



## KOFAX FRONT-OFFICE SERVER / DOCUMENT EXCHANGE SERVER

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(b) **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.

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(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

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## **9. Maintenance and Updates Rights.**

**(a) Maintenance and Update Fee and Term.** If You have paid the annual Maintenance and Update ("M&U") fee associated with the Software, the following terms and conditions shall also apply. Your M&U benefits shall begin on the date of the Kofax invoice reflecting the appropriate M&U fee. The M&U benefits are described in the accompanying Kofax documentation, and shall continue for the period for which payment of the M&U fees has been made ("M&U Term"), unless terminated sooner. During the M&U Term, Kofax may, from time to time, generally make Updates available for licensing to its licensees.

**(b) Updates.** For the purposes of this Agreement, "Update" shall mean a generally available release of the Software that consists substantially of error corrections and minor modifications, and does not include major new functionality or features. Upon general availability of Updates and during the applicable M&U Term, Kofax will make such Updates available for Your download at the Kofax Support site, or, upon request shall provide You with one (1) copy of each such Update on cd-rom media. Additional copies of Updates may be available via webdownload or on cd-rom media upon request. Installations and access of any Updates provided hereunder shall be subject to the same restrictions as applicable to the associated Software. Any such Updates 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

- (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.
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- (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.