

# Software License Agreement

## Kofax Communication Server

01/05/09 F2.0

### Parties

- (a) Kofax Austria GmbH as licensor, incorporated and registered in Austria with business register number FN 91520p, whose registered office is at Talpagasse 1, A-1230 Vienna (**Supplier**).
- (b) The licensee, a natural or legal person which intends to enter into or has entered into a Software License Agreement with Supplier (**Customer**).

(each a **Party** and all together the **Parties**)

The Supplier is the legal and beneficial owner and licensor of certain software products. The Customer desires to license these software products from Supplier under the terms of this Software License Agreement (the **License**). The software products governed by the License include any update which is acquired by the Customer and/or delivered by the Supplier during the subsistence of this License as well as the KOFAX Communication Server user handbook (the **Software**).

### 1. License Grant

(a) Upon acceptance of the terms of this License and conditional on payment of all required fees as set forth in Section 3., the Supplier grants the Customer a non-exclusive, non-transferable, non-sub-licensable right to use the Software for internal use of the Customer in object code form only. Unless otherwise agreed upon by the Parties in writing, the license grant shall be unlimited in time.

(b) In relation to the scope of this license grant, **Use** means the loading, displaying, operating, and storing of the Software by the Customer for the purposes (production, evaluation, testing, demonstration, disaster recovery), duration and extent for which the Customer has paid the appropriate license fees, as evidenced by one or more valid order documents between the Customer and the Supplier or an authorized reseller of the Supplier identifying the Software and the limitations on use (such as volume limitations or concurrent client module use limitation).

### 2. License Restrictions

(a) The Supplier reserves all rights not expressly granted to the Customer under this License and the Customer may not use the Software other than as specified in this License without the prior written consent of the Supplier.

(b) In case of volume limitations or concurrent client module use limitation as agreed between the Parties, Use of the Software by more than the specified number of concurrent client modules, or for the benefit of any CPU which exceeds the applicable volume limitation is expressly prohibited. Whenever the Customer makes changes in its hardware, network structure or workforce, which is related to the volume or concurrent client module use limitations, the Customer shall delete the Software irretrievably from the hardware used up to the date of the change and notify the Supplier for an according adjustment of the License and/or license fees.

(c) The Customer may make as many back-up copies of the Software as may be necessary for its lawful use within the scope of applicable statutory law. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.

(d) Except as stated in this Section 2. (c) the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, alter or make error corrections to the Software in whole or in part. The Customer may not lease, sublicense or otherwise rent the Software and accompanying documentation.

(e) This License does not cover Use by subsidiaries, affiliates or otherwise associated companies of the Customer and is limited to the Use within the territory of the state in which the Customer has purchased the Software and does not convey to the Customer an

interest in or to the Software, but only a limited right of use revocable in accordance with the terms of this License.

(f) The Software shall only be used in accordance with the safety, application, and operational instructions, described in the KOFAX Communication Server handbook.

(g) Where the license restrictions set forth in this Clause 2. are not complied with, the Supplier is entitled – in addition to all other resulting legal and contractual consequences – to demand the immediate return or the verifiable and irretrievable destruction of the Software as well as of any backup copies and user data.

### 3. Fees

(a) The Customer shall – either directly to the Supplier or by way of payment to an authorised distributor of the Supplier – pay a license fee as agreed upon between the Parties or between the Customer and an authorised distributor of the Supplier. Payment shall be made upon the making available of the Software to the Customer unless agreed otherwise in writing between the Customer and the authorised distributor. For the purpose of this License, the Software shall be deemed 'made available' at the earliest of the following options:

- (i) when it was installed at the Customer's hardware
- (ii) when it was ready for dispatch in the place of performance pursuant to Section 16. (c).
- (iii) when the user data necessary for the Use of the Software have been requested.

(b) All sums payable under this License are exclusive of VAT or other sales, use, VAT or excise taxes, duties or assessments, for which the Customer shall be responsible.

(c) If the Customer fails to pay any amount payable by it under this License, the Supplier (and/or the authorised distributor on behalf of the Supplier) shall be entitled (but not obliged) to charge the Customer interest on the overdue amount, payable by the Customer forthwith on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 5% per annum above the base rate for the time being of the European Central Bank (*ECB*). Such interest shall accrue on a daily basis and be compounded quarterly.

### 4. Updates and Maintenance

(a) This License does not include a right of the Customer to receive updates from the Supplier. The Supplier may however offer the Customer updates of the Software, whereby an additional charge shall apply as agreed upon by the Parties by way of a separate agreement. Any such updates so delivered to and accepted by the Customer shall be considered Software under the terms of this License.

(b) Save for the warranty obligations stipulated in Section 5. below, this License does not include a right of the Customer to receive any maintenance services.

#### 5. Limited Warranty

(a) Subject to the limitations stated herein, the Supplier warrants to the Customer that, for a period of six months from the date of receipt, the Software, as delivered, will materially conform to the then-current KOFAX Communication Server handbook for the Software.

(b) The Customer acknowledges that, based on the current state of technology, it is not possible to develop complex software products that are entirely free of technical defects. The Supplier does not warrant that the use of the Software will be uninterrupted or error-free and the Customer accepts responsibility for the selection of the Software to achieve its intended results.

(c) If, within the warranty period as stipulated in 5. (a) above, the Customer notifies the Supplier immediately in writing of any defect in the Software in consequence of which it fails to conform in all material respects to its specifications as advertised and such defect does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of this License, for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, the Supplier shall, at the Supplier's option, either repair or replace the Software. The Customer shall support the Supplier's repair and/or replace efforts by providing any required information and documentation and in any other reasonable manner.

(d) This Limited Warranty is void if failure of the Software has resulted from accident, abuse or misapplication. The services provided hereunder shall be performed in a good and workmanlike manner in accordance with generally accepted standards of the software industry.

(e) In the event the Supplier can prove that there was no defect for which the Supplier was responsible based on this License, the Supplier shall be entitled to require reimbursement of its expenses, based on the Supplier's standard rates, incurred for the remedy efforts made.

(f) All other conditions, warranties or other terms which might have effect between the Parties or be implied or incorporated into this License or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

#### 6. Liability

The Supplier's liability for any and all damages, irrespective whether caused by breach of contract, defects or unlawful act shall be limited as follows:

(a) In cases of intentional acts, claims under product liability laws, malicious non-disclosure of a defect, as well as claims based on damage to life, body or health, the Supplier's liability shall be determined in accordance with statutory law.

(b) In case of gross negligence, the Supplier's liability shall be limited to the reimbursement of typical foreseeable damages.

(c) The Customer will have to prove the existence of intent or gross negligence.

(d) Liability for slight negligence is excluded.

(e) The Supplier shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

(i) loss of profits and consequential damages;

(ii) incidental loss and loss of anticipated savings;

(iii) loss of business opportunity;

(iv) loss of goodwill and loss of data.

(f) The total liability of the Supplier, whether in contract, tort (including gross negligence) or otherwise and whether in connection with this License or any collateral contract, shall in no circumstances exceed license fee paid for the Software. Any claim for damages will expire within one year after delivery of the Software or from the date the cause of action arises.

#### 7. Force Majeure

(a) No Party shall be liable to the other for any delay or non-performance of its obligations under this License arising from any cause beyond its control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion.

(b) For the avoidance of doubt, nothing in this Section shall excuse the Customer from any payment obligations under this License.

#### 8. Intellectual Property

(a) The Customer acknowledges that all Intellectual Property Rights in the Software and any modification thereof belong and shall belong to the Supplier, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this License. No title to or ownership in the Software is transferred to the Customer under this License.

(b) The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession, use, development, modification or maintenance of the Software (or any part thereof) in accordance with the terms of this License infringes the intellectual property rights of a third party (*Infringement Claim*) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim.

(c) For the avoidance of doubt, this Section 8. shall not apply where the Infringement Claim in question is attributable to possession, use, development, modification or maintenance of the Software (or any part thereof) by the Customer other than in accordance with the terms of this License or use of a non-current release of the Software.

(d) This Section 8. is conditional on:

(i) the Customer notifying the Supplier in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;

(ii) the Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of the Supplier, which consent shall not be unreasonably withheld or delayed; and

(iii) the Supplier having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer giving the Supplier all reasonable assistance in connection with those negotiations and such litigation at the Supplier's request and expense.

(e) If any Infringement Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

(i) procure for the Customer the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this License; or

(ii) modify the Software so that it ceases to be infringing; or

(iii) replace the Software with non-infringing software; or

(iv) terminate this License immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in Section 5. and the Customer shall have the same rights in respect thereof as it would have had under those Sections had the references to the date of this License been references to the date on which such modification or replacement was made.

(f) The Supplier will have no liability for any claim of infringement arising as a result of

(i) the Customer's use of the Software in combination with any items not supplied by the Supplier;

(ii) any modification of the Software at the Customer's request;

(iii) use of other than the latest revision of the Software if use of the latest revision would avoid the infringement; or

(iv) use outside the scope of this License.

(g) The foregoing states the Supplier's entire liability concerning infringement of intellectual property rights, including but not limited to, patent, copyright and trade secret rights.

#### 9. Indemnification

The Customer shall defend, indemnify, and hold the Supplier, 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 the Customer's wilful misconduct or unauthorized use of the Software.

#### 10. Assignment and Sub-Licenses

(a) The Customer has no right to sub-license or to assign the benefit or burden of this License in whole or in part, or to allow the Software to become the subject of any charge, lien or encumbrance without the prior written consent of the Supplier.

(b) The Supplier may sub-license, assign, charge or otherwise transfer any of its rights or obligations under this License, provided it gives written notice to the Customer of any sub-license, assignment, charge or other transfer.

#### 11. User Data and Unauthorized Use

(a) **User Data** means all data the Customer receives from the Supplier in order to use the Software, including, but not limited to, the license key.

(b) To prevent the misuse of the Software and the User Data, the customer in particular undertakes to store these carefully, to keep them secret, not to pass them on to unauthorised third parties, or to make them available in any other way and to advise the Supplier immediately upon any suspicion of misuse.

(c) In addition to the User Data, the Software is license-coded by the Supplier to prevent unauthorized use; the Customer must not misuse the User Data, or circumvent such license-coding and agrees to exercise the same level of care against unauthorized use by, or disclosure to, third parties as the Customer uses with respect to its own proprietary information of comparable importance, provided that in no event will the Customer use less than reasonable care.

#### 12. Confidentiality

The terms of this License are confidential and may not be disclosed by the Customer without the prior written consent of the Supplier.

#### 13. Data Protection

(a) Where, in connection with this License, either Party is required to access and/or process any personal data it will ensure that such processing and use is in accordance with applicable privacy laws. The Parties shall not disclose personal data to any third party except as required or permitted by this License in accordance with applicable privacy laws or with the respective Party's written consent.

(b) The Supplier shall be entitled to use and process personal data received from the Customer in the course of this License in accordance with the relevant privacy provisions and within the scope of this License and for such purpose to transfer such data to agents, subcontractors and affiliated companies.

#### 14. Entire Agreement

(a) This License including the English version of the KOFAX Communication Server handbook contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter. For the avoidance of doubt, this License does not preclude any arrangements between the Customer and an authorised distributor of the Supplier with regard to the specification of Fees in accordance with Section 3. or with regard to other contractual aspects not stipulated in this License.

(b) In the case of conflict or ambiguity between any provision contained in this License and any provision contained in the KOFAX Communication Server handbook, the provision in this License shall take precedence.

#### 15. Miscellaneous

(a) The Customer acknowledges that the Supplier may employ agents, subcontractors, suppliers or partners in order to exercise rights and fulfil obligations in connection with this License.

(b) If any provision of this License is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions shall not be prejudiced.

(c) Any amendment, waiver or variation of this License shall not be binding on the Parties unless set out in writing, expressed to amend this License and signed by or on behalf of each of the Parties.

(d) Any and all stamp duties and similar duties that may be levied in connection with this License shall be borne by the Customer. Each Party shall bear the costs and expenses in connection with its own legal advisors.

#### 16. Governing law and Jurisdiction

(a) This License, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Austrian law whereby the applicability of the conflict of law rules shall be precluded.

(b) Any and all disputes arising out of or in connection with this License shall be subject to the exclusive jurisdiction of the commercial court having subject matter jurisdiction for Vienna, 1<sup>st</sup> district.

(c) The place of performance shall be the place of the Supplier's registered office.