

SUBSCRIPTION TERMS OF SERVICE

IMPORTANT: PLEASE READ THESE TERMS OF SERVICE (“TERMS OF SERVICE”) CAREFULLY BEFORE USING THE SUBSCRIPTION SERVICES. BY USING THE SUBSCRIPTION SERVICES, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THESE TERMS OF SERVICE. THESE TERMS OF SERVICE WILL SUPERSEDE ANY AND ALL AGREEMENTS OR TERMS OF SERVICE GOVERNING ANY USE OF THE SUBSCRIPTION SERVICES PREVIOUSLY PROVIDED BY TUNGSTEN (AND ITS PREDECESSORS IN INTEREST) TO YOU.

1. Subscription Services.

(a) Subscription Services. Subject to the terms and conditions of these Terms of Service, Tungsten Automation Corporation (formerly Kofax, Inc.) and its subsidiaries and affiliates (“Tungsten”) grants you the nontransferable right to access and use the software subscription services as described in one or more valid agreements and/or order documents (the “Agreement”) between you and Tungsten identifying the specific subscription services and the limitations on use (including, without limitation, volume limitations or a specific type of function, transaction or other use limitations, or any other usage restrictions described in Tungsten product documentation) (the “Subscription Services”), such Agreement which sets forth the service fees and other terms and conditions applicable for the Subscription Services. The Subscription Services can be subject to the storage you acquired as described in the Agreement, such storage which you may upgrade upon payment of additional fees at Tungsten’s then current pricing.

(b) Subscription Services Platform. Tungsten will provide the Subscription Services through Tungsten’s computer software and datacenter facilities (the “Subscription Services Platform”), which Tungsten will manage and maintain. Any web endpoints on the Subscription Services Platform requiring a certificate will be set up with a Tungsten provided DNS name and third party SSL certificate. You may not provide your own internal or external CA-generated certificates. The Subscription Services Platform may be operated by Tungsten or by one or more third parties under agreements with Tungsten.

(c) Subscription Services Support. Tungsten will provide you support for the Subscription Services at the level of Subscription Services Support purchased as provided in the Agreement, and you consent to Tungsten’s application of all upgrades, enhancements and new releases to the Subscription Services Platform. You will be solely responsible to notify Tungsten immediately of any support issues via email at the Tungsten’s address as provided in the Agreement, and, at your expense, to train your users on use of the Subscription Services, be familiar with and leverage the use of Tungsten online support, designate a key contact for Subscription Service support communications, and provide Tungsten timely return of requested troubleshooting data in order to perform root cause analysis for support issues being experienced with the Subscription Services. You consent to Tungsten’s collection and use of data and information related to your access and use of the Subscription Services to provide the Subscription Services Support and to verify your use of the Subscription Services within the terms of these Terms of Service, including any limitations upon your use of the Subscription Services.

(d) Subscription Services Availability Commitment. Tungsten’s Subscription Services availability commitment is to provide you the ability to access the Subscription Services Platform 99.5% of the time, subject to outages of the Subscription Services Platform for maintenance. These commitments do not constitute a warranty or guarantee, and the Subscription Services are subject to the limitation of warranties as provided in these Terms of Service. Your sole and exclusive remedy in the event Tungsten fails to meet this service commitment or fails to comply with any other terms of these Terms of Service will be termination of the Subscription Services and these Terms of Service, such termination effected by written notice to Tungsten.

(e) Client Component Software. If the Subscription Services includes a software client component installed in your desktop environment, you are hereby granted a non-exclusive and non-transferable license to use such software for the term of Subscription Services. Any portion of such software that constitutes third party software, including software provided under a public license, is licensed to Customer subject to the terms and conditions of the software license agreements set forth in the `thirdpartylicenses.txt` file accompanying the client component software.

(f) Customer Responsibilities. You are responsible, at your expense, for providing the desktop and application environment necessary for the implementation and execution of the Subscription Services, providing maintenance, service, security and administration for such application environment, providing network connectivity between your local environment and the Subscription Services Platform, and paying all third-party access fees incurred by you to access and use the Subscription Services. You also will provide Tungsten with timely access to your desktop and application environment and functional and/or information technology staff to implement, deliver and support the Subscription Services. You are responsible for compliance with your obligations under this Agreement by any third parties you engage for the implementation and/or provision of other services associated with the Subscription Services.

(g) Your Data and Information. You are solely responsible for the accuracy and completeness of any and all data and information located on the Subscription Services Platform, and Tungsten makes no representation or warranty of any kind, either express or implied, regarding the quality, accuracy or validity of the data and information available from or on the Subscription Services Platform. Tungsten will not be liable to you or to any third party for any liabilities, damages, losses, penalties, costs or expenses suffered by you or any third party arising from any inaccuracy, incompleteness or invalidity of any such data and information or, absent Tungsten’s gross negligence or intentional act or omission, any modification, corruption, loss or breach of security with respect to any such data and information.

(h) Aggregate Data. Tungsten may remotely compile, collect, copy, modify, publish and use anonymous and aggregate data and information generated from or based on your access and use of the Subscription Services for analytical and other business purposes, including to enable Tungsten to provide you services and improve Tungsten's products and services. The data and information collected by Tungsten will be aggregated and will include only system level information, and will not include any of your document or business data, identify your users, or include any Personally Identifiable Information (as defined in Section 9 below). Tungsten will own such data and information and its rights to use such data and information will survive the termination of these Terms of Service and the Subscription Services, although such data and information will be subject to the confidentiality and non-disclosure agreements between you and Tungsten.

2. Use of Subscription Services.

(a) Use of Subscription Services. You will not use, or encourage, promote, facilitate or instruct others to use the Subscription Services or Subscription Services Platform in any manner which (a) disrupts the normal use of the Subscription Services Platform by Tungsten or other users of the Subscription Services Platform, (b) impacts the privacy, integrity or security of Tungsten or such other users, (c) is legally actionable between private parties, (d) violates any local, state, federal or international law or regulation, or (e) allows unauthorized access to or use of the Subscription Services. You will be solely responsible for all content and data placed upon the Subscription Services Platform by you or your authorized users of the Subscription Services and the Subscription Services Platform.

(b) Restrictions. You will use the Subscription Services only for your internal business purposes and your direct benefit. You will not modify, enhance or create derivative works based upon the Subscription Services or supplemental materials associated with Subscription Services, any such modification, enhancement, derivative work or other improvement which will be Tungsten's exclusive property and governed under these Terms of Service.

(c) Security Measures. Tungsten may require you to maintain secure passwords for use of the Subscription Services. You will keep confidential and not disclose to any third parties any user identifications, passwords, account numbers or account profiles, and you will have sole responsibility for maintaining the confidentiality of and preventing the unauthorized use of any secure passwords, and for otherwise preventing any unauthorized access to the Subscription Services Platform from or through your facilities, telecommunications and internet services.

(e) U.S. Government License Rights. If you are a U.S. Government entity, then all Subscription Services and other services provided to you are provided under the commercial license rights and restrictions generally applicable under these Terms of Service. If a U.S. Government entity has a need for rights not conveyed under the terms of these Terms of Service, it must negotiate with Tungsten to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written agreement with Tungsten specifically conveying such rights.

3. Fees. The fees payable by you to Tungsten for the Subscription Services are as provided in the Agreement, and you will pay such fees as provided in the Agreement. You are required to pay all fees for the entire term of the Subscription Services as provided in the Agreement, and you may not cancel or terminate the Subscription Services during such term. You will pay all taxes or levies of whatever nature arising out of or in connection with the Subscription Services and these Terms of Service, excluding taxes based on Tungsten's net income.

4. Limited Warranty.

(a) Warranty. Tungsten warrants that it has the legal right to provide the Subscription Services to you; provided, that this warranty is void if you violate any of the limitations on use of the Subscription Services as provided in the Agreement.

(b) DISCLAIMERS. TUNGSTEN MAKES NO REPRESENTATIONS OR WARRANTIES CONCERNING THE SUBSCRIPTION SERVICES, EXPRESSED OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS OF SERVICE, AND TUNGSTEN EXPRESSLY DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL OTHER WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR SKILL AND CARE. ANY IMPLIED WARRANTIES THAT BY LAW CANNOT BE DISCLAIMED ARE LIMITED IN DURATION TO THE GREATER OF (A) NINETY (90) DAYS FROM THE DATE OF THIS AGREEMENT, OR (B) THE SHORTEST PERIOD PERMITTED BY LAW.

5. Indemnification. You will hold harmless, indemnify and defend Tungsten, its affiliates and their respective officers, directors, agents and employees (collectively, "Tungsten Parties") from and against any and all claims (including any and all liabilities, damages, losses, costs and expenses and reasonable attorneys' fees arising therefrom) to the extent arising out of any action or proceeding brought by a third party against any one or more of the Tungsten Parties (i) alleging injury, damage or loss resulting from your use of the Subscription Services in violation of these Terms of Service or the Agreement, (ii) alleging that your objects/images including metadata located upon the Subscription Services Platform infringe a copyright or patent, or misappropriate a trade secret of a third party, or (iii) related to any act or omission by you which is a breach by you of any of your obligations under these Terms of Service or the Agreement.

6. Limitation of Liability. UNDER NO CIRCUMSTANCES WILL TUNGSTEN BE LIABLE TO YOU FOR ANY PUNITIVE

DAMAGES OR LOST PROFITS OR OTHER ECONOMIC LOSS, LOST OR DEGRADED DATA, INTERRUPTION OF BUSINESS, PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF BUSINESS, REVENUE, GOODWILL OR USE), HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, ARISING OUT OF THE USE OF (OR INABILITY TO USE) THE SUBSCRIPTION SERVICES, EVEN IF YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING CAUSES OF ACTION ARISING OUT OF TERMINATION OF THE AGREEMENT, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, PRODUCT LIABILITY AND ANY OTHER TORTS. THE MAXIMUM AGGREGATE AMOUNT FOR WHICH TUNGSTEN MAY BE LIABLE UNDER THE AGREEMENT WILL BE LIMITED TO THE AMOUNTS ACTUALLY PAID OR PAYABLE BY YOU TO TUNGSTEN FOR THE SUBSCRIPTION SERVICES SUBJECT OF THE CLAIM FOR WHICH SUCH LIABILITY IS ASSERTED DURING THE EIGHTEEN (18) MONTHS PRECEDING THE CLAIM.

7. Ownership of Intellectual Property. Tungsten will retain all title to and ownership of all proprietary documentation, software, techniques, tools and processes used by Tungsten in providing the Subscription Services, or in utilizing software utilized by Tungsten in providing the Subscription Services or any tools associated with such software, including, without limitation, any software client component and all written materials, copyright and patent rights, and other intellectual property rights.

8. Term and Termination.

(a) Term. The term of these Terms of Service and the Subscription Services will commence on the date of the Agreement and will continue until the termination or expiration of the term as provided in the Agreement or these Terms of Service.

(b) Termination for Breach. Either party may terminate these Terms of Service, the Agreement and the Subscription Services effective thirty (30) days after written notice to the other in the event that the other breaches any material provision of these Terms of Service and has not cured such breach within such thirty (30) day period, except for your breach of any payment terms, which will have a ten (10) day cure period, and except for your violation of the use restrictions provided in these Terms of Service or the Agreement, which will permit Tungsten to immediately terminate these Terms of Service, the Agreement and the Subscription Services.

(c) Rights and Obligations upon Termination or Expiration. Upon the expiration or termination of the Subscription Services, Tungsten will have no further obligation to provide the Subscription Services, and you will have no further rights to use or access the Subscription Services Platform; provided, however, that such termination or expiration will not excuse your obligation to pay in full fees or other amounts due by you to Tungsten, nor entitle you to a refund of fees paid by you to Tungsten. In the event that migratable data, including but not limited to objects, images and metadata, is located on the Subscription Services Platform upon the termination or expiration of the Subscription Services – as part of an additionally purchased storage option or as part of the Subscription Services by default – Tungsten will deliver to you such data upon your request and payment to Tungsten of all amounts due by you to Tungsten under the Agreement, and of data migration fees, if any, at Tungsten's then current prices for such data migration services. If you fail to request such data or to pay all such amounts to Tungsten within ten (10) days following the expiration or termination of the Subscription Services, Tungsten may permanently delete such data from the Subscription Services Platform with no liability or further obligation to you with respect to such data.

(d) Continuing Obligations. The terms and conditions of these Terms of Service that by their nature and context are intended to survive any termination or expiration of the term of these Terms of Service and the Subscription Services, including, without limitation, Sections 3 (Fees), 5 (Indemnification), 6 (Limitation of Liability), 7 (Ownership of Intellectual Property), 8 (Term and Termination), 9 (Confidentiality and Nondisclosure) and 10 (Miscellaneous), will survive such termination or expiration for any reason and will be fully enforceable thereafter.

9. Confidentiality and Nondisclosure.

(a) Confidentiality and Nondisclosure. Tungsten will maintain the confidentiality of, and agrees to use the same care to prevent disclosure of, your confidential information and Personally Identifiable Information as it employs to avoid disclosure, publication or dissemination of its own information of a similar nature, but in no event less than a reasonable standard of care. Tungsten, however, may disclose Confidential Information and Personally Identifiable Information to its employees, directors, officers, affiliates, agents, subcontractors, attorneys, accountants or professional advisors, who have a need to have access to the Confidential Information and Personally Identifiable Information in providing the Subscription Services.

(b) Exclusion. Confidential information will not include information that (a) is or becomes publicly available other than through Tungsten, (b) is in Tungsten's possession at the time of disclosure, (c) is acquired by Tungsten from a third party, who provides the information without breaching any express or implied obligations or duties to you, (d) is disclosed by Tungsten with your prior written consent, (e) is independently developed by Tungsten without reference to confidential information, or (f) is disclosed in response to a valid order, or request of a court or other governmental body; provided, however, that unless prohibited by law or regulation, Tungsten will first give you notice of any such order, inquiry or request so that you may seek an appropriate protective order.

10. Miscellaneous.

(a) Notices. Except as otherwise provided above, notices pursuant to these Terms of Service must be in writing and will be deemed effectively delivered to you when delivered by email at the address specified in the Agreement, and to Tungsten by email to Tungsten's address specified in the Agreement. All notices so given will be deemed given upon the earlier of receipt or three (3) days after dispatch.

(b) No Assignment. You will not voluntarily or involuntarily in any form or manner, assign or, transfer, including any assignment or transfer by operation of law, the Subscription Services or any rights under these Terms of Service.

(c) Governing Law. These Terms of Service will be construed and governed in accordance with the internal laws of the State of Delaware, without regard to any rules of conflicts or choice of law provisions that would require the application of the laws of any other jurisdiction. The foregoing notwithstanding, however, if you acquired the Subscription Services in a country which is a member of the European Union (including the UK), the laws of that country will govern the interpretation of these Terms of Service and any claims arising hereunder, regardless of choice of laws principles of any other jurisdiction. In each case, these Terms of Service will be construed and enforced without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act.

(d) Privacy. Tungsten will observe applicable data protection laws and will not use information that does or can be used to personally identify you, your employees or customers other than as set out in this this Section 10, as well as in Tungsten's Privacy Policy ("Privacy Policy") <http://www.Tungstenautomation.com/legal/privacy>. By submitting such personal data in relation to these Terms of Service and the Agreement, and their fulfillment, you consent to such personal data being processed to fulfill these Terms of Service and the Agreement. You particularly accept that Tungsten may collect, process and store some or all of the following personal data which you have provided or will provide to Tungsten in relation to these Terms of Service and the Agreement: your employee's and your customer's contact names and corresponding postal addresses, e-mail addresses, telephone numbers, payment processing data, etc. (hereafter "Personal Data"). Data, including Personal Data, will be stored in an electronic database maintained on servers in the geographical area where the Subscription Services are deployed by Tungsten. The Personal Data will be used by Tungsten exclusively for the purposes of facilitating these Terms of Service and the Agreement. In case Tungsten processes your personal data, as a data processor within the meaning of the General Data Protection Regulation (EU) 2016/679, in the context of your use of the Subscription Services, the Tungsten's Data Processing Addendum applies.

(e) Attorneys' Fees. In any action to interpret or enforce these Terms of Service, the prevailing party will be awarded all court costs and reasonable attorneys' fees and costs and expenses of investigation incurred.

(f) Entire Agreement. These Terms of Service and the Agreement constitute the entire understanding and agreement between the parties with respect to the subject matter of these Terms of Service and the Agreement, and supersede all previous agreements and communications between the parties concerning such subject matter, including, without limitation, any terms in a purchase order or other purchasing document provided by you which conflict with or are in addition to the terms of Terms of Service or the Agreement. No modifications may be made to these Terms of Service or the Agreement except in writing, signed by both parties.

(g) Severability. The provisions of these Terms of Service and the Agreement are severable, and if any one or more such provisions is determined to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of any of the remaining provisions or portions thereof will not be affected or impaired thereby and will nevertheless be binding between the parties. In the event any provision of these Terms of Service or the Agreement is found to be invalid, illegal, or unenforceable, the parties will endeavor to modify that provision in a manner that gives effect to the intent of the parties in entering into these Terms of Service.

(h) Export. The Subscription Services are subject to United States export control jurisdiction, and may not be shipped, transferred, re-exported into any country, or used for any purpose prohibited by any applicable international and national legal instruments that apply to the Subscription Services, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by the United States and other governments. You agree that you will not export or re-export the Subscription Services without first having obtained applicable United States or foreign government export licenses or permissions.

(i) Force Majeure. Neither party will be liable or deemed to be in default for any delay or failure in performance under these Terms of Service or the Agreement (except for payment obligations) resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, war, riots, civil disturbances, insurrections, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labor disputes or any causes beyond its reasonable control; provided that the party failing to perform in any such event will promptly resume or remedy, as the case may be, the performance of its obligations hereunder as soon as practicable.

(j) Compliance with Laws. The parties agree to comply with any and all laws and governmental requirements that apply to their respective performance under these Terms of Service and the Agreement. You agree that you are solely responsible for determining and complying with any and all laws and governmental requirements applicable or incident to your use of the Subscription Services, including, without limitation, data protection laws affecting your use or the retention of data, including any obligation to obtain consents related to any disclosure of personal data.