

## VAR Partner Agreement

**The parties to this Agreement, intending to be bound to the terms hereof, agree that clicking "I accept | Estoy de Acuerdo" below shall be deemed to be a valid "signature" evidencing acceptance of this Agreement.**

This Agreement is effective immediately ("Effective Date") and is entered into by and between KONICA MINOLTA PRINTING SOLUTIONS U.S.A., INC. ("KMPS"), a Delaware corporation with its principal place of business located at One Magnum Pass, Mobile, Alabama 36618 and your Company ("VAR Partner").

Whereas, KMPS is in the business of the design, manufacture and sale of computer printers and accessories; and

Whereas, VAR Partner is in the business of selling computer printers and accessories; and

Whereas, KMPS desires to appoint VAR Partner, and VAR Partner desires to accept such appointment, to participate in KMPS's VAR Partner Program through which VAR Partner will be entitled to purchase certain KMPS products either directly from KMPS or from any authorized distributor, reseller or supplier of KMPS products ("Distribution") for resale to third parties under potentially commercially advantageous terms. VAR Partner shall also be entitled to participate in special promotional programs and initiatives that may be offered, from time to time, by KMPS.

In consideration of the mutual covenants contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1.1 Appointment and Participation.**

**1.1.1** KMPS hereby appoints VAR Partner to be a participant in KMPS's VAR Partner Program as a reseller of certain KMPS products (the "Products") to be identified by KMPS on its VAR Partner website. VAR Partner shall have the right during the term of this Agreement to participate in special promotional programs and initiatives that may be offered by KMPS, provided that VAR Partner complies with all requirements for participation that may be set from time to time by KMPS and as more particularly discussed below. VAR Partner shall also be entitled, but is not obligated, to purchase Products directly from KMPS for resale or lease. This is not an exclusive appointment and each party agrees that this Agreement will not restrict the right of either party to enter into agreements with other parties for same or similar work, or to make, have made, use, sell, buy, develop, market or otherwise transfer any products or services, now or in the future, so long as confidential information is not disclosed. VAR Partner accepts such appointment and agrees to conduct its business at all times during the term of such Appointment in accordance with the terms of this Agreement.

**1.1.2** VAR Partner's participation in this Program is also subject to VAR Partner's credit approval. KMPS reserves the right to refuse any company or entity's request for participation in this Program.

**1.1.3** VAR Partner understands and agrees that in the event of any questions or interpretation regarding the rules, terms and conditions or eligibility for any promotion, the decision of KMPS is final.

**1.2 Relationship of the Parties.** VAR Partner is an independent contractor to KMPS entitled to purchase and resell the Products. Nothing in this Agreement shall be construed to create any other relationship or status between the Parties, or grant any authority to VAR Partner to create any obligation on the part of KMPS to any third party. The term "Partner" as used in this Agreement is descriptive in nature and does not imply or establish any relationship as that term traditionally may reference.

**1.3 Operations and Expenses.** Except as provided in this Agreement, VAR Partner's operations and expenses are solely the responsibility of VAR Partner. VAR Partner shall perform its rights and obligations under this Agreement under its own control and at its own expense.

**1.4 Promotional Materials.** VAR Partner may create and distribute promotional materials for the Products subject to the prior written approval by KMPS. VAR Partner shall be responsible for the accuracy and content of such materials, notwithstanding KMPS's consent.

**1.4.1** VAR Partner, by choosing "I Agree" and thereby executing this Agreement, signifies its acceptance of and agreement for KMPS, or its Partners, to distribute marketing materials and promotional offers to VAR Partner by telephone, regular mail or electronic mail. VAR Partner's may request to be taken off our mailing and/or telemarketing lists for this marketing materials and promotional offers and may do so by sending a written request to the Director of Marketing, Konica Minolta Printing Solutions U.S.A., One Magnum Pass, Mobile, Alabama 36618. Please include your name, address, phone number, and indicate your preference not to receive marketing materials and promotional offers by mail, phone, or both. Processing of such requests may take 8 to 10 weeks.

**2.1 Purchase Orders.** VAR Partner shall issue to KMPS purchase orders for Products it purchases directly from KMPS. The terms and conditions of this Agreement shall control any purchase order submitted by VAR Partner to KMPS notwithstanding any provision to the contrary on or referenced by VAR Partner's purchase orders. VAR Partner's purchase order shall be deemed accepted by KMPS unless KMPS notifies VAR Partner in writing within five (5) business days after receiving a legible purchase order that KMPS does not accept the purchase order. Any modification or cancellation of a purchase order from VAR Partner to KMPS shall be accepted by KMPS if received prior to shipment provided, however, that KMPS shall be entitled to reimbursement for its reasonable and normal expenses, if any, associated with preparing the shipment prior to receipt of VAR Partner's modification or cancellation of a purchase order. VAR Partner shall, within ten (10) calendar days from receipt of each shipment from KMPS, accept the Products if the Products and all necessary documentation delivered to VAR Partner are in accordance with the purchase order. VAR Partner's acceptance shall be deemed ten (10) calendar days after receipt of Products shipped pursuant to a Purchase Order.

**2.1.2 Purchases from Distribution.** VAR Partner shall not be obligated to purchase products directly from KMPS in order to participate in KMPS's VAR Partner Program. VAR Partner shall be entitled to purchase products from any Authorized Distributor, Reseller or other Supplier on such terms as may be mutually agreed upon.

**2.2 Product Shortages.** If for any reason KMPS's Products are not available in quantities ordered from KMPS by VAR Partner and other KMPS customers, KMPS may allocate a reasonable number of the Products to VAR Partner based on a fair and reasonable allocation among KMPS's customers.

**2.3 Evaluation and Demonstration Units Purchase Orders.** As mutually agreed upon and in accordance with the terms of any unit evaluation and demonstration program developed by KMPS, VAR Partner may, at its option order directly from KMPS, evaluation and demonstration units of the Products.

**2.4 Payment Terms and Taxes.** Payment terms for the Products purchased from KMPS shall be net 30 days. Delinquent invoices may be assessed a late payment charge equal to the lesser of 1.5% of the balance due per month or the statutorily allowed maximum rate of interest in accordance with applicable law. KMPS shall have the right, in its sole discretion, to require payment before shipment or payment via letter of credit at net 60 days. Any letter of credit used by VAR Partner must be in a form and drawn on a bank or other financial institution approved by KMPS, in writing. KMPS may stop shipments to VAR Partner if VAR Partner does not comply with applicable credit terms or limits or the terms and conditions of this Agreement. VAR Partner shall be responsible for franchise, sales, use and similar taxes or shall provide KMPS with an appropriate exemption certificate.

**2.4.1 Shipping, Title and Risk of Loss.** All shipment of the Products by KMPS to VAR Partner's located in the United States shall be FOB shipping point, or such other place as designated by KMPS. All shipments of the Products by KMPS to VAR Partner's located outside of the continental United States shall be made F.C.A. KMPS's facility (Mobile, Alabama U.S.A.) or such other place as designated by KMPS. FCA shall refer to the term as described in Incoterms 2000, except as may be set forth herein.

Title to the Product and risk of loss shall pass to VAR Partner upon delivery of the Product to the common carrier at the FOB or FCA shipping point. In the event KMPS agrees to pay any or all of the costs associated with freight and/or shipping for any Products purchased by VAR Partner (and such agreement of KMPS must be set forth in writing and executed by KMPS prior to the shipment at issue), Title to the Product and Risk of Loss shall still pass to VAR Partner upon delivery of the Product to the common carrier at KMPS's loading dock regardless of and despite any shipping term referenced in VAR Partner Purchase Order or any other documentation between the Parties.

**2.5 Packing and Transportation of the Products.** KMPS shall deliver the Product ordered by VAR Partner from KMPS clearly marked with the serial number, product description and machine-readable bar code (employing UPC or other industry standard bar code) to VAR Partner at the location and as close to the date shown set forth on the purchase order as may be reasonably possible.

**3.1 Sales Promotion and other VAR Partner Obligations.** VAR Partner shall use its best efforts to promote the sale of the Products to all of its existing and potential customers and will cooperate with users of the Products. VAR Partner shall maintain an adequate supply of promotional materials and shall, at all times, conduct business in a manner that will reflect favorably upon the Products and KMPS. VAR Partner shall not make any false or misleading representations concerning the Products' specifications, features, capabilities or KMPS's warranties which are inconsistent with those set forth in the Products' descriptions or product material available to VAR Partner.

**3.1.1** VAR Partner shall comply with all requirements for participation in the KMPS VAR Partner Program as may be set from time to time by KMPS, including compliance with KMPS Minimum Advertised Pricing policy. Requirements for Participation will be sent via written or electronic transmission or shall be posted by KMPS at its VAR Partner website. KMPS may review VAR Partner's compliance with participation requirements, which may change from time to time at KMPS' sole discretion and reserves the right to exercise any reasonable steps to improve VAR Partner's compliance or terminate this agreement as set forth herein. KMPS reserves the right to require VAR Partner to purchase directly from one of KMPS's distribution partners when VAR Partner is located outside the continental United States.

**3.2 Pricing.**

**3.2.1** Pricing for the Products VAR Partner purchases directly from KMPS shall be as specified by KMPS and may be modified from time to time by KMPS. KMPS shall notify VAR Partner of any change in Pricing either in writing, by electronic notification in the form of e-mail, or by posting such changes on its VAR Partner website, all of which are hereby deemed to constitute legally effective notice. All orders placed prior to the effective date of the price increase for shipment within thirty (30) days of the effective date, shall be invoiced by KMPS at the lower price. In the event of a price decrease by KMPS, VAR Partner shall be granted a price credit for the full amount of the decrease on all Products on order from KMPS, in transit from KMPS, or that were purchased directly from KMPS and are in VAR Partner's inventory on the effective date of the price decrease. VAR Partner shall provide KMPS a written list of all Products for which they claim a price credit and KMPS shall have the right, at its own expense, to conduct an audit of VAR Partner's records relating to such claims for credit. All prices contained herein or set forth on any attachment hereto are exclusive of all duties, tariffs, federal, state and local excise, sales, use, and similar taxes. Such taxes, duties, tariffs and fees, when applicable, will appear as separate additional items on invoices and are the responsibility of VAR Partner.

**3.2.2** VAR Partner shall not be bound in the sale of KMPS products by any KMPS suggested prices for said products but VAR Partner shall not advertise KMPS Products below KMPS's suggested selling price, which is the Estimated Street Price set by KMPS from time to time.

**3.3 Indemnification.** VAR Partner shall indemnify and hold harmless KMPS, its officers, directors, employees, successors and assigns, against any losses, damages, or expenses KMPS, its officers, directors, employees, successors and assigns may sustain or incur as a result of any third party suit, proceeding, claim or other legal action ("Third Party Action") insofar as such Third Party Action is based on a claim that: (i) VAR Partner has made any representations or warranties with respect to the Products that are inconsistent with or in addition to KMPS's representations or standard warranties on the Products; (ii) any breach of contract or negligent or intentional act or omission or violation of any law or regulation by VAR Partner for which any person or entity seeks to impose liability on KMPS. The foregoing indemnification obligation of VAR Partner shall be subject to KMPS promptly notifying VAR Partner of any such Third Party Action and furnishing VAR Partner a copy of each communication, notice or other action relating to the claim; VAR Partner being given authority, information and reasonable assistance necessary to settle, compromise or litigate such Third Party Action; and, no settlement or any Third Party Action being made without the express written permission of VAR Partner.

**4.1 Obligations of KMPS.** KMPS shall provide VAR Partner with promotional material for the Products and access to a secure website in order to obtain product literature, pricing information and promotional awards. The website, referred to herein as KMPS's VAR Partner website is located at <http://printer.konicaminolta.net/reseller/> and shall be specifically established for VAR Partners. The VAR Partner website shall contain information related to promotional and marketing programs and requirements for participation therein, price lists and other information regarding the VAR Partner Program and VAR Partner hereby agrees that any information or notices posted on the VAR Partner website shall be legally acceptable notice. KMPS shall also provide VAR Partner with reasonable sales support assistance, including training support, as determined appropriate by KMPS and requested by VAR Partner.

**4.1.1** From time to time, KMPS may make available to, change or terminate certain promotional or marketing programs available to VAR Partners. Participation in such programs or promotions shall be subject to the then current terms and conditions of those programs or promotions which are incorporated herein by reference. KMPS reserves and retains the right to modify the terms and conditions of, or discontinue any promotional program it offers to VAR Partners upon written notice or electronic notification in the form of email or by posting notice of any such changes on its VAR Partner website.

**4.1.2** Promotional or marketing programs that are offered from time to time by KMPS generally rely upon information reported by VAR Partner. VAR Partner hereby certifies and warrants that all information disclosed by VAR Partner to KMPS herein or hereafter shall be true and correct. VAR Partner shall comply with all reporting requirements or such programs and releases KMPS from claims, damages, fees, costs or liability arising from or related to VAR Partner's inaccurate reporting or non-compliance with reporting requirements. VAR Partner hereby grants to KMPS the right, at its expense, to inspect and audit the sale and purchase records of VAR Partner to determine compliance with the terms of this Agreement and eligibility of VAR Partner for any promotion. However, any such inspection or audit shall be at KMPS's expense and may only be conducted during regular business hours in such a manner as not to unreasonably interfere with the normal business activities of VAR Partner.

**5.1 Confidential Information.** Any confidential information disclosed by KMPS to VAR Partner shall be maintained as confidential and used only by VAR Partner to fulfill its obligations pursuant to the Agreement, during the term of this Agreement. Confidential Information includes, but is not limited to any and all technical and non-technical information including patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of KMPS, and also includes, without limitation, KMPS's information concerning research, experimental work, development design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customers lists, business forecasts, sales and merchandising, and marketing plans and information. VAR Partner may not disclose or provide any such confidential information to any third party and shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, contractors or consultants during the term of this Agreement. This paragraph shall survive any termination or expiration of this Agreement for a period of five (5) years. The following shall not be considered confidential information for purposes of this Section 5.1: (i) information which is or becomes in the public domain through no fault or act of VAR Partner; (ii) information independently developed by VAR Partner without the use or reliance on KMPS's confidential information; (iii) information which was provided to VAR Partner by a third party under no duty of confidentiality to KMPS; or (iv) information which is required to be disclosed by law, provided, however, prompt prior notice thereof shall be given to KMPS.

**5.1.1** No sale, advertising, promotion, or disclosure of features, availability or pricing of new products shall occur prior to KMPS introducing such products to the general public and posting such Product on its VAR Partner Website.

**5.2 Trademark and Trade Names.** Neither party shall use any of the other party's Trademarks, trade names or any part thereof, or any mark or name confusingly similar thereto, as part of its corporate or business name or in any other manner, except that VAR Partner may identify itself as a VAR Partner of KMPS and may use KMPS's trademarks relating to the Products for display purposes in connection with solicitation of orders for Products.

**6.1 Term and Termination.** This Agreement shall have an initial term of one (1) year from the Effective Date and shall automatically renew for additional one (1) year terms unless terminated as follows:

- (i) by either party in the event the other party is in material breach of this Agreement and has failed, within thirty (30) days after receipt of written notice thereof from the non-breaching party to cure such breach;
- (ii) by either party, effective immediately, if the other party should become the subject of any bankruptcy, receivership, or other insolvency proceedings, or

make an assignment or other arrangement for the benefit of its creditors, and such action is not discharged or terminated within ninety (90) days;

- (iii) by KMPS, effective immediately, if VAR Partner should sell, assign, delegate or transfer any of its rights and obligations under this Agreement without having obtained KMPS's prior written approval, or if VAR Partner merges or otherwise combines with an entity that manufactures or sells any product competitive with the Products;
- (iv) by either party, for any reason, upon thirty (30) days written notice.

**6.2** All obligations and duties which, by their nature, survive the expiration or termination of this Agreement shall remain in effect beyond any expiration or termination of this Agreement.

**7.1 Warranty.** The warranty on the Products is return to factory or other location as specified by KONICA MINOLTA PRINTING SOLUTIONS U.S.A. and shall be in effect for a period of one year and said period shall begin upon delivery to VAR Partner or thirty (30) days after delivery to VAR Partner, whichever comes first. There shall be no warranty after the expiration of the warranty period unless VAR Partner or its customers or end users purchases an extended warranty. Product properly returned to KONICA MINOLTA PRINTING SOLUTIONS U.S.A. during the warranty period will be repaired, or at KONICA MINOLTA PRINTING SOLUTIONS U.S.A.'s option, replaced at no cost to VAR Partner. This warranty covers defects in materials and workmanship in the product under normal use and service. The Product warranty does not extend to altered units of the Product, or to units of the Product which fail or are damaged after delivery thereof to the VAR Partner or its customer due to shipment, handling, storage, operation, use, or maintenance in a manner or environment not conforming to any published instructions or specifications of KMPS. THE WARRANTY SET FORTH HEREIN AND THE OBLIGATIONS AND LIABILITIES HEREUNDER ARE IN LIEU OF, AND VAR PARTNER HEREBY WAIVES, ALL IMPLIED GUARANTEES AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. Incidental and consequential damages caused by the malfunction, default or otherwise with respect to the breach of this warranty are not the responsibility of KONICA MINOLTA PRINTING SOLUTIONS U.S.A. and are hereby excluded both for property and, to the extent not unconscionable, for personal injury damage, even if the occurrence and extent of such damage were foreseeable and even in the event of the failure of an exclusive remedy. Prior to returning any Product, VAR Partner will obtain return merchandise authorization ("RMA") numbers from KONICA MINOLTA PRINTING SOLUTIONS U.S.A. and reference the serial number of the unit involved for all warranty claims including sub-assemblies. VAR Partner is responsible for the cost of shipping returned Products to KMPS. KONICA MINOLTA PRINTING SOLUTIONS U.S.A. is responsible for the cost of returning repaired or replaced Product to VAR Partner by the same method as received. KMPS shall not be required (unless subcontracted to KMPS) to install or place in service any Product, nor service or keep in good working order any Product or Products.

**8.1 Terms for Products Purchased from Distribution.** Terms and Conditions regarding Order Placement, Payment, Title, Risk of Loss, Taxes, Packing and Shipment for Products purchased by VAR Partner from Distribution shall be as mutually agreed between VAR Partner and Distribution. This Agreement shall have no effect on any agreement, contract or relationship VAR Partner has with any Authorized Distributor, Reseller or other Supplier of KMPS Products.

**9.1 Entire Agreement.** This Agreement, including any Attachments or Amendments hereto, is the entire agreement between the parties regarding the purchase and sale of the Products by VAR Star and KMPS and supercedes all prior discussions, agreements and understandings. Upon its execution, this Agreement and the accompanying Exhibit(s) set forth the entire agreement and understanding of the parties as to the subject matter hereof. The provisions of this Agreement, and any Attachments or Amendments hereto, shall apply to all purchase orders placed by VAR Partner, notwithstanding the presence of different or additional provisions on the

purchase order form, or any form, submitted by VAR Partner. This Agreement is in English language only, which shall be controlling in all respects, and all versions hereof in any other language shall be for accommodation only and shall not be binding upon the parties hereto. All communications and notices to be made or given pursuant to this Agreement shall be in the English language. This Agreement may be modified only by a written amendment specifying the sections of the Agreement or of any Supplement to be amended and the changes thereto, and shall be signed by persons authorized to sign agreements on behalf of the Parties to this Agreement. Such written amendment shall thereafter be considered part of this Agreement. This Agreement shall not be amended or modified by any course of dealing or trade usage. No delay or failure by either party to act in the event of a breach or default hereunder shall be construed as a waiver of that or any subsequent breach or default of any provision of this Agreement. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Once signed by both parties, any reproduction of this Agreement made by reliable means (i.e. photocopy or facsimile) shall be considered an original. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

**9.2 Notices.** Notices required to be given by KMPS under this Agreement may be given in writing (confirmed by overnight courier with certified receipt), by facsimile transmission, e-mail or by posting the same on its VAR Partner website. Notices given by VAR Partner may be given in writing (confirmed by overnight courier with certified receipt), by facsimile or by e-mail addressed to the Vice President of Sales. For notices to KMPS a simultaneous copy shall also be sent by facsimile to KMPS's Office of General Counsel, Attention: Bryan Hack at 251-633-8729.

**9.3 Force Majeure.** Neither party shall be in default of this Agreement by reason of any failure or delay in the performance of any obligation hereunder arising out of an event of force majeure.

**9.4 Non-Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Neither party may assign or otherwise transfer its rights and obligations hereunder without the prior written consent of the other party, whose consent shall not be unreasonably withheld.

**9.5 Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Alabama as if the same were wholly entered into and executed within the State of Alabama. The parties hereby consent to the jurisdiction of the courts of the State of Alabama and the United States District Court for the Southern District of Alabama, and waive any objection to such venue. Furthermore, it is expressly agreed herein by the Parties that KMPS, at its sole discretion, shall also have the right to seek legal remedies and/or initiate any judicial remedy or litigation against VAR Partner before any court in the Territory, State or Country with jurisdiction, and VAR Partner waives any objection to such venue. The Parties agree that process may be served upon them in the manner provided herein for giving of notices or otherwise as allowed by Alabama or federal law or by courts of competent jurisdiction within the Territory, State or Country, as the case may be. The Parties specifically agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to any products purchased under this agreement.

**9.5.1 Compliance with Laws.** Each party to this Agreement agrees to comply with all applicable federal, country, state and local laws, regulations and ordinances including, but not limited to, the regulations and laws of the U.S. Government relating to the export of technical data and other goods, insofar as they relate to the activities allowed or to be performed under this Agreement.

**9.6** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOST DATA, LOST PROFITS OR SAVINGS, LOSS OF BUSINESS OR OTHER ECONOMIC LOSS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION OR THEORY ASSERTED. This limitation of liability shall not apply to damages, losses and claims arising out of a Party's gross negligence or willful misconduct.

**VAR PARTNER HEREBY AGREES TO THE TERMS AND CONDITIONS OF THIS VAR PARTNER AGREEMENT, AND INTENDS TO BE BOUND THERETO AS IF THE AGREEMENT WAS MANUALLY EXECUTED AND, ACNOWLEDGES THAT THE OTHER PARTY TO THIS AGREEMENT MAY RELY IN GOOD FAITH ON THIS ELECTRONIC ACCEPTANCE.**