KOFAX FRONT-OFFICE SERVER / DOCUMENT EXCHANGE SERVER

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      (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

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         (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

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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. 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.

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