



# Avonix Imaging, LLC GENERAL TERMS AND CONDITIONS

These Terms and Conditions (“Terms”) constitute the agreement between Avonix Imaging, LLC, a Minnesota limited liability company (“Company”) and the customer (“Customer”) that is identified in the quote or proposal to which these Terms are attached (“Proposal”) (the Proposal and the Terms shall be collectively referred to as the “Agreement”). Acceptance of the Proposal of the Services (as defined below) or payment of an invoice shall constitute acceptance of the Terms by the Customer and no additional or differing terms, conditions or limitations of liability shall have any effect unless agreed to, in writing, by the Company.

**1. Customer Parts.** Customer represents and warrants that Customer is either (a) the rightful owner of, or (b) an authorized agent of the rightful owner of all parts supplied by Customer to Company as part of this Agreement (“Customer Parts”). Customer represents and warrants that no consent is required from any third party prior to having the Company perform scanning, imaging or other services (collectively, “Services”) on the Customer Parts. Customer shall supply the Company, in advance, with written documentation related to any and all regulations or statutory requirements (collectively, “Regulations”) which may affect the handling of the Customer Parts.

**2. Prices and Taxes.** Customer agrees to pay the Company the prices set forth in the Proposal. Customer may not set-off disputed amounts owed to the Company against undisputed amounts payable to the Company under this Agreement or any other agreement with the Company. In the event that taxes, tariffs or duties are assessed against the Company as a result of the Services, Customer shall reimburse the Company for any such amounts paid by Company or provide the Company with valid tax exemption certificates with respect thereto.

**3. Payment Terms.** Each invoice shall be due and payable in full within thirty (30) days of the date of such invoice. In the event any invoice is not paid when due, the Company may, at its sole discretion and without limitation as to its other remedies, suspend furnishing any further goods or services. All past due invoices shall accrue interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law. Customer shall pay the Company for all of the Company’s costs and expenses, including, but not limited to, reasonable attorneys’ fees, in connection with collection or pursuit of any monies owed to the Company hereunder.

**4. Purchase Orders.** The Company hereby rejects any terms on Customer’s purchase orders that add to, vary from or conflict with this Agreement. In the event of a conflict between the terms of a purchase order and this Agreement, the Customer and the Company agree that this Agreement shall control. Any preprinted or special terms and conditions appearing on Customer’s

purchase orders or other business forms, including electronic forms, will only be binding on the Company if specifically agreed to, in writing, by the Company.

**5. Delivery.** Unless otherwise noted on the Proposal, results obtained in performing the Services shall be delivered to the Customer electronically. In the event that Customer does not notify the Company in writing within 96 hours of delivery of results, then such results shall be deemed accepted.

**6. Force Majeure.** In the event that the Company is prevented from performing, or is unable to perform, any of its obligations under this Agreement by circumstances beyond its reasonable control, including, without limitation, fire, explosion, power outages, Internet outages, cyber attacks or viruses, acts of God, war or other hostilities, civil commotion, and domestic or foreign governmental acts, orders or regulations (“Force Majeure Event”), and if the Company has used commercially reasonable efforts to avoid such occurrence and minimize its duration and has given prompt written notice to Customer thereof, then the Company’s failure to perform hereunder shall be equitably excused and the time for performance shall be equitably extended for the period of delay or inability to perform due to such Force Majeure Event.

**7. Intellectual Property Warranty.** Customer hereby represents and warrants to the Company that: (i) it is free to disclose, without any obligation to, or violation of any right of, any third party, all information and data disclosed to the Company through the services covered by this Agreement including but not limited to, information related to the Customer Parts; and (ii) the Company’s use of the information, data, specifications, concepts, ideas, artwork, slogans, practices and techniques disclosed to the Company under this Agreement will not violate the intellectual property rights of any third party.

**8. Warranties.** The Company warrants solely to the Customer that the Services will be performed by the Company with reasonable care. The Customer expressly acknowledges that the Company is not a certified testing laboratory and the Company does not guarantee the correctness or completeness of its Services. Accordingly,

all risk and liability relating to the Customer Parts (including, but not limited to, products liability) shall be retained exclusively by the Customer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION, THE COMPANY DOES NOT MAKE ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PURPOSE.

**9. Acceptance or Rejection.** THE CUSTOMER HEREBY EXPRESSLY ACKNOWLEDGES THAT THE COMPANY WILL PROVIDE SERVICES THAT MAY INVOLVE IMAGES OF CUSTOMER PARTS. ANY DECISION TO ACCEPT OR REJECT ANY OR ALL CUSTOMER PARTS FOR A PARTICULAR PURPOSE BASED ON THE IMAGES PROVIDED SHALL BE THE SOLE RESPONSIBILITY OF THE CUSTOMER.

**10. Limitation of Liability.** THE COMPANY'S TOTAL LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF FEES THAT CUSTOMER HAS ACTUALLY PAID TO THE COMPANY UNDER THE APPLICABLE PURCHASE ORDER. IN NO EVENT SHALL THE COMPANY BE LIABLE FOR PUNITIVE DAMAGES, INDIRECT DAMAGES, SPECIAL DAMAGES, INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES OR FOR DAMAGES RESULTING FROM LOSS OF PROFITS, LOSS OF DATA, OR INTERRUPTION OF BUSINESS REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTORY LIABILITY OR OTHERWISE) AND REGARDLESS OF WHETHER THE COMPANY WAS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

**11. Independent Contractor Status.** The Company will provide services as an "independent contractor" as that term is defined by the U.S. Internal Revenue Code. The parties are not partners. Neither party is an agent of the other and neither may bind the other to contracts with third parties.

**12. Indemnification.** The Customer shall indemnify, defend and hold the Company harmless from any and all actual costs or expenses (including, but not

limited to reasonable attorneys' fees and amounts paid in settlement of claims) related to any actual or threatened claim which may be made against the Company alleging that: (i) the Services provided under this Agreement infringe upon the patent, copyright or other intellectual property rights of any third party; or (ii) by any third party for liability related to Customer Parts or the Company's provision of Services. The indemnification requirements in this section shall not apply if such liability arises as a direct result of, and then, only to the extent of, the gross negligence or willful misconduct of the Company or its employees.

**13. Cancellations and Refunds.** Once accepted, Proposals are not cancellable without the prior written consent of the Company. Customer shall be liable for all specially ordered products or services ordered by Company in order to perform specialized services.

**14. Miscellaneous.** This Agreement contains the entire agreement between the parties with respect to the subject matter herein and supersedes all prior or contemporaneous agreements, discussions or representations, oral or written with respect to such subject matter. No waiver shall be effective unless in writing and then only to the extent expressly set forth in writing. If for any reason any provision hereof is determined by a court of competent jurisdiction to be unenforceable or invalid, such provision shall be deemed severed from this Agreement and the remaining provisions shall be carried out with the same force and effect as if the severed provision or part thereof had not been a part of this Agreement. There are no third party beneficiaries to this Agreement. This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota without giving effect to the choice of law provisions thereof. The parties consent to the personal jurisdiction and exclusive venue of the state and federal courts located in Hennepin County, Minnesota with respect to all disputes arising hereunder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. The descriptive headings for the several sections of this Agreement are inserted for convenience only and not to confine or limit any of the terms or provisions hereof.