

THESE ARE THE TERMS AND CONDITIONS ON WHICH KODAK WILL SUPPLY THE CUSTOMER WITH SUPPORT SERVICES. 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 Support 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.

**"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.

**"Delivery"** shall mean for Supplies 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 covered by a Support Plan, as identified in the Agreement.

**"Initial Support Term"** shall have the meaning given in condition 3.2 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.

**"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 sub division 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, DP Consumables, Equipment, Printheads, Software and Parts.

**"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.

**"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) any Software Updates and Software Upgrades which are provided to Customer by Kodak, in its sole discretion, and (e) all user materials and other documentation.

**"Supplies"** shall mean where the context permits, Parts and DP Consumables.

**"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.

**“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 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 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.

2.3 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.

2.4 The Customer shall ensure that all safety information provided by Kodak relating to the Equipment or Support Services is passed on to the Customer's employees, contractors and representatives or Equipment users. The Customer shall not alter, mask or remove any safety information from the Equipment.

## **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 Support Term as such term is defined in condition 3.2.

3.2 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 4.2), unless either Party provides the other Party with written notice of termination in accordance with this condition 3.2. 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".

3.3 Kodak may, by written notice to the Customer, terminate the Agreement or cancel the Support Plan or suspend the supply of Support Services 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 12.1, Kodak may without liability cancel any outstanding orders and provided that Kodak shall not be liable for any termination damages or compensation however arising.

## **4 Price and Payment.**

4.1 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.

4.2 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 4.2. 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 Supplies or other items are provided at list prices or at a discount off of list prices, Customer understands and acknowledges that list prices are subject to change without notice. If DP Consumables are provided hereunder, Kodak may, at its discretion, adjust prices of DP 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.

4.3 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 Supplies are not returned as directed by Kodak.

**4.4** Unless otherwise specified in the Agreement, Supplies pricing, if applicable, does not include and Customer shall pay for: i) unloading; ii) shipping and handling (notwithstanding anything to the contrary in applicable Incoterms); iii) export or import duties or other customs charges, when and if applicable and iv) storage.

**4.5** Payment for the Support Services and if, applicable, Supplies 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 Support Services and Supplies 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.

**4.6** 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.

**4.7** 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.

**4.8** 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.

**4.9** 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 Products, suspend Support Services, alter payment terms, repossess the Products, 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.

## **5 Delivery of Supplies**

**5.1** Kodak will make reasonable efforts to Deliver the Supplies 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 16.2, Kodak shall have the right either to suspend deliveries without notice, or cancel the order without liability.

**5.3** Customer shall inspect the Supplies immediately on Delivery to ensure compliance with the Agreement.

**5.4** Incomplete Deliveries/Supplies missing from order(s) must be reported in writing to Kodak within 24 hours of Delivery of Supplies in accordance with conditions 5.4(i) and 5.4(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-Return of Supplies**

**6.1** Customer shall, within 7 days of Delivery of Supplies, 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.

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

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

**6.4** Where Kodak is satisfied that the Supplies 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 Supplies. Subject to condition 6.5 any Supplies replaced or credited shall be returned to Kodak. In the event that Kodak allows Customer to retain such Supplies, then any credit shall be reduced by any recovery or scrap value of such Supplies.

**6.5** Supplies 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, Supplies. Kodak drivers or delivery carriers are not authorized to collect Supplies for return without Kodak written authorization.

## **7 Risk and title.**

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

**7.2** Unless otherwise specified in the Agreement, title to the Supplies will pass from Kodak to Customer upon Delivery.

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

**8.1** 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.

**8.2** New Support Plan. Subject to condition 10.1, 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.

### **8.3 Deletions.**

**8.3.1** 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.

**8.3.2** 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.

**8.4 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.

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

**9.1** 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.

**9.2** 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.

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

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

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

**10.2 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.

**10.3 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.

**10.4 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.

**10.5 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.

**10.6 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.

**10.7 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.

**10.8 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.

## **11 Warranty.**

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

**11.1 Supplies Warranty.** Parts shall be free from material defects in materials and workmanship, subject to normal use and recommended service, for the warranty period set forth in the Agreement and/or packaging. If no such period is specified, the Part carries no warranty. Any DP Consumables provided hereunder are provided without warranty.

**11.2** Subject to the provisions of condition 12.1, Customer's sole remedy under the warranty described in condition 11.1 shall be, at Kodak's discretion to repair or replace the defective or non-conforming Part or refund of the actual amount paid by

Customer for the defective Part. The remedies are only available if Kodak is notified of a warranty claim within the applicable Warranty Period.

**11.3 "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.

**11.4 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 4.3 relating to additional charges also apply.

**11.5 Warranties Limitations.** The above warranties 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) interoperation 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 Products 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.

**11.6** Subject to the provisions of condition 12.1 or mandatory Applicable Law any further 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.

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

**12.1** 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.

**12.2** Subject to condition 12.1, 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 Support Services and/or Supplies that directly gave rise to the damages claimed, regardless of the basis on which the injured Party claims.

**12.3** Subject to condition 12.1, 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.

**12.4** 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 12.1, 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.

**12.5** 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.

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

## **13 Confidentiality.**

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

**13.2** 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.

**13.3** 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 sub contractors 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.

**13.4** 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.

**13.5** The provisions of this condition 13 shall not apply to any Confidential Information:

- 13.5.1** 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;
- 13.5.2** 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;
- 13.5.3** 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;

**13.5.4** which has been independently developed by the Receiving Party without access to the Confidential Information;  
or

**13.5.5** which is required to be disclosed by any Applicable Law.

**13.6** The provisions of this condition 13 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.

#### **14 Intellectual Property.**

**14.1** 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.

**14.2** Intellectual property rights associated with the Products belong to Kodak (except where owned by a supplier of Kodak) and are reserved by Kodak on the sale of Products. 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 Products, including the right to sue for damages or other remedies in respect of any infringement.

**14.3** Kodak will defend Customer against any suit based on a claim that the Products infringe any patents in force in the country where the Products 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 Products not manufactured by or for Kodak, Products used in combination with equipment or software not manufactured by or for Kodak, Products used in a manner other than as specified by Kodak or for a purpose for which the Products were not intended, Kodak Products manufactured specifically to Customer's specifications or designs, or Products modified after Delivery.

**14.4** If any qualifying Products 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 Products, or replace infringing Products with non-infringing Products, or modify the Products so that they do not infringe, or remove them and refund the purchase price paid, less a reasonable depreciated value for use

#### **15 Personal Data Protection.**

**15.1** Customer acknowledges that in order for Kodak to provide the Support 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 Support Services, in accordance with Customer's instructions, or as required or permitted by law.

**15.2** 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.

**15.3** 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 understand 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.

**15.4** 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.

**15.5** 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 Support 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.

**15.6** 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 Support 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.

#### **16 Miscellaneous.**

**16.1 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. 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.

**16.2 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 reasonable necessary to compensate for delay.

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

**16.4 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.

**16.5 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.

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

**16.7 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.

**16.8 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.

**16.9 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.

**16.10 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.

**16.11 Communication.** The Customer agrees that Kodak personnel can communicate electronically with the Customer designated individuals, in relation to marketing, Consumable shipments, payments, 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.

**16.12 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).

**16.13 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.

**16.14 Governing law, Jurisdiction.** This Agreement is governed by the law of the State of New York, excluding its conflicts of law rules. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. Any dispute hereunder shall be decided by the United States District Court for the Western District of New York, Rochester Division, or the Supreme Court of the State of New York, Monroe County, at the sole option of Kodak. The Parties agree to submit to the exclusive jurisdiction of these courts and to litigate any dispute only in the court selected by Kodak. The Parties waive all rights to a trial by jury.

**16.15 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.