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  - (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

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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. Confidentiality.
  - (a) Confidential Information. You hereby acknowledge that You may have access to information that is confidential to Kofax ("Confidential Information"). Confidential Information shall include the Software, including all related source and object codes, any documentation included with the Software, the terms and pricing under this Agreement, and trade secrets and intellectual property relating to Kofax and the Software. Confidential Information also includes information relating to Kofax's business or financial affairs, such as financial results, business methods, pricing, competitor and product information and all other information designated as confidential by the disclosing party. Confidential Information shall not include any information that (i) becomes part of the public domain through no act or omission of the other party, (ii) is lawfully acquired by the other party from a third party without any breach of the third party's obligations to the disclosing party, or (iii) is disclosed by the disclosing party to a third party without any obligation of confidentiality by the third party. You agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of Kofax's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. You agree to maintain at least the same procedures regarding Kofax's Confidential Information that You maintain with respect to Your own confidential information. Without limiting the generality of the foregoing, You shall not permit anyone to remove any proprietary or other legend or restrictive notice contained or included in any material provided by Kofax.
  - (b) Injunctive Relief. You acknowledge that any use or disclosure of Kofax's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause Kofax irreparable damage for which remedies other than injunctive relief may be inadequate, and You agree that Kofax shall be entitled to seek injunctive or other equitable relief to restrain such use or disclosure in addition to other appropriate remedies.
  - (c) Survival. The terms and provisions of this section shall survive any termination of this Agreement for any reason.
13. 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. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
  - (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) 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 REGARDING THE SOFTWARE, WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT OR ADDITIONAL LICENSE TEXT ACCOMPANYING THE SOFTWARE ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN YOU AND KOFAX RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.