

OLD DOMINION University
STANDARD CONTRACT
Contract No. 17-ODU-02-JNH

This contract entered into as of the "Effective Date", as described herein, between **KONICA MINOLTA BUSINESS SOLUTIONS U.S.A., INC.**, a New York corporation, with its principal place of business located at 100 Williams Drive, Ramsey, New Jersey 07446 (hereinafter referred to as "Contractor"), **Old Dominion University**, with its principal place of business located at 5115 Hampton Boulevard, Norfolk, Virginia 23529 (hereinafter the "University").

WHEREAS, University maintains operations in various locations throughout the United States and wishes to purchase Products and related Services from Contractor for use in University's facilities; and,

WHEREAS, Contractor wishes to sell such Products and related Services to University; and,

WHEREAS, the parties deem by means of this Agreement to establish general terms and conditions, which will govern the purchase of such Products and related Services by University,

WITNESSETH that the Contractor and the University, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

1. DEFINITIONS:

- a) "Products" is defined as Hardware and Software made available to University under this Agreement.
- b) "Hardware" is defined as multifunctional devices, printers and other hardware, peripherals, accessories and options supplied by Contractor.
- c) "Services" is defined as Hardware, Professional Services and Maintenance Services provided by Contractor.
- d) "Software" is defined as Contractor Software programs, procedures, and related documentation associated with a computer system.
- e) "End User License Agreement" also known as EULA, is defined as each software license Agreement under which University has been granted the right by the applicable Software development company or other licensor to use the Software.

2. PERIOD OF PERFORMANCE:

- a) The Initial Term for this Agreement shall commence upon complete execution ("*Effective Date*"), and shall be in effect through December 31, 2019.

- b) At the conclusion of the Initial Term, this Agreement may be renewed for up to ten (10) additional 12-month periods with sixty (60) days written notice, and subject to the parties' mutual concurrence and negotiation of any additional scope of service, acceptable fee structure, and/or additional terms and conditions, as may be applicable.
- c) Subsequent renewal periods shall commence on January 1st of associated year, and remain in effect for twelve (12) months, expiring each year on December 31st.
- d) Each renewal period shall be governed by the then current Agreement, unless otherwise modified and agreed to in writing by all parties.
- e) The University and Contractor reserve the right to renegotiate annual costs or cancel service requirements as needed without penalty.

3. ENTIRE AGREEMENT AND AMENDMENTS:

- a) This is the entire Agreement between University and CONTRACTOR. This Agreement supersedes any proposal or prior agreement, oral or written, or any other communications relating to Products purchased under this Agreement. Should it be determined that a pre-existing agreement was entered into between CONTRACTOR and University then the terms of any orders placed under said agreement shall not be affected by this Agreement. University may elect to lease Hardware and enter into a separate standalone Lease Agreement.
- b) The following documents, by inclusion and/or reference, shall constitute the *Contract Documents* for this Agreement as follows:
 - i. This fully executed agreement; and
 - ii. The University's Request for Proposal ("RFP") #17-ODU-02-JNH dated July 8, 2016;
 - iii. Addendum #1 dated July 25, 2016, Addendum #2 dated August 11, 2016, and Addendum #3 dated August 16, 2016;
 - iv. Contractor's September 1, 2016 response to referenced RFP and associated Addenda, submitted on September 7, 2016; and
 - v. Contractor's February 24, 2017 *Best and Final Offer ("BAFO")* submitted in response to the University's February 10, 2017 email request for same.
- c) In the event of any conflict between this agreement and any of the above referenced documents, the provisions of this Agreement shall control.

4. **SCOPE OF SERVICES - GENERAL:**

- a) This Agreement will apply to Products and related Services to be provided in the United States only.
- b) Standard Services under this Agreement is provided during CONTRACTOR's normal business hours 8:00am-5:00pm Monday through Friday exclusive of core national holidays observed by CONTRACTOR. Extended coverage Services outside of standard coverage hours may be available on a per-event charge or fixed monthly premium.
- c) The Products and Services under this Agreement are subject to availability. If CONTRACTOR is unable to fulfill a University order in accordance with the terms of this Agreement CONTRACTOR may substitute an equal or better model at a mutually agreed upon price. As CONTRACTOR introduces new Products these Products may be added to this Agreement, at a mutually agreed upon price.
- d) The University may request from the CONTRACTOR at any time during this agreement, including the Initial Term and/or any subsequent renewal periods, *Other Services* not covered herein, but related to the University's current programs, specifically (i) Multi-Functional Devices ("MFD"), and (ii) Desktop Managed Print Services ("MPS"). Any applicable cost considerations for Other Services, shall be mutually negotiated and agreed to by both Parties, as necessary.

5. **SCOPE OF SERVICES – SPECIFIC:**

a) **Hardware Services:**

- i. Hardware Services: Provided under this agreement include labor and parts required to maintain covered Hardware in a normal operating condition as set forth in the Hardware Product specifications detailed on Contractor.konicaminolta.us.
- ii. Hardware Exchange: Will be used for Products where on-site support is not available. CONTRACTOR will employ a 'hot swap' process and will provide packaging for return of the original unit. University is responsible to facilitate the reconnection and return process.
- iii. Auto Add of Hardware: Where the use of 'Fleet Device Monitoring' as part of a managed print program has been agreed to it will be used to detect new devices and may add such devices to this agreement at pre-established price levels. The University will be notified via email and may reject the addition of the device(s) by contacting CONTRACTOR.

- iv. User Training: CONTRACTOR trains University to operate all Products. Training consists of an overview of Hardware and Software. CONTRACTOR provides on-going training throughout the Agreement, at no additional charge. Production print Hardware, have advanced user functions that may require advance training. Advanced training on Production Print Product will be at an additional charge.
- v. Preventative Maintenance: Shall be performed as needed to ensure optimal operation of Hardware. This includes component replacement, adjustments and cleaning. End-user maintenance as defined in the Hardware user guide is not covered. Repairs and/or Services that fall outside the scope of this agreement may be billed at prevailing hourly rates with prior authorization. This includes but is not limited to abuse/misuse, alteration or modification, 3rd party interference, use of non-standard supplies, usage beyond recommended operating parameters, theft, neglect, fire, water, casualty or other natural force. Failure to authorize repair and/or Services may result in suspension or termination of this agreement.
- vi. Site Environment: University shall be responsible to insure that Hardware and Software are placed in a location that meets manufacturer's requirements (available on the CONTRACTOR website) including space, power, network, temperature and humidity. Electrical power must meet voltage, amperage and electrical noise level requirements. CONTRACTOR personnel will be granted reasonable and safe access to perform Services when required.
- vii. Prerequisite to Service: For Hardware not previously under a continuous maintenance agreement, Hardware must be in good working condition before the start of this agreement. Remedial Service may be required to bring the Hardware to proper operating standards and the labor and parts associated will be billed at prevailing rates. A quote will be provided for University approval before work begins.
- viii. Initial Installation: Physical installation, removal of packing material and initial setup of Hardware will be performed by CONTRACTOR using default configuration settings at the location specified by University. Application of custom settings can be requested prior to installation. CONTRACTOR reserves the right to charge additional fees for custom settings.
- ix. Relocation and Move Preparation: When requested, relocation Services will be performed and billed at prevailing rates. Coverage at the new location is subject to Service availability and acceptance by CONTRACTOR.

- x. Service Replacement: CONTRACTOR may replace Hardware, at no additional cost to University, with a comparable unit when repair of the original Hardware is not practical or economically feasible.
- xi. Color Calibration and Management: Routine and periodic color calibration and management of color print profiles is not covered by this agreement.
- xii. Additional University Requested Services: University may request additional Services be performed such Services will be quoted and performed at mutually agreed upon rates.

b) **Supplies and Consumables:**

- i. Consumable Supplies: CONTRACTOR will provide toner and staples for covered Hardware on an as needed basis. Wide format Hardware may have other coverage options and/or exclusions. The consumable supplies provided are the property of CONTRACTOR until they are consumed and are intended to be used exclusively in the covered Hardware. University bears the risk of loss of unused supplies in the event of theft, employee misconduct, fire or other mishap.
- ii. Supply Source: CONTRACTOR supplies will be used under this agreement for CONTRACTOR Hardware. For non-CONTRACTOR Products CONTRACTOR will provide fully compatible toner and print cartridges for use in covered Hardware.
- iii. Supply shipping and handling: CONTRACTOR may charge a supply shipping and handling fee on each periodic invoice regardless of whether supplies are shipped in any particular period. The current calculations for such fees can be found at <http://Contractor.konicaminolta.us/faqs>. CONTRACTOR reserves the right to charge for expedited supply orders (i.e. overnight delivery) where requested by University.
- iv. Auto Supply Delivery: If part of a managed Services Agreement, requires a designated University contact(s) to confirm supply shipments via email and maintain delivery address information via MyKMBS.com or other agreed upon methodology.
- v. Expected Yield: Pricing under this agreement is based on published and commercially reasonable expectations of supply and consumables consumption. At its discretion, CONTRACTOR may perform an audit of supply/consumables consumption and Hardware usage data to determine consumption levels. In the event the actual consumption levels materially exceed (20%) of the levels used to determine contract pricing, CONTRACTOR shall have the right to invoice for the excess consumption.

c) **Software and Solutions:**

- i. Licenses: CONTRACTOR hereby grants the University the non-exclusive, non-transferable right to install, and use the Software, updates, upgrades and patches provided this Agreement is effective.
- ii. License Reactivation: University is responsible to safeguard Software license keys. CONTRACTOR may charge a reactivation fee in the event license keys need to be regenerated.
- iii. Data Backups and restoration: University is responsible to manage server data backups. CONTRACTOR recommends adherence to industry best practices for backup procedures. In the event of a catastrophic data loss, the University is expected to restore the environment and data to prior state.
- iv. Access: University shall provide CONTRACTOR personnel with access to the servers and/or Hardware where the Software is installed. University shall arrange and insure that one of its employee's or designated agents is present at all times when CONTRACTOR is performing maintenance and support Services.
- v. Solutions warranty: Any Software sold as part of this Agreement is sold "as is" and without any warranties as to performance or merchantability or any other warranties whether express or implied. To the extent permitted by law, CONTRACTOR disclaims all other warranties, express or implied, including but not limited to implied warranties of merchantability and fitness for a particular purpose, with respect to the Software and the accompanying written materials. In no event shall CONTRACTOR be liable for any damages whatsoever (including but not limited to damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) which results from an inability to use this Software, even if CONTRACTOR has been advised of the possibility of such damages.
- vi. Solution Integration: With print output devices covered under this or other agreement may be affected by existing University Software, configuration changes or other network environment issues. CONTRACTOR reserves the right to assess additional charges to resolve complex integration issues, including situations where the solution was initially provided by CONTRACTOR.

d) **Software Maintenance (Level 0) and Helpdesk (Level 1):**

- i. Maintenance Support levels: Coverage for both level 0 (Software maintenance) and level 1 (Helpdesk support) begin at time of installation of Software at University's location. Level 1 support is only available when level 0 support is in

effect.

- ii. Start of Software Service: Rules may vary by OEM, Software activation is expected within 30 days of purchase or install whichever comes first.
- iii. Current version: University is required to keep Software and OS at the latest recommended version levels. Failure to perform recommended updates may result in suspension and/or termination of Services under this agreement
- iv. Software Maintenance Level 0: University support offered if chosen;
- v. Patches and Updates: University is eligible to receive periodic maintenance patches, hot-fixes and updates for licensed Software covered under maintenance. Excluded are full version upgrades (i.e. v1.2 to v2.0) and the installation Services required to install patches, hot-fixes and updates.
- vi. Access to patches and updates: University will be provided access to a website operated by CONTRACTOR or 3rd party supplier where patches and updates are accessible for download.
- vii. Solutions Helpdesk Support Level 1: CONTRACTOR's expert helpdesk support is available to the University to assist with covered Software solutions including, PageScope Enterprise, Print Groove, Dispatcher Pro and select third (3rd) party solutions. Included are helpdesk Services related to end-user support, baseline workflows, features and administrative functions involved in the operation of the Software and workflows. University participation is required for remote and/ or on-site support.

e) **Professional Services, Solutions and Network:**

- i. Initial Assessment: University agrees to provide or assist in gathering network configuration details needed by CONTRACTOR to perform contracted Services.
- ii. Basic Network Services (BNS): Where offered, covers common network integration with typical network schema and print/scanning requirements. CONTRACTOR reserves the right to assess additional fees depending on the extent of the network integration requirements needed.
- iii. Basic Production Services (BPS): Complex Products are offered with comprehensive end-user training (BPS). The training is crucial to proper Hardware operation and to ensure the University achieves satisfactory output. Service related to operator deficiency will be performed and billed at prevailing rates. Additional end user training when requested can be provided and will be billed at prevailing rates.

- iv. Technical Pilot: When required University agrees to participate in a technical pilot where Software installation, configuration, use cases and integration requirements are determined. University also agrees to participate in testing of the system(s).
- v. Solution Baseline: is defined as the operating level and configurations agreed to by University and CONTRACTOR upon completion of the technical pilot and testing.
- vi. Enhancements: For professional Services beyond the baseline capabilities of the solution are available at an additional charge.
- vii. Digital Connected Support: CONTRACTOR's expert helpdesk support is available at a fee to the University to assist with issues associated with device connectivity to network, printing from desktop applications, graphics application, scanning and support on many other digital machine functions. Configuration updates that are the result of changes to the University network environment are not included.
- viii. University Data: CONTRACTOR shall not be liable for any claims, damages and cost relating to loss of data or disclosure of data due to acts or omissions of University or its employees, end-user errors or release of administrator password.
- ix. Hard Drive Security: If 'bizhub SECURE' or a comparable option has been ordered, CONTRACTOR will provide advanced security Services at a fee. These Services include real-time hard-drive encryption (level 2 encryption – equivalent to current Department of Defense standards and US Air Force standards) and document data security through disk over-write as well as user mailbox data deletion, HDD encryption, HDD lock and administrative password (according to University policy). At the University's request, for an additional fee CONTRACTOR shall return the hard drive to the University for disposal. A replacement hard drive will be installed and re-initialized with the generic device control programs. Additional Services are subject to hourly fees plus the cost to replace the Hard Drive (availability of options depends on model and configuration).
- x. Professional Services Projects: When requested by the University, CONTRACTOR can provide professional Services associated with the enhancement of the University's printing, network connectivity, end of life hard drive disposal, fleet management, user experience, production management, job tracking and document environment. Such projects will be quoted and upon approval, performed and billed at prevailing hourly or per-instance rates.

f) **Meter and Related:**

- i. **Meter Readings:** University agrees to provide CONTRACTOR with a timely meter reading prior to the end of the billing period to be used to generate maintenance invoices. Should the University fail to provide CONTRACTOR with timely meter reads CONTRACTOR reserves the right to estimate meter readings. Repetitive failure for University to provide timely and accurate meter readings may result in the conversion of associated Hardware to flat monthly fee billing.
- ii. **Aggregated Meter Billing:** Contracts escalation will occur at the annual anniversary of the initial establishment of the usage pool.
- iii. **Electronic Meter Collection:** CONTRACTOR offers vCare and other network based machine data collection methods for University convenience, billing accuracy and to enhance Service effectiveness. Unless specifically directed otherwise, CONTRACTOR will enable vCare or network monitoring on capable Hardware.
- iv. **Fleet Device Monitoring:** Shall the University agree, CONTRACTOR will install and maintain server based Software to monitor the printing devices on the University's network for an additional fee. If the monitoring Software cannot reliably operate in the University's environment for any reason, CONTRACTOR reserves the right to suspend or terminate Services under this agreement.
- v. **Definition of a Print:** Each 8.5"x11" image generated by the covered Hardware is considered a 'print'. Larger paper sizes result in images that are a multiple of a single print based on length (17"=2 prints, 27" = 3 prints, 36" = 4 prints and over 36" =5 prints). For 'wide format' Hardware, one square foot of output equals one print. Duplex images count as twice the rate of simplex prints.

g) **Desktop Printing Assessments:**

- i. As may be requested by the University, the CONTRACTOR will perform 'targeted' assessments of current *Desktop Printing* environments ("Desktop"), which is still in use across the University.
- ii. The Contractor may use University provided data, data generated through the BEACON software application, or other data as necessary to complete assessments, report findings and make recommendations.
- iii. If after any assessment the CONTRACTOR recommends that a current Desktop environment should transition to the University's MFD Program:
 - i. The University will purchase the recommended product(s) directly from the CONTRACTOR; and

- ii. The associated CPI for the new MFD fleet product(s) shall be the then current agreed to CPI pricing for both (i) Black & White, and (ii) Color copies.
- iv. If after any assessment the CONTRACTOR recommends that a current Desktop environment should transition to a *Managed Print Services ("MPS")* program:
 - i. The CONTRACTOR and the University shall mutually negotiate and agree to the "scope" of a MPS Program, including covered consumables and associated CPI pricing;
 - ii. The University may purchase the recommended product(s) directly from the CONTRACTOR, or another party if so desired;
 - iii. The associated CPI for the new MFD fleet product(s) shall be the then current agreed to CPI pricing for both (i) Black & White, and (ii) Color copies.
- v. Any transitioned Desktop environment, whether to the MFD or MPS Program, shall fall under the then current contract period for the MFD Program;
- vi. The CPI pricing for any and all renewals for a transitioned Desktop environment to either the MFD or MPS Program shall follow the renewal and pricing guidance provided in below paragraph 7.b., Maintenance Services.

6. TRANSITION OF CURRENT UNIVERSITY MFD FLEET:

- a) The CONTRACTOR and the University shall work collaboratively in the development and implementation of a transition strategy for the University's current MFD fleet.
- b) The University will issue purchase orders referencing this Agreement for the various CONTRACTOR replacement MFD's, and will work with CONTRACTOR to develop the associated schedules to remove existing fleet MFD's and replace same with the CONTRACTOR's MFD fleet.
- c) It is the University's intent to remove and replace approximately five (5) MFD's daily, with an expectation that the entire MFD fleet can be transitioned on or before December 31, 2017.
- d) The University shall be responsible for taking the current MFD fleet 'off-line', as necessary, through the transition period.
- e) The CONTRACTOR shall be responsible for installing the replacement MFD's and working with the University to bring same 'on-line'.

- f) The CONTRACTOR shall be responsible for the removal, transfer and storage of the University's current MFD fleet, with storage at the CONTRACTOR'S warehouse located at 911 Live Oak Drive, Suite 106, Chesapeake, Virginia 23320.
- g) The University shall be responsible for coordinating with a third-party Buyer, the removal of the stored fleet from the CONTRACTOR'S warehouse on a weekly basis, or more frequently as may be necessary to support the transition.

7. **PRICING:**

a) **Products:**

- i. Product pricing, as specified in *Attachment A, Contract Pricing*, shall be fixed for the Initial Contract Period ending December 31, 2019, or as otherwise mutually agreed to.
- ii. Thereafter, pricing for "products" may be increased annually by an amount not to exceed five percent (5%) over the previous year pricing.
- iii. In the event CONTRACTOR needs to revise, modify or change Attachment A, CONTRACTOR may provide such revisions, modifications or changes to University in the form of an email. University's affirmative response to such email shall constitute acceptance of any revisions, modifications or changes Attachment A pricing and shall be binding on both Parties.

b) **Maintenance Services:**

- i. Maintenance Service pricing, as specified in *Attachment A, Contract Pricing*, hereinafter referred to as *Cost Per Impression ("CPI")*, shall be fixed for the Initial Contract Period ending December 31, 2019, or as otherwise mutually agreed to.
- ii. Starting no later than sixty (60) days prior to the end of the Initial Contract Period, and/or any subsequent twelve (12) month renewal period(s), the CONTRACTOR and the University shall review the then most current CPI pricing, and may mutually negotiate and agree to any changes to same for subsequent twelve (12) month contract periods.
- iii. Any and all changes to the CPI pricing, whether decreased or increased, shall be based on, but not limited to:
 - The University's then current MFD fleet size and configurations;
 - The University's combined annual meter readings of MFD's, separated by (i) Black & White, and (ii) Color copies; and
 - The then current market conditions and associated trends that may impact MFD and/or similar programs;

- iv. Any and all changes to the CPI as described herein, shall be mutually agreed to and binding on both Parties, regardless of percentage decrease or increase.
- v. Related to each at an increase not to exceed ten percent (10%) per year. Once Hardware is installed Service pricing shall be fixed for a period of twelve (12) months (defined as the "Initial Install Term") and at the prices specified on the Schedule A in effect at the time of installation. Thereafter, coverage for individual units will automatically renew for successive one (1) year terms at an annual rate not to exceed ten percent (10%).

8. PAYMENT TERMS:

- a) Payment is due within thirty (30) days from the date of the invoice. University shall be responsible for paying all applicable sales, use, personal property or other taxes when due. The use of an eProcurement solution, credit card, procurement card or similar payment device may incur additional fees.
- b) For an outright Hardware purchase, risk of loss shall transfer upon delivery of the Hardware to University's designated location(s) and title shall transfer upon payment in full for such Hardware. University agrees to the filing of any liens and/or UCC security agreements (including UCC-1.)
- c) Cyclical invoices shall be prepared in a format mutually agreed upon during implementation, fully described in Schedule C. CONTRACTOR and University shall use Schedule C to determine invoicing details prior to implementation. Unless University provides CONTRACTOR with a sales tax exemption certificate or direct payment permit, sales tax shall be identified on the total taxable invoiced amount.
- d) Any of the following shall constitute an event of default under this Agreement:
 - Any breach or failure of University to make any payment required hereunder or under any Schedule when due, or the failure of University to otherwise observe or perform any of its obligations, covenants or undertakings under this Agreement or any Schedule;
 - i. Any misrepresentation or breach of warranty or covenant by University;
 - ii. If University, or any guarantor of University's obligations hereunder or under any Schedule, becomes insolvent or makes an assignment for the benefit of creditors or a receiver, conservator or liquidator of University, or all or a substantial part of its assets is appointed or a petition is filed by or against University under the Bankruptcy Codes or under any other insolvency law;
 - iii. No express or implied waiver by CONTRACTOR of any event of default hereunder

shall in any way be, or be construed to be, a waiver of any future or subsequent event of default. The failure or delay or waiver of any such right in the future and any single or partial exercise of any particular right by CONTRACTOR shall not exhaust such rights or constitute a waiver of any other right provided herein.

- e) In the event of default by University, CONTRACTOR may, in its sole and absolute discretion:
- i. Declare the entire balance of the unpaid payments for the full term immediately due and payable, sue for and receive all payments and any other payments then accrued or accelerated under this Agreement or any other Agreement, plus the estimated fair market value of the Hardware at the end of the originally scheduled term;
 - ii. Charge University interest on all payments due at the rate of up to eighteen percent(18%) per year from the date of default until paid, but in no event more than the maximum rate permitted by law;
 - iii. Refuse to continue to Service Hardware and require the University to return the Hardware to a location specified by CONTRACTOR and, in the event University shall fail to return the Hardware, enter upon the premises peaceably with or without legal process where the Hardware is located and repossess the Hardware, or furnish Services on a time and materials basis, without prejudice to any other remedies that CONTRACTOR may have. Such return or repossession of the Hardware shall not constitute a termination of this Agreement unless CONTRACTOR expressly notifies University in writing. In the event the Hardware is returned or repossessed and unless CONTRACTOR has terminated this Agreement, CONTRACTOR will attempt to sell or re-rent the Hardware to such persons and upon such terms as CONTRACTOR may determine, at one or more public or private sale, with or without notice to University, and apply the net proceeds after deducting the costs and expenses of such sale or re-rent to University obligations with University remaining liable for any deficiency and with any excess being retained by University.

9. **TERMS AND CONDITIONS:**

- a) **ADVERTISING:** Contractor agrees that no indication of such sales or services to the University will be used in product literature or advertising during the contract term of any contract award for supplies, equipment, or services, unless agreed to in writing by the University.

- b) **APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia, § 23-38.90*). The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.
- c) **APPLICABLE LEGISLATION AND MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia, specifically § 23-38.90 of the Code of Virginia and its associated Rules Governing the Procurement of Goods, Services, Insurance and Construction (“the Rules”) and the Purchasing Manual for Universities of Higher Education and their Contractors and any revisions thereto, which are hereby incorporated into this contract in their entirety. A copy of the manual is accessible on the Internet at www.odu.edu/procurement under “Information for Contractors”.
- d) **ANTI-DISCRIMINATION:** Contractor certifies to the University that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians with Disabilities Act, the Americans with Disabilities Act and § 10. of the Rules. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipients religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*the Rules §36.E.*)

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - 2. The Contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- e) **ANTITRUST:** By entering into this contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- f) **ASSIGNMENT OF CONTRACT:** This contract shall not be assignable by the Contractor in whole or in part without providing the University notice. University may not assign this Agreement, without CONTRACTOR express written consent.
- g) **AVAILABILITY OF FUNDS:** The University shall be bound hereunder only to the extent of the funds available or which may hereafter become available during each subsequent fiscal year and/or contract term, as applicable, and any requirement by Contractor for any total or partial compensation or payment by the University of unpaid fees, whether current or future, for lost profit and/or as liquidated damages in the event of early termination of the then current term if for other than breach by the University is prohibitive.
- h) **AUDIT:** Contractor agrees that they shall retain all books, records, and other documents relative to any resulting contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The University, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- i) **AUTHORIZED CONTRACT PARTICIPATION:**
 - i. In accordance with the University's Rules Governing Procurement of Goods, Services, Insurance and Construction ("Rules Document"), specifically §6, Cooperative Procurement, this contract shall allow any public body, public or private health or educational University's, or Old Dominion University's affiliated agencies and/or

corporations, access and use of any subsequent contract(s), as authorized by the Contractor(s).

- ii. Participation in this cooperative procurement is strictly voluntary. If authorized by the CONTRACTOR, this contract may be extended to the entities as indicated above to purchase at contract prices in accordance with contract terms and conditions. The CONTRACTOR shall notify Old Dominion University in writing of any entities accessing the contract. No modification of this contract or execution of a separate contract is required to participate. The CONTRACTOR will provide semi-annual usage reports for all entities accessing the contract. Participating entities shall place their own orders directly with the CONTRACTOR, and shall fully and independently administer their use of the contract, including contractual disputes, invoicing and payments, without direct administration from Old Dominion University. Old Dominion University shall not be held liable for any costs or damages incurred by any other participating entity as a result of any authorization by the CONTRACTOR to extend participation and use of the contract.
- iii. It is understood and agreed that Old Dominion University is not responsible for the acts or omissions of any entity, and will not be considered in default of the contract no matter the circumstances.
- iv. Use of this contract does not preclude any participating entity from using other contracts or competitive processes as the need may be.

j) **BUSINESS PURPOSE:**

University warrants and represents that the Products purchased under this Agreement will be used for business purposes only. University also warrants that Products will be used directly by the University and will not be made available for resale without the express written consent of CONTRACTOR.

- k) **CANCELLATION OF CONTRACT:** The University reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation. Cancellation does not entitle University to a refund of funds received by the Contractor prior to the date of cancellation.

l) CHANGES TO THE CONTRACT:

Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. The University may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the University a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the University's right to audit the Contractors' records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the University with all vouchers and records of expenses incurred and savings realized. The University shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the University within thirty (30) days from the date of receipt of the written order from the University. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Purchasing Manual for Institutions of Higher Education and their Vendors*. Neither the existence of a claim nor a dispute resolution process, litigation or any

other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the University or with the performance of the contract generally.

- m) **COMPANY PERSONNEL STANDARDS:** The Contractor shall employ and propose to manage only competent and satisfactory personnel and shall provide a sufficient number of employees to perform the required services efficiently and in a manner satisfactory to the University. If the Contract Administrator or designee, notifies the Contractor in writing that any person employed on this Contract is incompetent, disorderly, or otherwise unsatisfactory, such person shall not be assigned to this Contract without the prior written consent of the University.
- n) **CONFIDENTIALITY:**
- i. "Confidential Information" means any information provided by the disclosing party (the "Disclosing Party") to the receiving party ("Receiving Party") in tangible or intangible form; provided, that such information is conspicuously marked "Confidential".
 - ii. The Receiving Party may use or disclose the Disclosing Party's Confidential Information only where such use or disclosure is necessary to perform its obligations under this Agreement. CONTRACTOR and University agree to use reasonable care (the same being not less than that employed to protect its own proprietary information of like importance which it does not desire to have published or disseminated) to safeguard Confidential Information and shall not at any time, or in any manner, either directly or indirectly, divulge, disclose or communicate Confidential Information to any third party.
 - iii. Confidential Information shall not include any information, however designated, that:
 - a) is or becomes known publicly through no fault of the Receiving Party;
 - b) is learned by the Receiving Party from a third party whom the Receiving Party believes in good faith is entitled to disclose it;
 - c) is already known to the Receiving Party before receipt from the Disclosing Party as shown by the Receiving Party's written records;
 - d) is independently developed by the Receiving Party as shown by the Receiving Party's written records; or
 - e) is otherwise required to be disclosed by applicable law.
 - iv. Where the Receiving Party is required to disclose Confidential Information pursuant to a lawful order of a court of competent jurisdiction, administrative agency or other governmental authority, the Receiving Party shall promptly notify the Disclosing Party of the proceeding to allow the Disclosing Party an opportunity to obtain a protective order or equivalent.

- v. All Confidential Information shall remain the exclusive property of the Disclosing Party. The Disclosing Party's disclosure of Confidential Information shall not constitute an express or implied grant to the Receiving Party of any license or other rights to or under the Disclosing Party's patents, copyrights, trade secrets, trademarks, or other intellectual property rights.
- o) **COVENANT NOT TO HIRE OTHER PARTY'S PERSONNEL:**
 - i. University and CONTRACTOR covenant and agree that during the term of this Agreement, and for twelve (12) months thereafter, neither party shall retain the Services (whether as an employee, independent contractor or otherwise) of an employee of the other party (or ex-employee within six (6) months of such employee's termination of employment).
 - ii. If either party elects to retain the Services of an employee of the other party, it agrees to pay the other party a reasonable and mutually negotiated and agreed to compensation, provided the employee was directly involved with the provision of the Services described in this Agreement.
 - iii. This Section shall not apply to individuals responding to a general advertisement of employment.
- p) **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the University, after due oral or written notice, may procure them from other sources. This remedy shall be in addition to any other remedies which the University may have.
- q) **DRUG-FREE WORKPLACE:** During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractors workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitation or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section a *drug-free workplace* means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution,

dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

- r) **ENVIRONMENTAL LIABILITY:** Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the Contractor, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or by its agents, officers, employees, subcontractors, consultants, sub consultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of any resulting Contract or related activities, shall be paid by Contractor. This paragraph shall survive the termination, cancellation or expiration of this Contract.
- s) **EXCLUSIVITY:** The University reserves the right to procure goods or services covered under this contract from a third party. If there is no fault on the part of the Contractor and they are willing and capable of providing the goods or service, Contractor would be offered first right of refusal. If the goods or service cannot be effectively provided by the Contractor, it would be deemed in the University's best interest to seek procurement from a third-party provider.
- t) **FORCE MAJEURE:**
Neither party shall be responsible for delays or failure in performance of this Agreement (other than failure to make payment) to the extent that such party was hindered in its performance by any act of God, labor dispute, or any other occurrence beyond its reasonable control.
- u) **INSURANCE:** The Contractor certifies that the Contractor and any subcontractors will maintain the following insurance coverage's during the entire term of the contract and that all insurance coverage's will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.
1. Worker's Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
 2. Employer's Liability - \$100,000.
 3. Commercial General Liability - \$1,000,000 per occurrence. Commercial

General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - \$1,000,000 per occurrence.

v) **INDEMNIFICATION:**

- i. CONTRACTOR agrees to indemnify, defend and hold harmless the University, its officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the Contractor/any services of any kind or nature furnished by the Contractor, provided that such liability is not attributable to the sole negligence of the University or to failure of the University to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.
- ii. To the extent permissible by applicable law, the University agrees to indemnify, defend and hold harmless CONTRACTOR, its officers, directors, employees and agents from all loss, liability, claims or expenses (including reasonable attorneys' fees) arising out of University's use of the Hardware, including but not limited to liabilities arising from illegal use of CONTRACTOR Products as well as bodily injury, including death, or property damage to any person, unless said injuries, death or property damage was caused solely as the result of a negligent or intentional act or omission by CONTRACTOR.

w) **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Contractor certifies that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

x) **LICENSE GRANT:**

Subject to the terms of any license agreement provided to University in conjunction with the Product, CONTRACTOR hereby grants to University a non-exclusive, nontransferable, limited license to use the Product for its day-to-day operations at University's designated location(s). Neither University or anyone under University's control shall make or be permitted to make copies of or reproduce any Software provided by CONTRACTOR.

y) **LIMITATION OF LIABILITY:**

To the maximum extent permitted by applicable law, the Contractor will not be liable under this contract for an indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal

injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

- z) **NOTICES:** Whenever any notice to a party is required hereunder or within the Agreement, such notice shall be in writing, addressed to the party's address set forth below.

If to University:

Old Dominion University
Paul Lebetter
Manager, Converged Technologies
1024 Koch Hall
Norfolk, VA 23529
ggenard@odu.edu

If to Contractor:

Konica Minolta Business Solutions U.S.A., Inc.
500 Day Hill Road Windsor, CT 06095
Attn: Contract Administration
Tele: (860) 902-2222
Email: MasterAgreements@Contractor.konicamonolta.us

aa) **PAYMENT PROVISIONS:**

1. Contractor is hereby obligated to:
 - i. Submit all invoices for goods/services ordered, delivered and accepted directly to:
 - a) Old Dominion University
Finance Office
Rollins Hall, Room 202
Norfolk, Virginia 23529; or
 - b) invoice@odu.edu
 - ii. All invoices shall include:
 - a) Vendor Name, 'Remit To' Address, Federal Tax Identification Number
 - b) Invoice Number, Invoice Date, Payment Terms and Discounts, and Payment Due Date;
 - c) Purchase Order Number;
 - d) University Contact Number;
 - e) Description of provided goods/services;

- f) Quantity delivered per line item;
- g) Unit and Extended Cost per line item; and
- h) Total Amount Due

iii. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

iv. All goods or services provided shall be billed by the Contractor at the agreed to contract price.

v. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be researched and challenged. Upon determining that invoiced charges are not reasonable, the University shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section does not relieve the University of its Prompt Payment Obligations.

2. **To Subcontractors:**

a. The Contractor is hereby obligated:

(1) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the University for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or

(2) To notify the University and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.

b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the University, except for amounts withheld as stated in (2) above.

c. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the University.

bb) **ORIGINAL DOCUMENT:**

University further agrees (a) that facsimile or electronic signatures shall be accepted as original signatures; and (b) that this Agreement or any document created pursuant to this Agreement, may be maintained in an electronic document storage and retrieval system, a copy of which shall be considered an original. Neither party shall raise any objection to the authenticity of this Agreement nor any document created hereunder, based on either the use of a facsimile signature or the use of a copy retrieved from an electronic storage system.

cc) **RISK OF LOSS; INSURANCE:**

Upon delivery to University's designated location, University shall bear all risk of theft, loss or damage not caused by CONTRACTOR to all Products. University shall maintain in full force throughout the term of this Agreement such policies of insurance in order to satisfy University's obligations hereunder.

dd) **SELLER'S AGENTS:**

University acknowledges that it has been advised that no agent, employee, or representative of CONTRACTOR has any authority to bind CONTRACTOR to any affirmation, promise, representation, or warranty concerning any of the Products therefore, unless an affirmation, promise, representation, or warranty is specifically set forth in this Agreement, it does not form a basis of this bargain and shall not be enforceable against CONTRACTOR.

ee) **SEVERABILITY:** The provisions of this contract shall be deemed to be severable, and should any or more of such provisions be declared or adjudged to be invalid or unenforceable, the remaining provisions shall be unaffected thereby and shall remain in full force and effect.

ff) **TAXES:** Sales to agencies of the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of Federal excise and transportation taxes. Old Dominion University's excise tax exemption registration number is 212-057-8029.

gg) **TESTING AND INSPECTION:** The University reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications and/or scope of services.

hh) **TERMINATION WITH CAUSE:**

1. In the event that the Contractor shall for any reason or through any cause be in default of the terms of the contract, the University may give the Contractor written notice of such default by certified mail/return receipt requested.
2. Prior to termination of the contract, the University shall give the Contractor ten (10) calendar day's written notice, during which the Contractor may "cure" the cause of the termination. If cured to the satisfaction of the University within said ten (10) days, the University may rescind the notice of termination. If Contractor does not, the termination for cause shall become effective at the end of the ten-day (10) notice period.
3. In the alternative, the University may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor that the causes of termination will be remedied in a time and manner which the University finds acceptable. If at any time more than ten (10) days after the notice of termination, the University determines that Contractor has not or is not likely to cure the causes of termination in an acceptable manner or within the time allowed, then the University may immediately terminate the contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.
4. Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.
5. In the event of violations of law, safety or health standards and regulations, the contract may be immediately cancelled and terminated by the University and provisions herein with respect to opportunity to cure default shall not be applicable.

ii) **TERMINATION FOR CONVENIENCE:**

- i. CONTRACTOR allows University the right to terminate this Agreement for convenience with sixty (60) days prior written notice as of the effective date thereof and paying a lump sum termination fee equal to three (3) months of Service fees based on actual twelve (12) month billing. Termination for convenience will apply to pending or open orders that have yet to be shipped to University locations.

ii. If either Party breaches any of its obligations under this Agreement by an act of commission or omission, the non-breaching party hereto may notify the breaching party of the specific breach and demand that the breach be cured. That notice shall also specify with particularity any and all reasonable actions that must be taken by the breaching party to cure the breach. Unless the breaching party then cures the breach (i.e., by taking at least those reasonable actions specified in the notice) and notifies the non-breaching party of the cure within thirty (30) business days from receipt of the non-breaching party's notice, the non-breaching party shall then have the right to terminate this Agreement at any time after the thirty calendar day period by giving notice of termination to the breaching party. The termination shall be effective upon receipt of the termination notice by the breaching party, but the termination shall not operate to extinguish or prejudice the other rights and remedies of the non-breaching party with respect to the breach. However, if the breaching party has cured the breach and given notice of the cure to the non-breaching party before it receives the termination notice, the termination notice shall have no effect, and this Agreement shall remain in effect unless and until it is otherwise terminated. Termination of this Agreement due to an uncured breach by a party hereto shall cause all Schedule's under this Agreement to likewise terminate as of the termination date.

jj) **USE OF PURCHASE ORDERS:**

University agrees that any purchase order or other University documentation issued to CONTRACTOR covering the Products shall be issued for purpose of authorization and University's internal use only. Any terms and conditions contained in any such University documentation shall not modify or add to the terms and conditions of this Agreement.

kk) **UTILIZATION OF SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES:** The following reports shall be submitted as indicated:

- 1) Periodic Progress Reports/Invoices: The Contractor shall provide a report on involvement of small businesses and businesses owned by women and minorities on a quarterly basis to the Contract Officer. This report will specify the actual dollars contracted to be spent to date with such businesses, actual dollars expended to date with such businesses, and the total dollars planned to be contracted with such businesses on this contract. This information shall be provided separately for small businesses, women-owned businesses and minority businesses.
- 2) Final Actual Involvement Report: The Contractor shall submit to the Contract Officer, within 10 days of contract completion, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of

the contract. At a minimum, this report shall include for each firm contracted with and for each such business class (i.e., small, women-owned) a comparison of the total actual dollars spent on this contract with the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated contract value.

- 3) Reporting requirements shall be waived during the initial term and/or renewal periods as long as the Contractor maintains current DSBSD certification status. In the event the Contractor's certification status expires or lapses, the Contractor may be required to provide quarterly SWaM report as required.

II) **WARRANTIES:**

i. **HARDWARE WARRANTY**

Contractor warrants that hardware manufactured by Konica Minolta, Inc. Or one of its affiliates shall perform in accordance with the performance specifications.

ii. **SERVICE WARRANTY**

Contractor warrants that the services will be performed in a professional manner in accordance with generally applicable industry standards.

iii. **DISCLAIMER OF WARRANTY**

Contractor makes no other warranties whatsoever, express or implied, with regard to the hardware products, service, software or its installation, except as otherwise provided in this agreement, and expressly excludes all implied warranties including, but not limited to, warranties of merchantability, non-infringement, and fitness for a particular purpose.

iv. **REMEDY LIMITATIONS**

Contractor's sole liability (and university's exclusive remedy) for any breach of the product warranty shall be repair of the hardware or replacement of a nonconforming part, at the option of contractor. Contractor's sole liability (and university's exclusive remedy) for any breach of the service warranty shall be for contractor to re-perform any deficient services, or, if contractor is unable to remedy such deficiency within 30 days, to void the invoice for the deficient services. Contractor shall have no obligation with respect to a warranty claim (i) if notified of such claim more than 30 days after delivery of the hardware or services or (ii) if the claim is the result of the use of any third-party software or hardware, or the actions of university or a third party. The parties waive their respective rights to special, consequential, exemplary, incidental or punitive damages (including, without limitation, damages for interruption of services, loss of business, loss of profits, loss of revenue, loss of data, or loss or increased expense of use), whether in an action in contract, warranty, tort (including, without

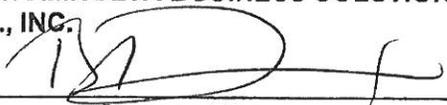
limitation, negligence), or strict liability, even if the parties have been advised of the possibility of such liabilities, for any proven breach of this agreement. The parties reserve the right to recover contract damages allowed via this agreement. The aggregate liability of each party under this agreement or any schedule shall not exceed the total payments made by university to contractor in the twelve (12) months immediately preceding the occurrence of the event giving rise to such liability.

mm) **WAIVER:**

Failure by CONTRACTOR to enforce any provision of this Agreement or failure to exercise those rights or elections provided for herein, shall in no way be considered a waiver of such provisions, rights or elections, or in any way impact CONTRACTOR's right to later enforce or exercise the same or other provisions, rights or elections, it may have under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

**KONICA MINOLTA BUSINESS SOLUTIONS
U.S.A., INC.**

By: 
Terence Dixon

Title: President Direct Channel

Date: 11/1/2017

OLD DOMINION UNIVERSITY

By: 
Gregory DuBois

Title: Vice President, Finance & Administration

Date: 10/25/17