

Kofax Image Products, Inc. Software License Agreement

IMPORTANT – CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT (THIS “AGREEMENT”) BEFORE OPENING THE SEALED DISK PACKAGE. OPENING THE DISK PACKAGE INDICATES THAT YOU HAVE READ, UNDERSTAND AND ACCEPT THIS AGREEMENT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. SHOULD YOU CHOOSE NOT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, PROMPTLY RETURN THE UN-OPENED DISK PACKAGE AND ACCOMPANYING WRITTEN MATERIALS TO THE PLACE YOU OBTAINED THEM FROM FOR A COMPLETE REFUND. NO REFUND WILL BE GIVEN FOR SOFTWARE THAT HAS AN OPENED DISK PACKET OR MISSING COMPONENTS.

1. Software License.

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(b) Volume Restrictions and Software Keys. If you received a version of Ascent software under a license subject to software-based volume restrictions your use of the Software may not exceed the annual or monthly volume limits specified in the “Volume License(s)” appearing on the associated Kofax sales invoice and in the Software’s activation code; and

(c) Limited License Grant for High-Availability Back Up System. If you have been provided an additional license for a High-Availability Back Up installation of the Software:

(i) you may install and maintain the Software on a system mirroring your normal production system for the limited purpose of using the High-Availability Back Up version of the Software during the period in which the Software installed on your primary production system is inaccessible or non-functional due to a disaster or other unforeseen event;

(ii) Kofax reserves the right, during your normal business hours, to view the environment in which you have installed the Software for purposes of confirming your compliance with the limited High-Availability Back Up license. Such audit will

(A) not unreasonably interfere with your business activities;

(B) not be conducted more than once in any twelve (12) month period (unless a prior audit revealed unauthorized installation or use of the Software);

(C) not be at your costs or expense unless unauthorized installation or use of the Software is revealed on any two (2) consecutive audits; and

(D) be conducted subject to a reasonable confidentiality agreement of your specification.

2. **License Restrictions.** Kofax reserves all rights not expressly granted to you under this Agreement. You may not modify or alter the Software in any way. You may not disassemble, decompile or reverse engineer the Software in order to obtain the source code, which is a trade secret of Kofax. You may not lease, sublicense or otherwise rent the Software and accompanying documentation.

3. **Ownership.** No title or ownership in the Software is transferred to you. You acknowledge and agree that Kofax and its suppliers own and retain all rights, title and interest in the Software and ownership of all intellectual property rights in the Software, including any adaptations or copies. You acquire only a license to use the Software. The Software is the proprietary product of Kofax and/or its suppliers and is protected by United States copyright laws and international provisions. You must treat the Software as any other copyrighted material with the exception that (a) you may make a single copy of the Software in non-printed machine-readable form for each Client CPU on the licensed Local Area Network, and (b) you may make a single copy of the Software solely for back-up or archival purposes, or transfer the Software to a single hard disk provided you keep the original solely for back-up or archival purposes. You agree not to attempt in any way to obliterate or destroy the trade secret or copyright notice in all copies of the Software. In no event shall you copy the documentation, or any portion thereof, accompanying the Software. You may not use, copy, modify, or transfer the Software or documentation accompanying this Software except as expressly provided in this Agreement. You agree to keep a written record of all copies of the Software made and the disposition thereof and furnish a copy of such record to Kofax upon request.

4. **Term.** This license is effective until terminated. You may terminate it by destroying the Software and accompanying documentation and all copies thereof. This license will also terminate if you fail to comply with any term or provision of this Agreement. You agree upon such termination to destroy the Software and accompanying documentation and all copies thereof.

5. **Limited Warranty.** In the absence of any optional warranty or continuing provisions extended by a formal written agreement, Kofax warrants its Software in accordance with the following:

(a) Limited Warranty. Kofax warrants solely on its behalf and for your benefit alone, that the Software will perform substantially in accordance with the accompanying documentation for a period of ninety (90) days from your receipt of the Software (the “Warranty Period”). Kofax further warrants solely on its behalf and for your benefit alone, that the optical media on which the Software is recorded shall be free from defects in materials and workmanship during the Warranty Period and under normal use. Except as expressly provided herein, neither Kofax nor its suppliers warrant the performance or results of the Software, that the Software will meet your requirements, or that the Software will run uninterrupted or error free.

(b) Exclusive Remedy. Kofax’s entire liability and your exclusive remedy shall be the replacement of any media not meeting the limited warranty set forth above, provided it is returned to Kofax as set forth below. Warranty claims must be received by Kofax within the Warranty Period. In the event of a warranty claim, you shall be responsible for the removal of the defective Software, shipping charges for return to Kofax, and installation of its replacement. Replaced Software, or any part thereof, shall become the property of Kofax and shall be returned to Kofax at your expense.

6. **WARRANTY DISCLAIMER.** THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY KOFAX AND ITS SUPPLIERS. Some jurisdictions do not allow certain disclaimers and limitations of warranties, so portions of the above limitations may not apply to you. This limited warranty gives you specific rights and you may also have other rights which vary from state to state.

7. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL KOFAX OR ITS SUPPLIERS BE LIABLE TO YOU FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, BUSINESS, DATA, GOODWILL, OR ANTICIPATED SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. IN NO EVENT WILL KOFAX’S AGGREGATE LIABILITY FOR DIRECT DAMAGES TO PROPERTY OR PERSON (WHETHER IN ONE INSTANCE OR A SERIES OF INSTANCES) EXCEED THE AMOUNT PAID BY YOU FOR THE SOFTWARE OUT OF WHICH SUCH CLAIM AROSE. In those jurisdictions that do not allow the exclusion or limitation of damages, Kofax’s liability shall be limited or excluded to the maximum extent allowed within those jurisdictions.

8. **U.S. Government Restricted Rights.** The Software and documentation are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions as set forth in subparagraph (b)(3) of the Right in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software – Restricted Rights at 48CFR 52.227-19, as applicable. Supplier is Kofax Image Products, Inc. 16245 Laguna Canyon Road, Irvine, California 92618-3603.

9. Maintenance and Upgrade Rights.

(a) Maintenance and Update Fee and Term. If the licensed user has paid the annual maintenance and upgrade (“M&U”) fee to obtain Updates (as defined below) for the purchased Software, the following terms and conditions shall also apply. If the licensed user has paid the appropriate annual M&U fee, the licensed user’s M&U rights shall begin on the date the licenses are purchased as described in the accompanying documentation and shall continue for the term of which payment has been made unless terminated sooner. During this term, Kofax may, from time to time, generally make Updates available for licensing to the public.

(b) Updates. For the purposes of this Agreement, an Update shall mean a generally available release of the same Software that was originally purchased. Upon general availability of Updates during the paid M&U term, Kofax shall provide the licensed user with one (1) copy of each such Update for each copy of the Software originally licensed by the licensed user pursuant to this Agreement to provide applicable support up to, but not exceeding, the number of user licenses you are entitled to based on your original purchase of Software for such licenses, without additional charge. Any such Updates so delivered to the licensed user shall be considered Software under the terms of this Agreement.

10. **Export.** You agree that you do not intend to and will not, directly or indirectly, export or transmit the Software or related documentation and technical data to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute, without the prior written consent, if required, of the Bureau of Export Administration of the U.S. Department of Commerce, or such other governmental entity as may have jurisdiction over such export or transmission. You represent and warrant that you are not located in, under the control of, or a national or resident of any such country.

11. **Indemnification.** You shall defend, indemnify, and hold Kofax, its officers, directors and employees, harmless from and against any and all claims, damages, losses, costs or other expenses (including reasonable attorneys’ fees) that arise directly or indirectly out of your willful misconduct or unauthorized use of the Software.

12. Miscellaneous.

(a) Severability. If any provision of this Agreement is invalid or unenforceable under applicable law, then it shall be, to that extent, deemed omitted and the remaining provisions will continue in full force and effect.

(b) Governing Law. The validity and performance of this Agreement shall be governed by California law (without reference to choice of law principles), and applicable federal law.

(c) Construction. This Agreement is deemed entered into in California, and shall be construed as to its fair meaning and not strictly for or against either party.

(d) Attorneys’ Fees. In the event of any legal action or proceeding relating to this Agreement, the prevailing party shall be entitled to recover its attorneys’ fees in addition to any other relief granted.

(e) Third Party Software and Related Intellectual Property. As used in this Agreement, the term “Software” includes Adobe Technology and related documentation, and any upgrades, modified versions, updates, additions, and copies thereof. “Adobe” and “Adobe PDF Library” are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

(f) Entire Agreement; Modification. This Agreement sets forth the entire understanding and agreement between you and Kofax and may be amended only in a writing signed by both parties.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. YOU FURTHER AGREE THAT IT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU AND KOFAX, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN YOU AND KOFAX RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.