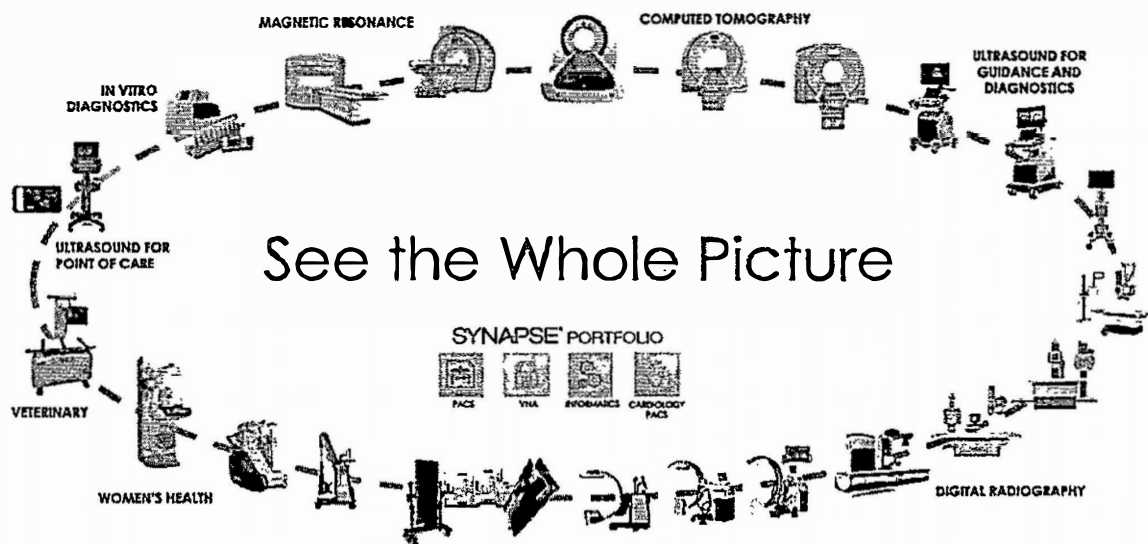


FUJIFILM Healthcare Americas Corporation

Quote # 2023-94691 1

Date of Issue: 05-12-2023

U7AR0084 Premium SMA



Contact: Danielle McDonald

Phone: (216) 396-0320

Email: [danielle.mcdonald@fujifilm.com](mailto:danielle.mcdonald@fujifilm.com)

FUJIFILM Healthcare Americas Corporation  
81 Hartwell Avenue  
Lexington, MA 02421  
800-431-1850

Quote: 2023-94691  
Date: 05-12-2023  
Expires: 09-09-2023

**SOLD TO:**

DIAGNOSTIC MEDICAL GROUP  
1129 S SAN GABRIEL BLVD  
SAN GABRIEL California 91776-3114  
ATTN:

Service Account Executive Danielle McDonald  
Phone: (216) 396-0320  
Email Address: danielle.mcdonald@fujifilm.com

This Service Maintenance Agreement is CONFIDENTIAL and is not to be disclosed to anyone except to employees or agents of Customer with a legitimate need to know such information without first obtaining the express written consent of FUJIFILM Healthcare Americas Corporation.

### Agreement

FUJIFILM Healthcare Americas Corporation ( " HCUS " ) will inspect and maintain Customer's medical equipment (the " Equipment " ) as described in this Service Maintenance Agreement ( " SMA " ) for the Coverage Period and for the Price specified on the SMA Detail Page, subject to the SMA Terms and Conditions set forth herein, and except as otherwise set forth herein, is independent of any other SMA between Customer and HCUS.

**Notwithstanding Section 10.3 of this Agreement to the contrary, the laws of the following state shall govern this SMA: California**

### Acceptance


This SMA shall not bind HCUS until it has been countersigned by an authorized representative of HCUS. This SMA may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Electronic transmission of any signed original counterpart shall be deemed the same as the delivery of an original. Customer and HCUS agree that the electronic signatures of the parties to this SMA are intended to authenticate this writing and to have the same force and effect as manual signatures.

**Quote SMA Annual Total**

**\$5,875.00**

Customer Acceptance

FUJIFILM Healthcare Americas Corporation

Signature: <u><i>Cindy Chen</i></u>	DocuSigned by: <i>Hidetoshi Izawa</i>
Print Name: <u>CINDY CHEN</u>	 Signer Name: Hidetoshi Izawa
Print title: <u>general manager</u>	Signing Reason: I approve this document
Date: <u>6/26/2023</u>	Signing Time: 6/29/2023   4:12:24 PM PDT
	Accepted by HCUS 660C11BB937049F2A9024F5122283493

Contact: Danielle McDonald

Phone: (216) 396-0320

Email: danielle.mcdonald@fujifilm.com

Contract Level: Premium Service

Commencing on 07-19-2023 and expiring on 07-18-2026.

Service Coverage: 8 x 5 M - F

PM Coverage: 8 x 5 M - F

Billing Cycle: Annual Billing Option

<u>Serial #/Asset Tag</u>	<u>Description</u>	<u>Annual Price</u>
U7AR0084	ARIETTA70-SE SMA	\$5,875.00

#### Yearly Total

Year 1 \$5,875.00

Year 2 \$5,875.00

Year 3 \$5,875.00

**Grand Total \$17,625.00**

Service Name	Extended Description
Service PM	HCUS will provide Preventative Maintenance coverage in accordance with the Manufacturer's specifications and at the Manufacturer's recommended intervals. PM work will be scheduled at mutually agreeable times, to be completed according to the SMA PM Schedule.  ____ After hour PMs can be added for an additional \$500
Loaner Coverage	HCUS will provide loaner equipment at no additional charge for Equipment that cannot be repaired at the Customer's facility.
Probe Coverage Included (1 per year)	One replacement probe included per contract year.
O/S Upgrades	All maintenance and updates for application software are included as part of this Agreement. Onsite Applications Training as requested by the Customer.
On-site Follow Up Apps	Onsite Applications Training will be provided upon Customer's request at no additional charge.
Options Discount (20%)	Customer will receive a 20% discount off the then List Price of options.
Service Labor	Remedial maintenance required to maintain the Equipment at Manufacturer's specifications during coverage hours. Labor requested outside coverage hours will be billed at HCUS then current labor rates.
All Service Travel	All travel and living expenses for HCUS personnel are included in this Agreement at no additional charge to Customer.
Service Parts	All parts required to maintain the Equipment to Manufacturer's specifications, including coils, but excluding third party equipment, accessories, and, if applicable, x-ray tubes, unless specifically included.
Application Helpline	Dedicated Applications Helpline available Monday through Friday, 8am to 9pm (Eastern)
Accreditation Support,	Should Fujifilm provide accreditation support during the last agreement year of the Service Maintenance Agreement (SMA) the SMA shall automatically extend for an additional agreement year upon the same SMA terms and conditions. Accreditation support shall include, but not be limited to, collecting equipment performance data, phantom testing or Applications Helpline support, in furtherance of an application with the American College of Radiology, Intersocietal Accreditation Commission or The Joint Commission.
Guaranteed Uptime	HCUS guarantees a 99% uptime.
Uptime Calculation	Uptime will be calculated quarterly based on hours of service. The Equipment will receive one month of free service as set forth in the Service Maintenance Agreement Terms and Conditions.

Additional Comments:

Customer may cancel the remaining term of this agreement with a sixty (60) day prior written notice without penalty without cause.

# FUJIFILM HEALTHCARE AMERICAS CORPORATION

## SERVICE AGREEMENT TERMS AND CONDITIONS

### 1. SCOPE

**1.1** For the term set forth in this Service Maintenance Agreement (this "SMA"), FUJIFILM Healthcare Americas Corporation ("HCUS") will provide selected preventive maintenance and remedial maintenance services on the equipment specified in the SMA Detail Page attached to this SMA (such equipment, the "Equipment") in accordance with the terms and conditions set forth herein. Such selected services (collectively, "Services") may be updated, modified or amended from time to time in HCUS's sole discretion.

**1.2** In the event that (i) the term of this SMA does not include the Equipment warranty period, or (ii) the term of this SMA does not commence immediately upon the expiration of the HCUS warranty, or (iii) the Equipment was serviced prior to commencement of the term of this SMA by anyone other than HCUS or an authorized HCUS dealer or service provider, or (iv) the Equipment was moved from its original location or is not connected to its original power supply (other than portable or mobile Equipment), then the Equipment is subject to inspection by HCUS prior to the commencement of Services under this SMA. Any inspection as well as any repairs or adjustments deemed necessary by HCUS during such inspection shall be made at HCUS's then current rates. Repairs and adjustments will be completed prior to the commencement of Services under this SMA.

**1.3** If this SMA includes any training courses, such training courses may consist of on-site training at Customer's site or at HCUS's training facility, self-study or computer-based training. Customer will be responsible for tuition less discount (if applicable) and for all travel and lodging costs.

### 2. SERVICES - GENERAL

**2.1 Scheduled Preventive Maintenance.** During the term of this SMA, HCUS will provide Preventive Maintenance Inspections for the Equipment at least annually or as recommended by the Equipment manufacturer. Preventive Maintenance will include, without limitation, those actions which HCUS, in its sole discretion, considers necessary to insure proper operation of the Equipment. Unless otherwise noted, Preventive Maintenance shall be performed at the Customer's facility during HCUS normal working hours, 8:00 AM to 5:00 PM local time, Monday through Friday ("Normal Hours," which do not include the following HCUS recognized holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day). Preventive Maintenance inspections may be performed concurrently during Remedial Maintenance (described in Section 2.2 below), and in that event may be unscheduled. Normal Hours restrictions under this Section 2.1 will not apply where Customer has selected After Hours PMs, Coverage Up to 9:00 PM or, if available, 24x7 365 Services.

**2.2 Remedial Maintenance during Normal Hours.** HCUS will provide Remedial Maintenance necessary to maintain the Equipment in good working order upon Customer's request for service, which request may be oral or in writing. Unless otherwise provided on the Detail Page, Remedial Maintenance will be performed at Customer's facility during Normal Hours. Normal Hours restrictions under this Section 2.2 will not apply where Customer has selected, if available, 24x7 365 Services or to the extent that Customer has selected Coverage Up to 9PM.

**2.3 Remedial Maintenance Outside of Normal Hours.** Remedial Maintenance will be performed outside of Normal Hours at Customer's request only, at HCUS's then current labor rates, including, without limitation, any additional charge for overtime labor, travel and expenses. There will be a minimum two-hour travel and four-hour labor charge for all Remedial Maintenance performed pursuant to this Section 2.3. Additional charges will not apply where Customer has selected 24x7 365 Services, if available, or to the extent Customer has selected Coverage Up to 9:00 PM.

**2.4 Maintenance Parts.** Except as otherwise specified in the Contract Level on the SMA Detail Page, HCUS will provide all necessary replacement parts for maintaining the Equipment at no cost to Customer. Such replacement parts, when furnished, will be new or used, reworked or refurbished parts that comply with applicable performance and reliability specifications for the Equipment. All replaced parts removed from the Equipment shall become the property of HCUS unless such replaced parts constitute "hazardous wastes", "hazardous substances", "special wastes" or other similar materials, as such terms are defined by any federal, state or local laws, rules or regulations, in which case, at the option of HCUS, such replaced parts shall remain the property of Customer and shall be disposed of by Customer in strict compliance with all applicable laws, rules and regulations.

**2.5 HCUS Application Software Updates and Support.** If the Equipment covered by this SMA utilizes HCUS's application software, HCUS will provide all maintenance and updates for such application software as part of this SMA unless specifically excluded under the Contract Level on the SMA Detail Page or is otherwise specifically excluded by Customer. Such updates will solely relate to previously purchased or licensed capabilities or capacities of the Equipment. Application software upgrades that provide new features or capabilities or that require hardware changes will be offered to Customer at purchase prices established by HCUS. In addition, unless otherwise provided in the Contract Level on the SMA Detail Page, some upgrades may require applications training performed by HCUS personnel that will be offered at HCUS rates and terms then in effect. HCUS retains the sole right to determine whether an upgrade requires such training.

**2.6 Software Maintenance and Support Services.** Should Customer require software support and maintenance services for HCUS PACS, RIS, CV or other software products licensed to Customer by HCUS (such support and maintenance services, collectively, "Software Support"), Software Support shall be subject to the maintenance and support provisions of the applicable End User Purchase, License and Services Agreement between HCUS and Customer ("EULA"). In the absence of a EULA, Customer agrees that Software Support shall be provided in accordance with HCUS's then current standard EULA posted on HCUS's website at [contracts.fujimed.com](https://contracts.fujimed.com).

**2.7 End of Life Service Life Support.** HCUS will provide Customer an end of service life notification in writing for Equipment which has reached its end of service life or for which associated spare parts have become limited or unavailable ("EOL") as soon as reasonably possible prior to the scheduled EOL date for such Equipment. EOL Equipment covered by this SMA shall be supported to the extent practicable and subject to the availability of associated spare parts for the remainder of the Term of this SMA HCUS will make commercially reasonable efforts to acquire replacement parts for Remedial and Preventative Maintenance. In the event that replacement parts are unavailable or the cost of such parts exceeds 50% of the value of this SMA, then either party may cancel this SMA with respect to the EOL Equipment without penalty upon thirty (30) days' notice to the other party. EOL Equipment will be eligible for renewal service coverage on an EOL Equipment only agreement subject to the provisions of this Section 2.7.

**2.8 CT General Maintenance and Tube Replacement:** In the event Customer selects Services providing for CT maintenance and Tube Coverage, HCUS will replace CT tubes which fail under normal operating circumstance in accordance with the Contract Level selected on the SMA Detail Page and not otherwise excluded under the provisions of Section 3 hereof. Such coverage shall be subject to the exclusions set forth in Section 3 hereof.

**2.9 Uptime Guarantee:** HCUS guarantees that during the Term of any SMA that provides for an uptime guarantee the Equipment will maintain a level of uptime equal to or better than the percentage selected on the SMA Detail Page. Uptime will be measured quarterly unless otherwise specified on the SMA Detail Page. Equipment is considered to be "up" when it is capable of performing clinical studies. Equipment is considered to be "down" when it cannot perform any clinical studies. Downtime for each piece of Equipment covered by this SMA means the period of time during the Service Coverage Hours selected on the SMA Detail Page that the Equipment is down as defined herein, excluding if applicable, Equipment down due to a Chiller issue. Downtime shall commence upon Customer's timely notice to the HCUS Service Dispatch that the Equipment is down and will end when the Equipment is no longer down. The Customer's SMA shall be extended at the end of the Term by one month for each quarter below the uptime percentage selected on the SMA Detail Page. The Equipment must be available immediately (remotely and onsite) to HCUS for diagnosis and/or repair upon the report of down Equipment.

### 3. EXCLUSIONS FROM MAINTENANCE SERVICES

**3.1** HCUS shall have no obligation to provide maintenance Services or replacement parts on the Equipment in connection with: (a) repair, replacement or maintenance arising from (i) any intentional acts or negligence of Customer's employees, agents or invitees (except for FPDs where Customer has selected FPD replacement coverage and damage resulted from Customer's negligence or accidental causes), (ii) attempts to repair or service the Equipment made by anyone other than HCUS personnel without the prior approval of HCUS or its authorized agents, (iii) use of special attachments or devices not provided by HCUS for the Equipment or (iv) misuse of the Equipment, including, without limitation, use of the Equipment for any application or function for which it was not designed; (b) repairs or maintenance of (i) Equipment due to an improper operating environment such as lack of air conditioning or electrical work external to the Equipment; or (ii) accessories, attachments, supplies, machines or other devices not furnished HCUS; (c) maintenance required by damage to the Equipment resulting from transportation or relocation of the Equipment by Customer; or (d) any Excusing Event (as defined in Section 7 hereof).

**3.2** If HCUS is called upon to service or repair the Equipment under this Section 3, Customer will be billed in a separate invoice for labor, parts and expenses at HCUS then current rates.

### 4. LOCATION AND ACCESS TO EQUIPMENT

**4.1 Location.** The Equipment shall not be moved to another location without reasonable notice to and the consent of HCUS, subject to the following exceptions: (i) any portable Equipment may be moved to other locations within the same facility with reasonable notice to HCUS prior to scheduled maintenance; (ii) if any Equipment is located in a trailer, van or other vehicle, such Equipment may be moved from the Customer's address set forth in this SMA; provided, however, that HCUS will not be required to service such Equipment if Customer does not notify HCUS at least thirty (30) days in advance of such Equipment's new location prior to a scheduled service event, or such Equipment is located more than 25 miles from the original Equipment location when a scheduled service event arises or Services are otherwise required under this SMA; and (iii) if any fixed Equipment is moved to any other location within Customer's facility, then either (a) Customer shall engage HCUS to relocate such fixed Equipment, at HCUS's then current rates, or (b) if HCUS does not perform the relocation services, then HCUS may suspend Services under this SMA until HCUS performs an inspection of such fixed Equipment, at Customer's cost and at HCUS then current rates, to determine if any repairs or adjustments are necessitated as a result of any such relocation. If Customer refuses to allow HCUS to inspect relocated Equipment under this Section 4.1(ii)(b), this SMA will automatically terminate and Customer shall be liable to HCUS for the Full Payment Amount.

**4.2 Physical Access.** Customer shall provide reasonable access to the Equipment for HCUS personnel for purposes of providing Services under this SMA. If reasonable access is not provided to HCUS personnel, Customer will be billed at HCUS then current labor rates due to the fact that the HCUS representative is denied access to the Equipment. Whenever Remedial Maintenance is provided outside Normal Hours in accordance with Section 2.3 hereof, Customer shall provide a knowledgeable representative on-site with signature authority to accept the completion of work performed and to authorize billing.

**4.3 Remote Access.** In the event Customer selects Sentinel or Active Line Monitoring Services as part of the Services, Customer shall provide HCUS with remote access to the Equipment. The remote access shall be provided through Customer's network as is reasonably necessary for HCUS to be able to provide remote monitoring services.

### 5. PAYMENT

**5.1** Customer shall pay within thirty (30) days of the date of the invoice the total Price pursuant to the Billing Cycle selected on the SMA Detail Page, including, without limitation, all applicable federal, state and local taxes. Customer shall also pay within thirty (30) days of the date of the invoice all charges based upon HCUS's then current rates for all work requested by Customer, which is not the responsibility of HCUS to perform pursuant to this SMA, including, without limitation, services arising out of any of the causes listed in Sections 3 and 4 hereof. If invoiced amounts exceed \$10,000, HCUS cannot accept payment (either in whole or in part) by credit card, p-card or any other charge card.

### 6. TERM AND TERMINATION

**6.1** The term of this SMA is as set forth on the Detail Page Customer acknowledges that this SMA is for the entire Term and constitutes an irrevocable promise by Customer to pay HCUS the total sum of each Year Price multiplied by the number of years in the Term (the "Full Payment Amount") regardless of any Billing Cycle payment arrangement to which HCUS may agree. Customer further acknowledges that in order to ensure the ability of HCUS to satisfy its obligations under this SMA for the Term, HCUS will be making financial and other commitments, both internally and externally, that may be irrevocable. Accordingly, upon the occurrence of any Event of Default, HCUS may, at any time, declare this SMA to be terminated and the remaining unpaid balance of the Full Payment Amount to be immediately due and payable by Customer without discount, deduction or setoff.

**6.2** Any one or more of the following events shall constitute an Event of Default: (i) Customer fails to pay any monies due HCUS pursuant to this SMA when such payment becomes due and such failure is not cured within seven (7) days of the date on which a notice of default is

## FUJIFILM HEALTHCARE AMERICAS CORPORATION

### SERVICE AGREEMENT TERMS AND CONDITIONS

sent by HCUS to Customer (during which period HCUS may suspend service to Customer without liability); (ii) Customer becomes insolvent, a receiver is appointed for any part of the Customer's property, Customer makes an assignment for the benefit of creditors, or any proceeding is commenced either by or against Customer under any bankruptcy or insolvency laws; or (iii) Customer defaults in any other obligation owing to HCUS pursuant to this SMA or otherwise and such failure is not cured within ten (10) days of the date on which a notice of default is sent by HCUS to Customer (during which period HCUS may suspend service to Customer without liability).

#### 7. EXCUSED PERFORMANCE

7.1 HCUS will not be liable for any failure to perform or delayed performance of any part of this SMA if HCUS performance is prevented, hindered, or delayed by reason of any cause beyond the reasonable control of HCUS (such cause, an "Excusing Event"), including, without limitation, labor disputes, strikes, other industrial disturbance, acts of God, pandemic, floods, shortages of materials, earthquakes, casualty, war, acts of the public enemy, riots, insurrections, embargoes, or laws, blockages, actions, restrictions, regulations or orders of any government, government agency or subdivision.

#### 8. WARRANTY: DISCLAIMER OF WARRANTY; LIMITATION OF LIABILITY

8.1 **Warranty and Disclaimer of Warranty.** HCUS warrants that the parts and Services provided to Customer pursuant to this SMA will be free from defects in material and workmanship at the time such services are provided. In the event of a breach of any HCUS warranty under this SMA, the sole obligation of HCUS shall be to make all necessary adjustments and repairs to, or replacements of, any parts installed pursuant to this SMA which are defective at the time of installation. HCUS MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT, WITH RESPECT TO SERVICES OR PARTS PROVIDED BY HCUS PURSUANT TO THIS SMA.

8.2 **Limitation of Liability.** HCUS's total liability under this SMA for any claims arising under, in connection with or relating in any way to this SMA shall be limited to money damages in an amount not to exceed the annual Price paid by Customer. The foregoing limitation of liability shall not apply to claims by Customer or third parties for bodily injury or damage to real property or tangible personal property caused solely and directly by the gross negligence or willful misconduct of HCUS. In addition, HCUS shall have no liability hereunder to Customer to the extent that Customer's or any third party's acts or omissions contributed in any way to any loss or damage sustained by Customer or any third party or to the extent that such loss or damage is due to an Excusing Event. HCUS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, UNFORESEEN OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, LOST REVENUES, LOSS OF USE OR DOWNTIME, AND LOST DATA, WHETHER BASED ON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF HCUS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, ARISING OUT OF, IN CONNECTION WITH OR RELATING TO THIS SMA, OR THE USE OR PERFORMANCE OF THE EQUIPMENT.

#### 9. CONFIDENTIALITY

9.1 During the course of this SMA, the parties acknowledge that they may exchange certain Information concerning their respective businesses, the businesses of their subsidiaries and affiliates and their future or current business relationship (the "Business Relationship"). For purposes of this SMA, the term "Information" shall mean all information, regardless of form, that the disclosing party deems to be confidential and proprietary to it or its subsidiaries or affiliates (including but not limited to business plans, customer lists, information on product pricing and other terms of sale, technical data, trade secrets or know-how (including research, product plans and specifications), products, services, investors, partners, distributors, markets, market studies, computer software and programs (including object code and source code), data, databases and database technologies, developments, inventions, processes, compilations, flowcharts, formulae, technology, sketches, designs, drawings, diagrams, manuals, schematics, samples, engineering, hardware configuration information, and marketing, finance or other business information) that is disclosed, directly or indirectly, by the disclosing party to the receiving party pursuant to this SMA. For purposes of this section 9.6, "subsidiaries and affiliates" shall mean any corporation, firm, partnership or other entity that directly or indirectly controls, is controlled by, or is under common control with, either party. The parties agree that "Information" includes the fact that the Business Relationship itself is being conducted.

9.2 The receiving party, its subsidiaries and affiliates (collectively referred to as "Recipient") agree to maintain in confidence the Information with at least the same degree of care Recipient holds its own confidential and proprietary information, but at all times with no less than reasonable care. Recipient will not use the Information except for its evaluation and performance of the Business Relationship pursuant to this SMA. Recipient will disclose the Information only to its employees directly concerned with the Business Relationship and on a need-to-know basis only, and Recipient will not disclose the Information to any third party or use the Information for any other purpose.

9.3 Recipient's preceding obligations of non-disclosure and the limitation upon the right to use the Information shall not apply to the extent that Recipient can demonstrate that the Information is: i) in the possession or control of Recipient prior to the time of disclosure hereunder; ii) at the time of disclosure or thereafter becomes public knowledge through no fault or omission of Recipient; iii) lawfully obtained by Recipient from a third party under no obligation of confidentiality to the disclosing party; or iv) developed independently by personnel of the Recipient who have not had access to Information received from the disclosing party.

9.4 All proprietary rights (including but not limited to patent rights, copyrights and trade secrets) in and to the Information shall remain the disclosing party's property, and nothing in this SMA shall be construed as granting any license under the Information, or any proprietary rights now or hereafter owned or controlled by either party. A party shall not cause or permit the reverse engineering, reverse assembly or reverse compilation of any Information of the disclosing party or include any Information of the disclosing party in any patent or patent application.

9.5 Upon the request of the disclosing party, Recipient either will return promptly to the disclosing party or destroy, with such destruction certified in writing by an authorized officer of the Recipient, all of the Information, including all copies thereof.

9.6 Recipient agrees that a breach of this SMA may result in irreparable harm to the disclosing party. In seeking enforcement of any of these obligations, the disclosing party therefore shall

be entitled to seek injunctive and other equitable relief to prevent or restrain the breach of this SMA. Notwithstanding the foregoing, nothing in this SMA shall be construed as prohibiting the disclosing party from pursuing any other remedies that may be available to it, whether at law or in equity.

9.7 In the event Recipient is required by law, regulation or court order to disclose any Information, Recipient will promptly notify the other party in writing prior to making any such disclosure in order to allow the disclosing party to seek a protective order or other appropriate remedy from the proper authority. Recipient will cooperate with the disclosing party in seeking such order or other remedy. If the disclosing party is not successful in precluding the requesting legal body from requiring the disclosure of the Information, Recipient will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded to such Information.

#### 10. MISCELLANEOUS

10.1 **Assignment.** The rights and obligations of Customer under this SMA shall not be assignable in full or in part by operation of law or otherwise without the prior written consent of HCUS.

10.2 **Waiver.** Any forbearance, failure or delay by either party in exercising any right, power or remedy hereunder shall not be deemed to be a waiver of such right, power or remedy; any single or partial exercise of any right, power or remedy by either party hereunder shall not preclude the further exercise thereof; and every right, power or remedy of each party shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by such party.

10.3 **Governing Law.** The laws of the State of New York shall govern this SMA, without giving effect to its conflict of laws provisions.

10.4 **Severability.** In the event any one or more of the provisions of this SMA or the terms and conditions set forth herein shall for any reason be held to be invalid, illegal or unenforceable, the remaining provisions of this SMA and hereof shall be unimpaired and any such invalid, illegal or unenforceable provision shall be replaced by a provision which, being valid, legal and enforceable, comes closest to the intention of the parties underlying such invalid, illegal or unenforceable provision.

10.5 **Notice.** Notices to the parties shall be sent to their respective addresses as set forth in this SMA by certified mail, return receipt requested, or by overnight courier.

10.6 **Access to Books and Records.** To the extent Section 952 of the Omnibus Reconciliation Act of 1980 (Public Law 96-499) is found applicable to this SMA and the value or cost of services rendered thereunder exceeds \$10,000 or more over a 12-month period, then until the expiration of four (4) years after furnishing of services pursuant to this SMA, HCUS agrees to make available, upon their written request, to the Secretary of the United States Department of Health and Human Services (the "DHHS"), the Comptroller General of the United States or to any of their respective duly authorized representatives, this SMA, HCUS's books, documents and records that are necessary to certify the extent of any costs of Customer arising from this SMA, or such other information as otherwise required by law. Further, if HCUS carries out any of its duties arising from this SMA through a subcontract, the value or cost of which is \$10,000 or more over a 12-month period, with a related organization, such subcontract shall contain a clause to the effect that, until the expiration of four (4) years after furnishing such service pursuant to such subcontract, the related organization shall make available, upon their written request, to the Secretary of the DHHS, the Comptroller General of the United States or any of their respective duly authorized representatives, the subcontracts, books, documents and records of such organization that are necessary to verify the nature and extent of such costs, or such other information as otherwise required by law.

10.7 **Reporting.** Should Customer seek reimbursement from a government entity for products or Services made available as a result of this SMA, Customer represents and warrants that it is aware of, and covenants that it will comply with, applicable law and regulation pertaining to discounted sales, including, without limitation, the provisions of Section 1128B(b) of the Social Security Act 42 USC 1320a-7b(b) as well as all other regulations pertaining to such transactions. Without limiting the generality of the foregoing, Customer acknowledges that all price concessions, including, without limitation, discounts, credits and rebates, may constitute discounts off the prices of goods and services furnished hereunder. Discounted pricing must be fully and accurately reported on all claims for payment filed with applicable Medicare, Medicaid and state agency cost reports. In accordance with all applicable federal and state laws and applicable agreements Customer should also retain a copy of this SMA and communications regarding this SMA, together with the invoice(s) for the purchase, and permit agents of the DHHS or any state agency access to such records upon request.

10.8 **HIPAA Provisions.** To the extent required by the provisions of the Health Insurance Portability and Accountability Act ("HIPAA") and the regulations promulgated thereunder, HCUS does hereby assure Customer that it will appropriately safeguard protected health information made available to or obtained by it pursuant to this SMA ("PHI"). Without limiting the obligations of HCUS otherwise set forth in this SMA or imposed by applicable law, HCUS agrees to comply with applicable requirements of law relating to PHI and with respect to the Services performed for Customer hereunder. To that end, HCUS and Customer agree to be bound by the terms and conditions of HCUS current Business Associate Agreement, a copy of which can be found on HCUS website at [contracts.fujifilm.com](http://contracts.fujifilm.com).

10.9 **Captions.** The headings and captions in this SMA have been inserted for convenience of reference and are not part of this SMA.

10.10 **Entire Agreement.** This SMA and these terms and conditions set forth herein and made a part of this SMA supersede any prior agreements, written or oral, between the parties regarding the subject matter of this SMA or hereof, contain the entire understanding between the parties regarding the subject matter of this SMA and hereof and, except as provided herein or therein, may be amended or altered only by execution by both parties of an instrument in writing.