, or (2) postponement of Delivery or installation of the Equipment or Software;
- (ii) Support Services. Any costs incurred by Kodak, including without limitation, hourly labor rate, parts, zone surcharges (if applicable), and reasonable expenses (travel, accommodation, food and associated expenses, including telecommunications), in providing Support Services as a result of any of the following:
  - (a) the Equipment and Software are repaired, modified, have features added to them, or are maintained, or altered, other than by Kodak, a Certified Maintenance Technician or Certified Operator;
  - (b) the Equipment is damaged by any negligent or wrongful act or omission by any party other than Kodak or its agents, or is damaged or lost due to misuse, relocation, transportation, air conditioning, humidity control, electrostatic discharge, external electrical fields, or external causes, including accident, electrical power failure or surge, disaster, fire, flood, water, wind, and lightning;
  - (c) Customer operates the Equipment with (i) hardware or software which has not been approved or licensed for use by Kodak; (ii) a version of Software which is not the latest released Software Upgrade, or which does not contain the latest Software Update; or (iii) consumables not authorized (not qualified) by Kodak for use with the Equipment;
  - (d) Support Services are provided outside the hours of coverage specified in the Support Plan;
  - (e) Emergency weekend on-call Support Services are provided;
  - (f) Customer has not installed a modem or VPN connection, as requested by Kodak;
  - (g) Kodak installs self-installable Equipment at Customer's request; or
  - (h) replaced Parts are not returned as directed by Kodak.

**4.5** Consumables pricing changes. Kodak may, at its discretion, adjust prices of Consumables, adjust Volume-Based Charges, and/or impose a reasonable surcharge to cover changes in raw materials cost, cost of transportation and/or other manufacturing and logistics costs at any time.

**4.6** Subscription pricing changes. Kodak may, at its discretion, upon prior written notice, adjust Subscription Program pricing at any time on or after the one-year anniversary of the commencement of the Subscription Program.

**4.7** Unless otherwise specified in the Agreement, Goods pricing does not include and Customer shall pay for: i) unloading; ii) costs for additional tools or equipment (e.g. crane, forklift) and in general costs for transport of the Equipment from ground floor to installation area; iii) shipping and handling (notwithstanding anything to the contrary in applicable Incoterms); iv) export or import duties or other customs charges, when and if applicable and v) storage and rigging. Further charges as referred to in the Agreement, including conditions 8.2 and 10.2, may also apply. Notwithstanding the foregoing, shipping and handling costs for plates will be borne by Kodak.

**4.8** Payment for the Products will be made in accordance with the applicable payment terms set out in the Schedules, or if no payment terms are specified then within 30 days from the date of invoice. All payments for Products are payable in cleared funds to Kodak as stated on the invoice. Payment may not be made in a currency other than that specified in the invoice. Unless otherwise agreed by Kodak, payment shall be made by electronic funds transfer.

**4.9** Until a credit account is established, all business with new Customers is on a cash with order basis unless otherwise agreed. Any grant of credit facilities is conditional on Kodak receiving payment on or before the date set out on Kodak's invoice and Kodak may withdraw credit facilities forthwith if payment is not made on or before the due date, in which case payment of all outstanding amounts will immediately become due and payable.

**4.10** Unless otherwise specifically stated in the Agreement all prices and charges exclude VAT which will be paid in addition at the rate in force on the date of VAT invoice.

**4.11** Time for payment of amounts due from Customer to Kodak under the Agreement is of the essence of the contract. Kodak may appropriate any payments received that do not refer to a particular invoice to any outstanding invoice.

**4.12** If the Customer fails to pay any amount when due then the Customer will immediately be in default and Kodak may, without prejudice to Kodak's other rights and without further notice, cancel the order for Products, postpone shipments of Goods, suspend Services, alter payment terms, repossess the Goods, terminate the Agreement and automatically without the necessity for formal prior notice charge interest on all overdue amounts from the date payment is due until the date actual payment is received at the monthly rate of 1.5% (18% per annum) of the overdue balance. Any other amounts outstanding from the Customer to Kodak shall also become due and payable immediately.

**4.13** If any amounts due hereunder remain to be paid by Customer and title to Product is deemed to have transferred to Customer, Customer hereby grants to Kodak a security interest in the Products and all proceeds thereof or if the domicile or head office of the Customer is located in Quebec, a movable hypothec in the amount equal to the price of the Product as stated in this Agreement and within the meaning of the Civil Code of Quebec. Customer agrees to take such action as Kodak may reasonably request to perfect and protect such security interest and render opposable such hypothec. Customer acknowledges that Kodak may file financing statements covering the Products (the "Financing Statements") under the applicable personal property security legislation. Customer hereby authorizes Kodak to file the Financing Statements and any financing change statements, registration forms, continuation statements or amendments without the signature of Customer where permitted by law. If filing without Customer's signature is not permitted by law, Customer agrees to sign the Financing Statements at Kodak's request. A photocopy or other reproduction of this Agreement or any Financing Statement covering the Products shall be sufficient as a financing statement where permitted by law. Customer agrees that on request it shall provide Kodak with written proof satisfactory to Kodak of Customer's complete and accurate official name (including capitalization and punctuation), the jurisdiction in which Customer was incorporated or organized, and Customer's organization identification number (if applicable). Where permitted by law, Customer agrees to waive receipt of notice of any Financing Statement.

## **5 Delivery.**

**5.1** Kodak will make reasonable efforts to Deliver the Products on the dates as communicated by Kodak. Delivery times are estimates only and Kodak shall not be liable for failure to Deliver within such time.

**5.2** In case of delays caused by Force Majeure as specified in condition 23.2, Kodak shall have the right either to suspend deliveries without notice or cancel the order without liability.

**5.3** Kodak may Deliver the Goods in installments. Each installment will be treated as a separate contract. Each installment shall be paid on the due date as a condition precedent to further deliveries. Any defect in any installment of Goods shall not be grounds for cancellation of the remaining installments.

**5.4** Customer shall inspect the Goods immediately on Delivery to ensure compliance with the Agreement.

**5.5** Incomplete Deliveries/Goods missing from order(s) must be reported in writing to Kodak within 24 hours of Delivery of Goods in accordance with conditions 5.5(i) and 5.5(ii):

- (i) Loose carton Delivery – a consignment note is provided with each Delivery. It is the Customer's or its agent's responsibility to sign and print their name on the consignment note confirming receipt of the order. Any carton shortages or damage must be clearly noted on the consignment note before the Delivery is completed. Claims for carton shortages or damage not marked on the consignment note will not be accepted.
- (ii) Large Delivery (shrink wrapped) – a consignment note is provided with each Delivery. It is the Customer's or its agent's responsibility to sign and print their name on the consignment note confirming receipt of the order. Any pallet shortages or obvious damage must be clearly noted on the consignment note before the Delivery is completed. If possible, the Customer should count the number of cartons and note any shortages on the consignment note before the Delivery is completed.

## **6 Complaints>Returns**

**6.1** Customer shall, within 7 days of Delivery, give Kodak customer service written notice of any carton shortages and damage or defects reasonably apparent from an inspection that were not reasonably apparent on inspection at Delivery. Customer must notify Kodak in writing of non-Delivery or invoice queries within 7 days of the Goods invoice date.

**6.2** Customer shall give Kodak written notice of any defects in Goods not reasonably apparent on inspection at Delivery within 2 days of the Customer discovering such defects.

**6.3** Quality complaints relating to Consumables or Parts must be accompanied by a specimen of the Consumables or Parts showing the reported defect together with the identification references.

**6.4** Where Kodak is satisfied that the Consumables or Parts were damaged or defective on or before the date on which risk passes to the Customer, Kodak will repair or replace them free of charge or at its discretion credit the Customer with the price of the Consumables or Parts. Subject to condition 6.5 any Consumables or Parts replaced or credited shall be returned to Kodak. In the event that Kodak allows Customer to retain such Consumables or Parts, then any credit shall be reduced by any recovery or scrap value of such Consumables or Parts.

**6.5** Goods may only be returned with Kodak's prior agreement, when Kodak will arrange collection and issue a collection note, otherwise Kodak will not be liable for any loss of, or damage to, Goods. Kodak drivers or delivery carriers are not authorized to collect Goods for return without Kodak written authorization.

## **7 Risk and title.**

**7.1** The risk of loss of, or damage to, the Goods shall pass from Kodak to Customer as specified in the applicable Incoterm.

**7.2** Subject to the provisions of the Software license and unless otherwise specified in the Agreement, title to the Goods will pass from Kodak to Customer upon Delivery.

## **8 Equipment and Software installation Training and safety information.**

For Equipment and/or Software purchased from Kodak this condition 8 will apply.

**8.1** Except for self-installable Equipment, Kodak shall install the Equipment at Customer's Site at a mutually agreeable time. Prior to installation, Customer shall, at its expense, complete all applicable Site preparations as specified by Kodak and Applicable Law.

**8.2** If Customer fails to have the Site ready for installation, the additional time spent on Customer Site will be charged to Customer at Kodak's then current rate.



**8.3** Upon Completion of Installation, then unless the Equipment/Software is self-installable a Kodak representative may present the Customer with a report stating that the Equipment and/or Software has been duly installed and Kodak has achieved Completion of Installation.

**8.4** Kodak shall provide Training and Start-up Assistance if and as described in Schedule - Equipment, Software and Professional Services. Customer shall be responsible for scheduling all Training prior to installation and has 30 days from Completion of Installation to complete Training from Kodak. Kodak has the right to charge Customer for any additional costs if the requested Training is cancelled within 10 days of the scheduled Training date. Failure to schedule or complete Training shall not be cause to delay any payment under the Agreement. Unless otherwise stated in Schedule - Equipment, Software and Professional Services, classroom Training will be conducted at Kodak's premises and Customer shall be responsible for all travel, living and other costs incurred in connection with the Training. Notwithstanding the foregoing, Workflow Training and Start Up Assistance will be remotely delivered unless otherwise specified in the Agreement.

**8.5** If Kodak is unable to deliver Training or Professional Services within 6 months of the Effective Date of the Agreement due to the failure of Customer to schedule such Training or Professional Services or other reasons attributable to Customer, Kodak's obligation, if it so chooses, to perform the same shall cease. If Kodak elects not to provide the Training or Professional Services and has received payment for the undelivered Training or Professional Services, Kodak will either, at Kodak's sole discretion, issue a credit to Customer's account or refund the amount Kodak received.

## **9 Trade-In.**

If the Agreement includes any trade-in equipment, Customer represents and warrants that (a) the trade-in equipment can be picked up from Customer's Site ground floor by Kodak within 10 days following Completion of Installation of the Equipment or as specified in the Schedule - Equipment, Software and Professional Services and (b) is in good working order, condition and repair, subject to normal wear and tear, and (c) Customer has lawful, clear, marketable title to the trade-in equipment free of any third party rights. Customer shall indemnify Kodak for any costs, claims, damages and liability Kodak suffers if any of the foregoing representations and warranties are untrue and Kodak shall have no further obligation to accept the trade-in equipment and Customer shall be immediately liable to Kodak for an amount equal to the trade in allowance that was applied to reduce the purchase price of the Products. Any trade-in equipment will be identified as such in the Agreement.

## **10 Services.**

**10.1** Kodak will perform Services in accordance with generally accepted industry standards. Customer will perform its responsibilities as and when communicated by Kodak in a timely manner. Kodak will not be responsible, or otherwise liable, for any delays caused by a failure of the Customer to timely perform its responsibilities.

**10.2** Kodak will perform Professional Services in accordance with any statement of work, which shall describe the specific responsibilities of Customer and Kodak. Kodak will perform Professional Services in a workmanlike manner and in accordance with industry standards. Customer will perform its responsibilities identified in any applicable statement of work in a timely manner. Professional Services will be performed within a reasonable time after Completion of Installation. For self-installable Products or self-training Products, Customer must perform such installation or training prior to Kodak's performance of any associated Professional Services. Kodak will not be responsible, or otherwise liable, for any delays caused by a failure by Customer to timely perform its responsibilities. The Professional Services are a fixed duration service and will be provided in accordance with the days described in Schedule, Equipment, Software and Professional Services and on an 8 hours a day basis. If additional time is needed on-site, it will be provided on a chargeable time and material basis at Kodak's then current rates and subject to limitations of scheduling and local availability.

## **11 Support Services**

**11.1** Subject to the terms of the Agreement, Kodak will provide the Support Services in accordance with the Support Plans identified in the Schedules to the Agreement on the terms and conditions referred to in the Agreement.

## **12 Additions and Deletions of Equipment and Software.**

**12.1 Additions.** In the event that Customer has Equipment and Software that is under a Support Plan and Customer acquires additional equipment and software, for an additional charge such equipment and software shall automatically be placed on that Support Plan at the end of any applicable warranty period for such equipment and software, unless Customer notifies Kodak otherwise at least 30 days prior to the expiration of the warranty. In such cases, the end of the warranty shall be considered the Support Commencement Date.

**12.2 New Support Plan.** Subject to condition 14.1, in the event that Customer has equipment and software that is not under a Support Plan and is no longer under warranty or Customer acquires used equipment and software from a third party, and Customer wishes to purchase a Support Plan for such equipment and software, Customer may do so subject to Kodak's inspection and acceptance. Customer, at its expense, must take any remedial action required by Kodak, including without limitation in the case of equipment and software acquired from a third party, payment of a remanufacturing, certification and license fee, prior to such equipment and software being placed on a Support Plan.

### **12.3 Deletions.**

**12.3.1** Following the Initial Support Term Customer may remove Equipment and Software from a Support Plan by providing Kodak written notice, in which case the removal shall be effective 90 days following the end of the month of notification and the Service Fee adjusted accordingly. In the event the Software is covered under a Support Plan there will be no refund or credit of pre-paid fees. Notwithstanding the foregoing, should Customer finance a pre-paid Support Plan through a financing company, Customer shall be required to secure approval from the financing company prior to any deletion.

**12.3.2** Kodak may remove Equipment and Software from a Support Plan by providing Customer written notice, in which case the removal shall be effective ninety (90) days following the end of the month of notification and the Service Fee adjusted accordingly.

**12.4 Cancellation.** If Customer cancels a Support Plan and then subsequently wishes to re-instate that Support Plan more than 30 days after cancellation, then a full system health check will need to be completed by Kodak, at Customer's expense. All recommendations made as a result of the health check will need to be implemented by Customer before the Support Plan is re-instated. Support may be provided after cancellation at Kodak's then current time and material rates.

### **13 Support Services - Customer Responsibilities.**

This condition 13 will apply to the provision of Support Services.

**13.1** Customer shall, at its expense, (i) perform all routine maintenance procedures and maintain the Site, each as specified by Kodak and/or Applicable Law; (ii) promptly install and maintain all Software Updates and procure any additional equipment or software that may be required for, or as a result of, such installation and maintenance; (iii) provide necessary access to enable Kodak to provide the Support Services during normal business hours; and (iv) provide assistance, information, services, Consumables and facilities as may be requested by Kodak to provide the Support Services.

**13.2** Customer shall promptly return to Kodak, as requested, replaced Parts. Kodak will arrange collection of these Parts and pay for return shipping. If Customer does not allow pick up of these Parts within 10 working days, then Kodak will charge Customer at Kodak's then current rates.

### **14 Kodak Support Services Restrictions and Suspension of Performance.**

Support Services provided the Agreement shall be subject to the following restrictions:

**14.1 Interdependent or Like Equipment.** All Equipment that is Interdependent or Like Equipment must have the same support hours of coverage.

**14.2 Customer's employees.** Customer shall not permit any of its employees, contractors or other Persons to provide maintenance or support for the Equipment and/or Software where Kodak is providing Support Services, unless the individual providing maintenance or support is (i) a Certified Maintenance Technician or Certified Operator, or (ii) instructed by Kodak. Notwithstanding the foregoing, in no case shall Customer permit any of its employees or contractors or other Persons to provide maintenance or support for, or Kodak be required to train the Certified Maintenance Technicians or Certified Operators on, the laser components of the Equipment.

**14.3 Improper use of the products; Environmental Conditions.** Kodak shall not be liable for resolving problems relating to (i) improper use of the Equipment and/or Software for which Kodak is providing Support Services, (ii) environmental conditions, or (iii) operation of or use of the Equipment in a manner that has caused premature wear or failure of components that in Kodak's reasonable judgment is beyond the "normal wear and tear" of the Equipment.

**14.4 Consumables use.** Kodak shall not be responsible for resolving any problems caused by operation or use of Equipment with consumables not qualified by Kodak for use with this Equipment or with consumables for which Equipment is not designed or configured to operate/be used with.

**14.5 Software Updates and Upgrades.** Kodak shall not be responsible for any hardware upgrades that are necessary with regard to the Software Updates and Software Upgrades.

**14.6 Relocation of Equipment.** Any Equipment under a Support Plan that is moved to a different location at the Site, or to a different Customer site, shall remain eligible for Support Services under the Support Plan if (i) Customer gives Kodak reasonable prior written notice of Customer's intent to move such Equipment, and (ii) Kodak is given the opportunity to supervise and inspect the Equipment during the de-installation, packing, unpacking and reinstallation of the Equipment to ensure that the Equipment is in proper working condition following the relocation. Customer is responsible for all relocation and associated costs.

**14.7 Support Services Limitations.** Support Services do not include (i) resolving problems relating to the configuration of the Site, including Customer's network, (ii) administration of servers or operating system; (iii) support of Software installed on equipment using "beta" or operating systems not supported by Kodak; (iv) resolution of network errors not directly related to Software; or (v) installation, setup or support of software other than the Kodak Software; (vi) assistance for installing and maintaining anti-virus software or (vii) support of virtualized operating environment host operating systems and hardware platforms not sold by Kodak. Kodak will provide Support Services for (a) the latest Software Upgrade following the date it is made generally available and (b) for the immediately prior upgrade during the twelve (12) month period following the date the latest Software Upgrade is generally available.

**14.8 Suspension of Performance.** In addition to any other rights Kodak may have under this Agreement or otherwise, Kodak may withhold Support Services if Customer is in default of payment or any other obligation under this Agreement, or any account for Consumables, or any other agreement with Kodak.

### **15 Warranty.**

"**Warranty Period**" shall be the period of time specified in this Agreement and/or on packaging.

**15.1 Equipment and Parts Warranty.** Unless otherwise specified in this Agreement or where mandatory by Applicable Law, Equipment and Parts carry no warranty. Kodak specifically does not warrant that the Equipment or Customer's configuration will operate uninterrupted or error free.

**15.2** This condition 15.2 only applies if there is an Equipment and/or Parts warranty set forth in the Agreement. During the Warranty Period Kodak shall provide, at its discretion, (a) remote assistance during working days, Monday to Friday from 08:00 until 17:00 local time; (b) on-site assistance during working days Monday to Friday from 08:00 until 17:00 local time and Parts necessary to repair the Equipment (c) on-line assistance through the e-center (d) Parts and services as specified in Field Change Orders issued by Kodak during the Warranty Period.

**15.3** This condition 15.3 only applies if there is an Equipment and/or Parts warranty set forth in the Agreement. Subject to the provisions of condition 16.1, Customer's sole remedy under the Equipment and/or Parts warranty shall be, at Kodak's discretion to repair or replace the defective or non-conforming Part, component of the Equipment or refund of the actual amount paid by Customer for the defective Equipment or Part. The remedies are only available if Kodak is notified of a warranty claim within the applicable Warranty Period.

**15.4 "Non Customer Replaceable Units" Warranty.** Non Customer Replaceable Units must be installed under the supervision of a Kodak certified service specialist. Failure to do this will result in the unit not being covered by any Kodak warranties.

**15.5 Professional Services Warranty.** Kodak warrants that it shall perform Professional Services in a professional manner using appropriately skilled personnel in accordance with generally accepted industry standards and Kodak's then current policies and procedures. Subject to the provisions of condition 16.1 Customer's sole and exclusive remedy under the warranty described in this condition shall be, at Kodak's option, (1) re-performance of the non-conforming Professional Services, or (2) refund of the amount paid by Customer for the non-conforming Professional Services.

**15.6 Consumables Warranty** Except as specified in conditions 15.7 and 15.8, Consumables purchased from Kodak carry Kodak's limited warranty that such Consumables will conform to published specifications for the period of time listed on the product packaging, provided the Consumables are used according to such specifications. In the event of any claim by Customer,

Kodak's liability shall be limited, at Kodak's option, to replacement of the Consumables that are the subject of the claim or refunding the cost of such Consumables. All Consumables shall be validated and verified with Kodak before their intended use.

**15.7 Digital Print Consumables** Digital Print Consumables are provided without warranty.

**15.8 Inkjet Printing Systems Consumables** There are no warranties on consumables such as filters and light bulbs, or printheads. Printheads: In the event of failure, printheads will be refurbished or replaced without charge (including freight and insurance for return) during Customer's then-current "No Charge Refurbishment" (NCR) period. In the event of failure during the NCR period, the consumable portion of the printhead will be either replaced without charge with a refurbished printhead carrying the remaining hours of the applicable NCR, or replaced at the then-current prorated charge with a refurbished printhead set at zero hours. In some cases, a credit may apply if the replacement printhead has an NCR less than the remaining hours of the failed printhead NCR. For Inkjet Printing Systems Equipment, after the NCR periods, Kodak will refurbish or exchange for refurbished printheads that are returned to Kodak's location, at then-current prices in accordance with Kodak's Printhead Refurbishment and Exchange Policy. Customer will pay freight to and from Kodak's location and will insure printheads during transit. The charge for refurbishment shall be based on Kodak's then-current price and may be increased without prior notice. For Equipment sold under the "Click Charge Plan," all charges for printhead refurbishments are included in the Click Charge". Printheads will not be refurbished or replaced if they are used with inks, fluids or other supplies that are not supplied by Kodak or manufactured by Customer to Kodak's specifications with Kodak's prior written approval (collectively, "Kodak-Approved Supplies"). Use of ink, fluids or supplies other than Kodak-Approved Supplies with the Equipment can have a material negative impact on the performance of the Equipment. Failure to use exclusively Kodak-Approved Supplies with the Equipment will impact the availability of printhead refurbishment services (as noted above), and the price and availability of service contracts and other maintenance services. Kodak and/or its authorized representatives shall have the right to inspect the Equipment and audit Customer's books, records and operations at any time to confirm Customer's exclusive use of Kodak-Approved Supplies with the Equipment.

**15.9 Support Services Warranty** Kodak shall perform Support Services in a workmanlike and professional manner in accordance with generally accepted industry standards and Kodak's then current policies and procedures. Customer's sole and exclusive remedy under the warranty described in this condition shall be, at Kodak's option, (1) re-performance of the non-conforming Support Services, or (2) refund of the amount paid by Customer for the non-conforming Support Services. Further exclusions contained in condition 4.4 relating to additional charges also apply.

**15.10 Warranties Limitations.** The above warranties, if any, only apply if Kodak is notified of a warranty claim within the applicable Warranty Period and do not apply to claims that arise from (i) accident, neglect, misuse, abuse, improper handling or transportation, or improperly maintained air conditioning, humidity control or electrical power, (ii) issues caused by any Person other than Kodak or its authorized agents, (iii) interoperability with other non-Kodak supplied products, (iv) improper installation, service or modification by Persons other than Kodak or its authorized agents, (v) use in an environment or a manner or for a purpose for which the Goods were not designed or intended, (vi) unusual physical or electrical stress, (vii) improper storage or the use of unauthorized chemistries or processing equipment, or (viii) any cause other than ordinary use.

**15.11** Subject to the provisions of condition 16.1 or mandatory Applicable Law any conditions or warranties (whether express or implied by Applicable Law or arising from conduct or a previous course of dealing or trade custom or usage) as to quality, or fitness for any particular purpose, are expressly excluded.

## **16 Exclusions and Limitation of Liability.**

**16.1** Nothing in the Agreement shall affect any liability which Kodak may have in respect of the death of, or personal injury to, any person resulting from Kodak's negligence or operate to limit or exclude any liability for fraud or fraudulent misrepresentation or other liability which cannot be excluded by Applicable Law.

**16.2** Subject to condition 16.1, in no event shall the liability of Kodak or that of its parent corporation, subsidiaries, affiliates, licensors, manufacturers, subcontractors and suppliers exceed the actual amount Customer paid for the specific Products that directly gave rise to the damages claimed, regardless of the basis on which the injured Party claims.

**16.3** Subject to condition 16.1, in no event shall Kodak, its parent corporation, subsidiaries, affiliates, licensors, manufacturers or suppliers or subcontractors be liable for any loss of revenue, profits, business, contracts or cost savings, claims for loss of production or goodwill payments made, anticipated losses resulting from the Agreement, lost data, source material, images or other output, cost of substitute equipment, facilities or services or downtime cost or claims from third parties for any such loss or damage or for any other indirect, special, incidental or consequential loss or damages of any kind even if Kodak is made aware of the possibility of such losses or damages.

**16.4** Customer is responsible for purchasing and implementing its own network security including its own anti-virus software for Equipment, servers and workstations connected to the internet. Subject to condition 16.1, Kodak shall not assume or retain any liability or other obligations in connection with any possible Customer data loss or network security and/or virus violation. Customer shall hold harmless and indemnify Kodak, its parent corporation, its subsidiaries, affiliates, suppliers and licensors, subcontractors and manufacturers against any third party claims and losses relating to breaches of security pertaining to the internet. Kodak makes no claims, explicit or implied, related to operation and performance of Software in relation to third-party antivirus solutions.

**16.5** It is the responsibility of Customer to make and maintain backups and implement other practices to safeguard configuration, software, system, data and programs within its servers, including, but not limited to Software and Kodak-supplied servers. Kodak shall not be liable for any losses (of data or productivity or of any other kind) resulting from rebuilding or reconfiguring software to the original, factory configuration. Reloading, rebuilding and reconfiguring of server software may, at Kodak's sole discretion, be chargeable at Kodak's then published hourly professional services rates with minimum charges for service time, including travel and on-site wait time.

**16.6** Kodak and its parent corporation, subsidiaries, affiliates, licensors, subcontractors, manufacturers and suppliers may not be held liable for unsatisfactory operation of the Goods with other manufacturer's hardware, media or software, which have not been qualified by Kodak.

**16.7** In the case of Goods supplied but not manufactured by Kodak, the liability of Kodak pertaining to such Goods shall be limited to amounts recovered by Kodak under warranties given by its supplier, if any.

## **17 Software.**

**17.1 License.** Kodak grants to Customer a non-exclusive, non-transferable, non-sub licensable license to use the Software, provided the Software is used only (i) for Customer's internal business purposes, (ii) on the single computer system on which it is installed, and (iii) only in the country of Customer's place of business as stated in the Agreement. Customer shall not pool or

share the Software between or among multiple computers, except as authorized by Kodak. Kodak may terminate the license, without liability, if Customer breaches these provisions or its obligations under the Agreement and fails to cure such breach within 30 days after receipt of Kodak's written notice of breach, or if a Financing Company has informed Kodak that Customer is in default under its agreement to finance the Products and has requested that Kodak terminate the license. The Software may contain programs for Kodak's use only, as indicated within the Software. Also see condition 17.5.

**17.2 Ownership.** No title to, or ownership of, the Software is transferred to Customer and any use of the terms "sell", "sale," "purchase" or "acquire" in relation to the Goods with respect to the Software shall be deemed to mean "license on the terms contained in the Agreement". Neither Customer nor any of its agents or employees shall (i) copy the Software except for 1 copy for back-up purposes; provided such copy shall contain all proprietary notices and other markings appearing on the Software, (ii) assign or otherwise transfer, modify, enhance, supplement, adapt, translate, reverse engineer, reverse assemble, decrypt, decompile, disassemble, create derivative works, or make improvements to the Software, (iii) merge Software into any other program, (iv) use all or any portion of the Software for the purpose of deriving its source code, or (v) use of embedded software in a manner other than to control and or drive Kodak printing components or Kodak printing systems. Customer may not decode either the final or intermediate data streams nor utilize the output to drive non-Kodak imaging heads or printing systems. Upon termination pursuant to condition 17.1 above, Customer shall cease all use and return or certify destruction of the Software (including copies). For Goods that include Software, the manufacturer of the Software is Kodak or third parties. The manufacturers of third party software are identified with the Software as appropriate.

**17.3 Third party rights.** The Software may include programs owned by third parties not affiliated to Kodak (including Adobe Systems Incorporated). These entities are third party beneficiaries of the Agreement and may enforce the provisions of the Agreement that relate to their rights in the Software. IF THE SOFTWARE IS OR CONTAINS AN EXTENSION FOR QUARKXPRESS® (MACINTOSH®), IT CAN ONLY BE USED WITH A VALID, REGISTERED COPY OF QUARKXPRESS. Kodak is under no obligation to provide Software Updates for third-party software.

**17.4 EULA.** Some of the Software may be subject to the terms of an End-User License Agreement ("EULA"). The EULA is integrated in a digital form in the Software and is readable before installation. The terms of the Agreement and the terms of the EULA shall be applicable with respect to such Software and a copy of the EULA can be obtained from Kodak upon request. To the extent that the terms of the EULA conflict with the terms of the Agreement, the terms of the EULA shall prevail.

**17.5 Transfer of License.** Notwithstanding the provisions of conditions 17.1 and 17.2, if Customer sells or transfers the Equipment in which the Software operates, Kodak shall offer to license the Software, and to provide services, to any bona fide end user ("Transferee") pursuant to Kodak's then current standard terms, conditions and fees, provided that the Transferee is not considered, in Kodak's discretion, a competitor of Kodak or its parent, affiliates or subsidiaries. To the extent that the Software is licensed to a Transferee in accordance with this condition, Customer's license to use the Software shall be deemed terminated. Kodak shall offer to provide de-installation services for the Customer and re-installation and certification for the Equipment and Software and services for the Transferee at Kodak's then current applicable fees.

**17.6 Subscription Program.** Customer retains all ownership and intellectual property rights in and to the Customer content and Customer applications. Kodak or its licensors retain all ownership and intellectual property rights to the Software made available to Customer as part of a subscription arrangement, including Kodak programs and Subscription Programs, and derivative works thereof, and to anything developed or delivered by or on behalf of Kodak under this Agreement. In the event Customer converts from a perpetual Software license to a Subscription Program, the version of Customer's Software license at the time of conversion will be archived. Should the Subscription Program be terminated, Kodak will reactivate Customer's perpetual Software license at the archived version.

## **18 Restriction on the Resale of Consumables.**

Except as otherwise provided by law, Consumables may only be used for internal business purposes and not for resale. Kodak reserves the right to refuse orders for Consumables if it reasonably believes the Customer is reselling Consumables. Any credible evidence of the resale of Consumables by Customer shall be deemed to be a material breach of this Agreement.

## **19 Confidentiality.**

**19.1** The Receiving Party shall use Confidential Information received solely for the purposes of performing its obligations in accordance with the terms of the Agreement.

**19.2** The Receiving Party will exercise in relation to the Disclosing Party's Confidential Information no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential information and in any event will exercise a reasonable and appropriate degree of care and protection.

**19.3** The Receiving Party undertakes not to disclose any of the Disclosing Party's Confidential Information to any third party except that it may disclose such Confidential Information to its employees, professional advisors, agents or subcontractors but only to the extent necessary for the performance of its obligations under the Agreement. The Receiving Party shall ensure that any third party to whom it discloses the Confidential Information shall be informed of the confidential nature of the information and be bound by obligations of confidentiality on terms no less onerous than those set out in this Agreement.

**19.4** Without prejudice to any other rights or remedies that either Kodak or the Customer may be entitled to, Kodak and the Customer acknowledge that damages may not be an adequate remedy for breach of these confidentiality obligations and agree that both Kodak and the Customer will be entitled to seek the remedies of injunction, specific performance and any other available equitable relief for any threatened or actual breach.

**19.5** The provisions of this condition 19 shall not apply to any Confidential Information:

- 19.5.1** to the extent that it is or comes into the public domain otherwise than as a result of a breach of the Agreement by the Receiving Party;
- 19.5.2** which the Receiving Party can show by its written records was in its possession prior to receiving it from the Disclosing Party and which it had not previously obtained from the Disclosing Party or a third party on its behalf under an obligation of confidence;
- 19.5.3** which the Receiving Party can show by its written records was obtained by the Receiving Party without restriction as to use or disclosure from a third party legitimately in possession of it and legitimately able to disclose it;
- 19.5.4** which has been independently developed by the Receiving Party without access to the Confidential Information; or
- 19.5.5** which is required to be disclosed by any Applicable Law.

**19.6** The provisions of this condition 19 shall survive the expiry or termination of the Agreement and continue for a period of 3



years following the date of expiry or termination of the Agreement.

## **20 Intellectual Property.**

**20.1** Kodak trademarks are duly protected by Applicable Law in force and by international conventions. Customer will not use Kodak trademarks without previous authority in writing from Kodak, it being understood that nothing in the Agreement shall imply such authority.

**20.2** Intellectual property rights associated with the Goods belong to Kodak (except where owned by a supplier of Kodak) and are reserved by Kodak on the sale of Goods. The Customer shall not exercise or purport to exercise any rights, powers, privileges and immunities conferred on the proprietor of any intellectual property rights subsisting in or associated with the Goods, including the right to sue for damages or other remedies in respect of any infringement.

**20.3** Kodak will defend Customer against any suit based on a claim that the Goods infringe any patents in force in the country where the Goods are Delivered provided that Kodak is notified promptly and given information, assistance for and sole control of the defense and/or all decisions to settle or compromise, including all related negotiations. Kodak shall pay resulting damages and costs awarded in such suit. This provision excludes claims relating to Goods not manufactured by or for Kodak, Goods used in combination with equipment or software not manufactured by or for Kodak, Goods used in a manner other than as specified by Kodak or for a purpose for which the Goods were not intended, Kodak Goods manufactured specifically to Customer's specifications or designs, or Goods modified after Delivery.

**20.4** If any qualifying Goods are held to infringe a patent and further use is not permitted by Applicable Law, Kodak, at its own expense and at its sole option, will either obtain for Customer the right to continue using the Goods, or replace infringing Goods with non-infringing Goods, or modify the Goods so that they do not infringe, or remove them and refund the purchase price paid, less a reasonable depreciated value for use

## **21 Personal Data Protection.**

**21.1** Customer acknowledges that in order for Kodak to provide the Services hereunder, Customer may provide Kodak with personal information. Customer represents and warrants that this personal information has been collected in accordance with applicable laws and that it has the authority to provide such data to Kodak. Kodak shall process the personal information as needed to provide the Services, in accordance with Customer's instructions, or as required or permitted by law.

**21.2** Each Party warrants that it shall comply at all times with its obligations under the local data privacy legislation applicable to it in any specific country (the "**Privacy Laws**"), including (without limitation) the EU General Data Protection Regulation and the California Consumer Privacy Act. For clarity, Customer (and its affiliates) act as data controllers (as that term may be defined in the Privacy Laws) and Kodak, its affiliates and subprocessors act as data processors.

**21.3** Kodak shall at all times have implemented reasonable operational, technical and organizational measures to protect the personal information against accidental or unlawful destruction or alteration and unauthorized disclosure or access. Once per year upon request, Kodak will provide Customer with copies of any applicable Service Organizational Control (SOC) or other internal control reports that it has received. Customer understands that these internal control reports contain Confidential Information of Kodak. Customer shall not disclose the internal controls reports other than to its auditors and advisors in connection with verifying Kodak's compliance with this section.

**21.4** If Kodak becomes aware of a security breach (as defined in any applicable Privacy Law) that compromises the security, confidentiality or integrity of Customer's personal information (an "**Incident**"), Kodak will take appropriate actions to contain, investigate and mitigate the Incident. As required by applicable Privacy Laws, Kodak will notify Customer without undue delay to enable Customer to expeditiously implement its response program.

**21.5** Customer authorizes Kodak to use its affiliates, suppliers and subcontractors including for data processing, hosting and storage purposes, provided that Kodak remains responsible for the quality of the Services and the affiliates', suppliers' and subcontractors' compliance with the Privacy Law as applied to data processors. Where required by Privacy Laws, Kodak has entered into agreements containing standard contractual clauses for the transfer of personal information to processors located in a third country with other Kodak Affiliates and subprocessors as needed to document their commitment to adequate protection of personal information and authorize the transfer.

**21.6** To the extent required by the Privacy Laws, Kodak will (at Customer's expense) (i) reasonably assist Customer with fulfilling any obligations to respond to requests for exercising data subject's rights, (ii) delete or return the personal information when no longer needed for the provision of Services, (iii) provide Customer with all information reasonably necessary to demonstrate compliance with the specified obligations, and reasonably allow for and contribute to audits, including inspections.

## **22 Financing.**

This condition 22 shall apply to Equipment, Software or Professional Services that are subject to financing (the "Financed Products") by a financing company, including a Kodak approved financing company (the "Financing Company").

**22.1 Title to Financed Products.** The full and legal ownership (whether legal, equitable or beneficial) in the Financed Products shall pass to the Financing Company or to the Customer, as directed by the Financing Company upon payment in full. Kodak shall retain ownership of Software in all circumstances.

**22.2 Kodak's Right to Payment for Financed Products.** Unless otherwise agreed to in writing by Kodak, Customer or the Financing Company shall pay Kodak 100% of the Product price upon Completion of Installation of the Goods.

**22.2.1 Delivery and Acceptance.** If the Financing Company requires the Customer to sign a delivery and acceptance certificate or other similar document confirming that the Financed Products have been delivered, installed and are operating ("D & A Certificate"), the Customer shall sign such D & A Certificate within three (3) days of Completion of Installation of each phase.

**22.2.2 Non-Payment by Financing Company.** In the event that the Financing Company fails to pay Kodak for the Financed Product for any reason, Customer is responsible for the full purchase price and shall pay such purchase price to Kodak within five (5) days of notification from Kodak of non-payment by the Financing Company.

**22.2.3 Kodak's Remedies for Non-Payment.** In addition to any rights that Kodak may have under law, equity or this Agreement, failure of Customer to comply with this condition 22 shall be deemed a material breach of this Agreement and may result in Kodak (a) disabling the Financed Products, (b) terminating any software license agreement relating to the Financed Products, (c) charging a rental fee and/or interest in accordance with Kodak's then current policies and procedures, (d) suspending or terminating services, (e) repossessing the Financed Products and (f) at Kodak's option, taking an assignment of the financing documents from the Financing Company in order to exercise rights thereunder against Customer.

**22.3 Customer's Obligations.** Kodak is providing Products to Customer in consideration of Customer's promises and obligations under this Agreement. Under no circumstances shall the terms and conditions of the Financing Company's documentation relieve Customer of any of its obligations, responsibilities, or undertakings under this Agreement.

### **23 Miscellaneous.**

**23.1 Assignment.** Except as expressly set forth herein, each Party shall not assign this Agreement or any right under this Agreement, nor delegate any performance or obligation under this Agreement, without the other Party's prior written consent, which consent shall not be unreasonably withheld. Any purported assignment without the other Party's consent shall be null and void and of no force or effect. Any of Kodak's rights and obligations under this Agreement may be exercised and performed by any of Kodak's affiliates and subsidiaries, as designated by Kodak. This Agreement shall be binding upon the successors and permitted assigns of each Party. Kodak has permitted the Customer to assign its purchase rights to a financing company, if applicable. Notwithstanding the foregoing, either Party may upon thirty days notice assign this Agreement to any party that acquires all or substantially all the assets of the assignor that pertain to this Agreement.

**23.2 Force Majeure.** Neither Party is liable to the other Party for losses, damage, detention, or delays, or will be responsible if its performance becomes commercially impracticable, due to causes beyond the reasonable control of that Party, including strike, lockout, labor disputes or shortages, riot, revolution, mobilization, war, epidemic, pandemic, transportation difficulties, difficulties in obtaining necessary materials, manufacturing facilities, or transportation, working difficulties, machine breakdowns, accidents, fires, floods or storms, failure of suppliers, acts of God, sabotage, civil unrest, government imposed restrictions or embargoes, acts of civil or military authority, Applicable Law, inability to obtain material, hardware or transportation, incorrect, delayed or incomplete specifications, drawings or data supplied by the other Party or third parties (collectively "**Force Majeure**"). In the event of delay in performance due to Force Majeure, any dates set out in the Agreement will be postponed by such period as may be reasonably necessary to compensate for delay.

**23.3 Export Control.** Customer acknowledges that some of the Goods may be subject to US export control regulations which Customer shall comply with to the extent that they apply to the Customer.

**23.4 Amendment, Modifications.** Any kind of amendment or modification to the Agreement shall be in writing and signed by authorized representatives of both Parties or shall be of no effect.

**23.5 Waiver.** The failure or delay of a Party in exercising a right or remedy does not constitute waiver of them or any right to subsequently enforce them.

**23.6 Severability.** If any part of the Agreement is held unenforceable, the validity of the remaining provisions will not be affected.

**23.7 Representations.** The terms of the Agreement supersede all prior drafts, agreements, arrangements, understandings and discussions between the Parties or their advisors and all statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings whenever given and whether orally or in writing. Each Party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any such statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings that are not set out in the Agreement. Nothing in this condition shall limit or exclude any liability for fraud or fraudulent misrepresentation.

**23.8 Set off.** All amounts due to Kodak shall be paid in full without any deduction or withholding (other than any deduction or withholding of tax as required by Applicable Law) and the Customer shall not assert any set-off or counterclaim against Kodak to justify withholding payment in whole or in part. Without waiver or limitation of any of its rights or remedies where Kodak has incurred any liability to the Customer, whether under the Agreement or otherwise, Kodak may set off the amount of such liability, including any applicable VAT payable, against any sums owed at any time by Kodak to the Customer.

**23.9 Enforcement.** Each Party shall be liable for all costs incurred by the other Party (including legal fees and other legal costs) (i) in connection with the collection of any past due amounts and (ii) in any successful action by such other Party to enforce the terms of the Agreement.

**23.10 Audit.** Customer grants to Kodak, and/or the accounting firms of Kodak's choice, the right to inspect and audit Customer's relevant books and records to confirm Customer's performance of all of its obligations under this Agreement. Any such audit will occur at the location where such relevant books and records are located, upon no less than ten (10) days prior written notice during regular business hours and in such a manner as not to unreasonably interfere with Customer's normal business operations.

**23.11 Communication.** The Customer agrees that Kodak personnel can communicate electronically with the Customer designated individuals, in relation to marketing, Consumable shipments, payments, Services, scheduling Support Services, and other support items, etc. The Customer is responsible for ensuring that they keep the contacts updated via the Kodak online support process, or if unavailable, in writing via Customer's designated Kodak representative.

**23.12 Notices.** All notices to be given under the Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or mailed by first class mail (or air mail if sent internationally) or sent by courier addressed to the Party concerned at the address specified in the heading to the Agreement or to such other address as may be notified from time to time by the Party concerned as set out in this condition and shall be deemed to be served when personally delivered, or 2 days after the date it was sent by first class mail (or 3 days after the date it was sent if sent by air mail).

**23.13 Electronic Signatures, Facsimile Signatures, Counterparts.** The Parties agree that the electronic and facsimile signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, taken together, will constitute one and the same document.

**23.14 Governing law, Jurisdiction.** This Agreement is governed by the law of the Province of British Columbia and the laws of Canada applicable therein, excluding its conflicts of law rules. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. Customer hereby submits to the exclusive jurisdiction and venue of the courts of the Province of British Columbia with respect to all matters in connection with this Agreement.

**23.15 Survival.** Provisions that survive termination or expiration of the Agreement are those relating to limitation of liability, indemnity, confidentiality, payment and others which by their nature are intended to survive.

**23.16 Language.** It is the express wish of the Parties that this document and any related documents be drawn up and executed in English. Les Parties aux présents ont expressément demandé que ce document et tous les documents s'y rattachant soient rédigés et signés en anglais.