

DCA EULA

Please read this end user licence agreement ("**EULA**") carefully.

This EULA governs the use of:

- (a) the EKM printer monitoring software program known as the Data Collection Application or DCA including where applicable the optional Embedded Webserver Functionality (the "**Software**") which forms part of EKM's print management and reporting system (the "**System**"); and
- (b) the documentation associated with the Software and made available by EKM (the "**Documentation**").

The provision and use of the System is governed by the terms of the agreement (the "**Master Agreement**") between EKM or its authorised partner (such as a distributor or Service Provider) and the licensee being either a Service Provider or Customer (both as defined below) accepting the terms of this EULA, downloading, installing or using the Software (the "**Licensee**").

This EULA is a legal agreement between **EKM Global Limited**, a company incorporated in England and Wales with registration number 04165970 and having its registered office at Maplewood, Crockford Lane Chineham Park, Basingstoke, Hampshire United Kingdom RG24 8YB ("**EKM**" or "**Licensor**") and the Licensee.

By accepting the terms of this EULA, downloading, installing or using the Software, you agree to be bound by the terms of this EULA. If you are accepting this EULA on behalf of the Licensee, you represent and warrant that you have full authority to bind the Licensee.

If you do not agree to all the terms of this EULA, you must not accept this EULA, download, install or use the Software.

EKM may from time to time vary or update this EULA in which case EKM or its authorised partner shall notify the Licensee of variations/updates in writing (which may include email or notifications through the System) and following such notification the variations/updates shall apply between EKM and the Licensee.

1. Definitions and Interpretation

1.1 In this EULA in addition to the terms defined above the following definitions and rules of interpretation apply:

"Affiliate" means in relation to a company, any subsidiary or holding company (within the meaning of section 1159 of the Companies Act 2006) from time to time of that company, and any subsidiary from time to time of a holding company of that company and any business entity from time to time controlling, controlled by or under common control (within the meaning of section 1124 of the Corporation Tax Act 2010) with that company;

"Authorised Users" means the officers, employees, sub-contractors, agents, representatives and service providers of the Licensee, and, where permitted by the Master Agreement the Licensee's Affiliates, Customers and Customer Affiliates;

"Business Day" means any weekday, other than a bank or public holiday in England;

"Customer" means a customer who has entered into a Master Agreement and pursuant to which is to be provided with access to the System (or services which utilise the System) for the purposes of managing its and/or its Affiliates print systems;

"Intellectual Property Rights" means all intellectual property rights including copyright and related rights, database rights, patents, utility models, semi-conductor chip topography rights, business names, trade names, trade marks, service marks rights in inventions and/or designs, rights in confidential information, trade secrets, know-how and rights to bring claims for passing off or unfair competition in each case wherever in the world, whether registered or

unregistered and including any application or right of application, renewals and extensions for such rights;

"Licensed Materials" means the Software and Documentation;

"Licensee Equipment" means those elements of the Licensee's System that interface with the Software, including printer hardware;

"Licensee System" means a Licensee's computer systems, networks, hardware and software and where the Licensee is a Service Provider also includes the computer systems, networks, hardware and software of its Customers;

"Permitted Purpose" means:

- (a) if the Licensee is a Customer, the purpose of using the System (or services which utilise the System) in accordance with the Documentation to manage the Licensee's print systems, and the print systems of such of the Licensee's Affiliates as may be authorised in the Master Agreement; and
- (b) if the Licensee is a Service Provider, the purpose of providing the System (or services which utilise the System) to Customers in accordance with the Master Agreement;

"Service Provider" means a service provider which has entered into the Master Agreement pursuant to which it is entitled to provide the System or services utilizing the System to Customers;

"Updates" means updates to the Software, whether for the purpose of fixing errors or otherwise which are not Upgrades; and

"Upgrades" means major version upgrades of the Software, for the purpose of enhancing or altering the functionality of the Software or System.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended, extended, re-enacted or consolidated from time to time and includes all subordinate legislation made under that statute or statutory provision.
- 1.3 Any words that follow 'include', 'in particular' 'for example' or similar words or expressions shall be interpreted as illustrative and shall not limit the sense of any words preceding those terms.

2. Grant of rights

- 2.1 The Licensor grants to the Licensee a worldwide, revocable, non-exclusive and non-transferable right to:
 - 2.1.1 download, install and use the Software in accordance with the Documentation; and
 - 2.1.2 use, store, view, copy and print the Documentation,in each case subject to any restrictions set out in the Master Agreement, solely for the Permitted Purpose and strictly in accordance with this EULA.
- 2.2 The licence granted under Clause 2.1 is subject to the following limitations:
 - 2.2.1 the Licensed Materials may only be used by Authorised Users;
 - 2.2.2 the Licensee must at all times comply with the terms of this EULA, and ensure that all Authorised Users comply with the terms of this EULA.
- 2.3 Except to the extent mandated by applicable law or expressly permitted in this EULA the licence granted under Clause 2.1 is subject to the following prohibitions:
 - 2.3.1 the Licensee must not sub-license, rent, lease, loan, supply, distribute or redistribute the Licensed Materials or provide a bureau service using Licensed Materials (save that, if the Licensee is a Service Provider, the Licensee's Customer's may be provided with the System or services utilizing the System in accordance with the terms of the Master Agreement in which case licensing of the Licensed Materials shall be subject to such

- Customers agreeing to the terms of this EULA);
- 2.3.2 the Licensee must not allow anyone other than Authorised Users to access or use the Licensed Materials;
 - 2.3.3 the Licensee must not publish or re-publish the Licensed Materials;
 - 2.3.4 the Licensee must not copy or reproduce the Licensed Materials except where that copying is incidental to normal use of the Licensed Materials or where it is necessary for the purpose of back-up or operational security in accordance with the licence granted in this Clause 2;
 - 2.3.5 the Licensee must not modify, alter, adapt, translate or edit, the Licensed Materials or combine or allow the Licensed Materials to become incorporated into any other program, or create derivative works of, the Licensed Materials unless specifically approved by the Licensor in writing;
 - 2.3.6 the Licensee must not reverse engineer, decompile or disassemble the Licensed Materials;
 - 2.3.7 the Licensee must not circumvent or remove or attempt to circumvent or remove the technological measures applied to the Licensed Materials for the purpose of preventing unauthorised use; and
 - 2.3.8 the Licensee must not use the Licensed Materials to create, or in connection with the creation of, any software which is substantially similar to any software licensed or provided by EKM from time to time.
- 2.4 All Intellectual Property Rights in the Licensed Materials shall be the exclusive property of the Licensor and its licensors, and the only rights the Licensee has in relation to the Licensed Materials shall be those expressly set out in this EULA.
 - 2.5 Save to the extent expressly provided otherwise in this EULA, the Licensee has no right to access the source code of the Software.
 - 2.6 The Licensee shall be responsible for the security of the Licensee's copies of the Licensed Materials and shall use all reasonable endeavours to ensure that access to the Licensed Materials is restricted to persons authorised to use them.
 - 2.7 The Licensee must not remove or obscure any copyright notice, EKM branding or EKM hyperlink incorporated into the Licensed Materials.
- 3. Acceptable use**
- 3.1 The Licensee must not and must ensure Authorised Users do not:
 - 3.1.1 use the Software in any way that causes, or may cause: (i) damage to EKM's or any EKM subcontractor's business, systems or services; or (ii) impairment of the availability or accessibility of EKM's or any EKM subcontractor's systems or services;
 - 3.1.2 use the Software for anything other than the Permitted Purpose or in any way that is unlawful, illegal, fraudulent, misleading or harmful, or in connection with any unlawful, illegal, fraudulent, misleading or harmful purpose or activity;
 - 3.1.3 use the Software to store, host, copy, process, distribute, display, publish, transmit or send works or materials that are illegal or unlawful, will or may infringe any person's Intellectual Property Rights or other legal rights, or could give rise to legal proceedings, whether against the Licensor or another person, in each case in any jurisdiction and under any applicable law; or
 - 3.1.4 upload or transmit, or permit the uploading or transmission of, any computer virus or other malicious software program or code to or by the Software.
- 4. Software Updates/Upgrades**
- 4.1 The Licensor may at its discretion from time to time release Updates which shall form part of the Software. The Licensee is responsible for promptly installing all Updates.
 - 4.2 The Licensor may at its discretion from time to time release Upgrades, the provision of Upgrades to the Licensee shall be subject to agreement between the Licensor (or its authorised partner) and the Licensee and the Licensee

acknowledges that these may be subject to additional charges and license terms.

5. Support Services

- 5.1 The parties acknowledge that unless the Licensor has agreed otherwise in the Master Agreement, the Licensor shall not provide any maintenance or support services to the Licensee in respect of the Software.

6. Licensee obligations and responsibilities

- 6.1 The Licensee shall:

- 6.1.1 provide to the Licensor, and where the Licensor is a Service Provider procure from each Customer and all relevant third party suppliers of the Licensee and each Customer, all necessary co-operation and information as may be reasonably required by the Licensor to enable the provision of any support services, maintenance services and/or any other services to be provided to the Licensee under the Master Agreement;
- 6.1.2 ensure that each Licensee System complies with the minimum system requirements reasonably stipulated by the Licensor from time to time;
- 6.1.3 ensure that each Licensee System is properly maintained, supported and updated, and notify the Licensor of any updates or other changes to any element of any Licensee System which will or may affect the Software and/or any services to be provided to the Licensee under the Master Agreement;
- 6.1.4 ensure that it has all rights necessary to allow the Licensor to interface with each Licensee System as necessary for the performance of its obligations under this EULA and the Master Agreement;
- 6.1.5 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Licensor's data centres, and for all problems, conditions, delays, delivery failures and other loss or damage arising from or relating to the Licensee's network connections or telecommunications links or caused by the internet; and
- 6.1.6 carry out all other Licensee responsibilities set out in this EULA in a timely and efficient manner.

- 6.2 The Licensee acknowledges and agrees that the Licensor shall not be responsible for, or liable in respect of:

- 6.2.1 any use of the Licensed Materials contrary to this EULA, the Documentation or the Licensor's instructions;
- 6.2.2 the incorrect installation of the Software by any person other than the Licensor or a failure by the Licensee to install any Updates;
- 6.2.3 any modification or alteration of the Licensed Materials by any person other than the Licensor or the Licensor's duly authorised contractors or agents;
- 6.2.4 any issues affecting the internet, third party communications links which are outside of the Licensor's control, or the Licensee's network, firewall or anti-virus systems;
- 6.2.5 any denial of service attacks;
- 6.2.6 any failure by the Licensee to meet any minimum system requirements in respect of a Licensee System as stipulated by the Licensor on notice from time to time;
- 6.2.7 bad or limited data from printers;
- 6.2.8 any failure by the Licensee to comply with the requirements of this EULA; or
- 6.2.9 Licensee Equipment, Licensee Systems or any other software or equipment not supplied by the Licensor operating in conjunction with the Software or used by the Licensee.

- 6.3 The Licensee shall obtain or shall procure any Licensee Equipment required for the installation or use of the Software.

7. Records and audit

- 7.1 The Licensee shall maintain accurate and up-to-date records of the devices upon which the Software is installed and

shall provide such records to the Licensor promptly following receipt of a written request to do so from the Licensor.

8. Warranty limitations

8.1 The Licensed Materials are licensed on an “as is” basis and to the extent permitted under law, the Licensor provides no warranties (whether implied or otherwise) to the Licensee in relation to the Licensed Materials under this EULA, and all such warranties are excluded. Please refer to the Master Agreement for details of any warranties provided under that agreement.

8.2 Without prejudice to the generality of Clause 8.1 the Licensee acknowledges and agrees that:

- 8.2.1 the Licensed Materials have not been developed to meet the specific requirements of the Licensee, and accordingly the Licensee shall be responsible for ensuring that the Licensed Materials are suitable to meet the Licensee's requirements;
- 8.2.2 it is the Licensee's responsibility to ensure that the System is suitable for the Licensee's and, if the Licensee is a Service Provider, each relevant Customer's purposes, and the Licensor does not warrant that the Licensed Materials shall be suitable for any particular purpose;
- 8.2.3 the Licensor does not warrant that the operation of the Software shall be uninterrupted or error-free, or that defects in the Licensed Materials shall be corrected;
- 8.2.4 no oral or written information or advice given by the Licensor shall create any additional warranties or in any way increase the scope of the Licensor's obligations under this EULA (this is without prejudice to the terms of the Master Agreement);
- 8.2.5 the Licensee acknowledges that complex software is never wholly free from errors and bugs, and that the Licensor gives no warranty or representation that the System shall be wholly free from such errors and bugs; and
- 8.2.6 the Licensor does not warrant or represent that the System shall be compatible with any application, program or software not specifically identified as compatible by the Licensor.

9 Limitations and exclusions of liability

9.1 Nothing in this EULA shall:

- 9.1.1 limit or exclude the liability of a party for death or personal injury resulting from negligence;
- 9.1.2 limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- 9.1.3 limit or exclude any liability of a party in any way that is not permitted under applicable law.

9.2 The limitations and exclusions of liability set out in this Clause 9 and elsewhere in this EULA:

- 9.2.1 are subject to Clause 9.1; and
- 9.2.2 govern all liabilities arising under or in connection with this EULA or in relation to the subject matter of this EULA,

including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

9.3 Neither party shall be liable to the other party in respect of any:

- 9.3.1 loss of profits;
- 9.3.2 loss of income;
- 9.3.3 loss of use or production;
- 9.3.4 loss or damage to goodwill;
- 9.3.5 loss of anticipated savings;
- 9.3.6 loss of business, contracts or commercial opportunities;
- 9.3.7 loss or corruption of data;
- 9.3.8 wasted expenditure; or
- 9.3.9 any special, indirect or consequential loss or damage.

9.4 Neither party shall be liable to the other party for any loss or damage arising out of any event or series of related events beyond the first party's reasonable control.

9.5 The Licensor shall not be liable to the Licensee in respect of any loss or damage arising out of the failure of or any defect in the Licensee System or any Licensee Equipment.

9.6 The total liability of the Licensor, whether in contract, tort (including negligence) or otherwise, shall in no circumstances exceed £100 provided that where EKM and the Licensee are each party to the Master Agreement any applicable caps on liability in the Master Agreement shall take precedence over this clause 9.6.

10 Termination

10.1 This EULA shall automatically terminate upon the termination of the Master Agreement.

10.2 The Licensor may terminate this EULA immediately if the Licensee commits a material or persistent breach of this EULA.

10.3 On termination all rights granted to the Licensee under this EULA shall cease and the Licensee must stop using the Licensed Materials.

10.4 At any time following the termination of this EULA, the Licensor may deactivate the Software.

10.5 The Licensee must promptly following termination (and always within 7 days) irrevocably remove and delete all copies of the Licensed Materials from its computer systems and storage media (and procure such deletion from any Affiliates, Customers or Authorised Users systems).

10.6 On request the Licensee must send to the Licensor a written confirmation of its compliance with Clause 10.5, signed by an officer of the Licensee.

10.7 Upon the termination of this EULA, all the provisions of this EULA shall cease to have effect, save that the following provisions shall survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses 1, 2.4, 7, 8, 9, 10, 11 and 12.

11 Regulatory Compliance

11.1 The Licensee acknowledges and agrees that the Software, is subject to the export control laws and regulations of national legislation, EU, the United Kingdom and the United States. This includes but is not limited to the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls. The Licensee shall comply with all these laws and regulations.

11.2 The Licensee shall not, without prior required government authorization or except as otherwise authorized under those laws and regulations, export, re-export, sell or transfer the Software, either directly or indirectly, to (i) any country or region subject to a U.S. trade embargo or to any entity located in or organized under the laws of any such country or

any resident of any such country, or to (ii) any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specially Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other comparable European, United Kingdom or local regulation, or (iii) any person directly or indirectly owned or controlled by the foregoing.

In addition, Software may not be exported, re-exported, or transferred to an end-user engaged in activities related to weapons of mass destruction. Such activities include but are not necessarily limited to activities related to: (1) the design, development, production, or use of nuclear materials, nuclear facilities, or nuclear weapons; (2) the design, development, production, or use of missiles or support of missiles projects; and (3) the design, development, production, or use of chemical or biological weapons.

- 11.3 The Licensee shall not do or omit to do anything that may cause the Licensor, in the Licensor's reasonable judgment, to be in breach of applicable export control and sanctions laws and regulations, and shall protect, indemnify and hold the Licensor harmless from any claim, damages, liability, costs, fees and expenses incurred by the Licensor as a result of the failure or omission of the Licensor to comply with such laws and regulations.
- 11.4 The Licensee acknowledges and agrees that the Licensor may terminate this EULA forthwith if the Licensee materially breaches any of its obligations set out in this clause.

12 General

- 12.1 **Contacting EKM.** General communications about this EULA, Licensed Materials or System should be sent to insight@ekmglobal.com. Formal notices (such as notices of termination) should be sent to EKM's registered office FAO of the Legal Director and copied to insight@ekmglobal.com.
- 12.2 **Contacting the Licensor.** Without prejudice to the express provisions in this EULA in relation to notification of updates/variations to this EULA, any other notices and communications addressed to the Licensee shall be sent to the Licensee's registered office, trading address or any other address (including email address) as the Licensee provides to EKM or sent via the System.
- 12.3 **Delivery.** Any notice or communication shall be deemed to have been received:
- 12.3.1 if delivered by hand, at the time the notice is left at the proper address;
 - 12.3.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am UK time on the second Business Day after posting; or
 - 12.3.3 if sent by email or via the System, at the time of transmission, or, if this time falls outside 9am – 5pm UK time on a Business Day at 9am UK time on the next Business Day.
- 12.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.5 **Waiver**
- 12.5.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
 - 12.5.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 12.6 **Severance** If any provision of this EULA is or becomes invalid, illegal or unenforceable it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this EULA.
- 12.7 **Status of Parties** Nothing in this EULA is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into

any commitments for or on behalf of any other party.

12.8 Assignment and Subcontracting

- 12.8.1 The Licensor may assign, transfer, charge, licence, subcontract or delegate any or all of its rights and obligations under this EULA to another organization.
- 12.8.2 The Licensee shall not without the prior written consent of the Licensor assign, transfer, charge, licence or otherwise dispose of or deal in this EULA or any rights or obligations under this EULA.

12.9 Third Party Rights

- 12.9.1 This EULA is made for the benefit of the parties and is not intended to benefit or be enforceable by any third party.
- 12.9.2 The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

12.10 Entire Agreement

- 12.10.1 Where EKM is a party to the Master Agreement, this EULA, the Master Agreement and any other documents the Master Agreement identifies as being part of the contract constitute the entire agreement between the parties in relation to its subject matter, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 12.10.2 Where EKM is not a party to the Master Agreement this EULA constitutes the entire agreement between the parties in relation to its subject matter, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 12.10.3 Each party acknowledges that in entering into this EULA it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this EULA and, where the Licensor is a party to the Master Agreement, the Master Agreement.
- 12.10.4 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this EULA.

12.11 Law & Jurisdiction

- 12.11.1 This EULA shall be governed by and construed in accordance with English law.
- 12.11.2 EKM may issue and pursue legal proceedings against the Licensee in any jurisdiction in which the Licensee is situated, incorporated, established or resident from time to time; subject to this, the courts of England and Wales shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.