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**(a)** Kofax's contractual and statutory liability for damages caused by slight negligence shall, irrespective of its legal ground, be limited as follows:

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(c) Kofax will under no circumstances be for consequential and indirect damages and for loss of profits and other economic loss.

(d) This Section 7 shall apply analogously to Kofax's liability for wasted expenditures (Aufwendungsersatz, i.e., investments made in reliance on this License Agreement).

(e) You shall be obliged to take adequate measures to avert and reduce damages.

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## **9. Term and Termination.**

(a) **Term.** The term of this License Agreement and Your licenses of the Software will commence as of the first to occur of the date of Your acceptance of this License Agreement or the date the Software is made available to You, and will continue until the termination or expiration of the term of all of the licenses of the Software, unless earlier terminated at the end of any timeframe specified in a Sales Order or as provided below.

(b) **Termination.** Kofax may terminate this License Agreement (i) effective ten (10) days after written notice to You in the event that You fail to pay when due any fees for the Software as provided in a Sales Order, or (ii) effective thirty (30) days after written notice to You in the event that You breach any other material provision of this License Agreement and You do not cure such failure to pay or breach within such thirty (30) day period.

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(d) **Continuing Obligations.** The terms and conditions in this License Agreement that by their nature and context are intended to survive any termination of this License Agreement, including, without limitation, Sections 4 (Intellectual Property), 6 (Intellectual Property Indemnification), 7 (Limitation of Liability), 8 (Trademarks), 9 (Term and Termination), 10 (Audit), and 11 (Miscellaneous), will survive such termination of this License Agreement for any reason and will be fully enforceable thereafter.

**10. Audit.** Kofax, upon thirty (30) days written notice to You and not more than once during each calendar year during the term of this License Agreement and once during the one (1) year period following the termination of this License Agreement, may enter upon Your premises during Your regular business hours to audit Your use of the Software. You agree to cooperate with Kofax's audit and provide reasonable assistance and access to Your systems and information. If pursuant to any such audit, Kofax discovers any excess or unlicensed use of the Software, You agree to pay within thirty (30) days of written notification an amount equal to the sum of (a) the license fees which Kofax would have received for the additional licenses necessary to license such excess or unlicensed use of the Software at Kofax's then current list pricing, and (b) if Your excess or unlicensed use of the Software exceeds 105% of the licensed use of the Software, all costs and expenses incurred by Kofax in conducting such audit. If You fail to pay such amounts within thirty (30) days of being invoiced for such amounts, Kofax may terminate this License Agreement, Your licenses of the Software, and any maintenance and support of the Software. You will be responsible for any of Your costs incurred in cooperating with any such audit.

## **11. Miscellaneous.**

(a) **Notices.** All notices, demands or other communications under this License Agreement must be in writing and reference this License Agreement, and will be deemed effectively delivered to the party when delivered at the address for such party as last provided to the other, subject to modification by giving notice as provided herein. Notices may be delivered: (a) by email using a method that positively establishes receipt of the email by the recipient; (b) by personal, same or next day delivery; or (c) by commercial overnight

courier with written verification of delivery. All notices so given will be deemed given upon the earlier of receipt or three (3) days after dispatch.

**(b) Governing Law; Place of Venue.** This License Agreement will be construed and governed in accordance with the laws of Germany, 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 parties hereby submit to the exclusive jurisdiction and venue of the courts of Freiburg i.Br., Germany for any action or legal proceeding related to or arising under this License Agreement and waive any objections based on forum non conveniens; provided, however, that if for any reason said court does not have jurisdiction over the matter or a party, then Kofax may elect to commence any such action or proceeding in any court having jurisdiction over You. In each case, this License Agreement will be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

**(c) Severability.** If any one or more of the provisions of this License Agreement 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 this License Agreement is found to be invalid, illegal, or unenforceable, the parties will modify that provision in a manner that gives effect to the intent of the parties in entering into the License Agreement.

**(d) Waiver or Delay.** No failure to exercise or delay by a party in exercising any right, power, or remedy under this License Agreement operates as a waiver of such right, power, or remedy. A single or partial exercise of any right, power, or remedy does not preclude any other or further exercise of that or any other right, power, or remedy. A waiver is not valid or binding on the party granting the waiver unless made in writing.

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**(f) Entire Agreement.** This License Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter of this License Agreement and supersedes all previous agreements and communications between the parties concerning such subject matter. No modifications may be made to this License Agreement except in writing, signed by both parties.

**(g) Benefit of Agreement.** This License Agreement will bind and inure to the benefit of the parties and their respective permitted successors and assigns.

**(h) Cumulative Remedies.** Except as otherwise provided in this License Agreement, all remedies of the parties hereunder are non-exclusive and are in addition to all other available legal and equitable remedies.

**(i) Force Majeure.** Neither party will be liable or deemed to be in default for any delay or failure in performance under this License 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) Construction of Agreement.** Each party acknowledges that it has had the opportunity to review this License Agreement with legal counsel of its choice and agrees that in the event that this License Agreement or any other documents delivered in connection with the transactions contemplated by this License Agreement contain any ambiguity, such ambiguity will not be construed or interpreted against the drafting party. The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this License Agreement, which will be considered as a whole.

**(k) Choice of Language.** The original of this License Agreement has been written in English, which will be the controlling language in all respects. Any translations into any other language are for reference only and will have no legal or other effect.

**(l) Personal Data; Consent to Process and Transfer.** The parties agree to comply with any and all laws and governmental requirements that apply to their respective performance under this License Agreement, in particular the General Data Protection Regulation (EU) 2016/679 (“GDPR”). You agree that it is solely responsible for determining and complying with any and all laws and governmental requirements applicable or incident to Your use of the Software, 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. You agree that Kofax, its affiliates, and agents may collect and use information You provide in relation to any support services performed with respect to the Software and requested by You. Kofax agrees not to use this information in a form that personally identifies You, except to the extent necessary to provide such services. You agree that Kofax may transfer Your information to the United States or other countries for use in accordance with this Section. In case Kofax processes Your personal data, as a data processor within the meaning of the GDPR, in the context of Your use of the Software, the Kofax’s Data Processing Addendum applies.