

Ariba Contracts on Force.com Subscription Agreement Ariba, Inc.

This Ariba Contracts on Force.com Subscription Agreement (the "**Agreement**") is a legally binding contract between the company or organization that you have identified on the order page of this web Solution ("Customer," "You" or "Your") and Ariba, Inc. based at 910 Hermosa Court, Sunnyvale, CA 94085 U.S.A. ("Ariba"), which sets forth the terms under which You may use the subscription to the Ariba Contracts on Force.com application (the "Solution") purchased via the web-based order page provided by Ariba (your "Order"). By checking the box next to "I have read and accept the terms and conditions of the Subscription Agreement" or by executing an order form that references this Agreement, you agree that: (i) you are authorized to legally bind the Customer (whether a company or other type of entity) and its Affiliates to the terms and conditions set forth herein; and, (ii) Customer agrees to comply with and be legally bound by the terms and conditions set forth herein.

This Agreement is effective between You and Ariba as of the date you accept the terms.

You may not access the Solution if you are direct competitor of Ariba, Inc. or of Salesforce.com nor may You access the Solution for performing analysis of availability, performance or functionality or for any other competitive purpose.

IF YOU REGISTER FOR A FREE TRIAL, FOR ARIBA CONTRACTS FOR FORCE.COM FROM THE SALESFORCE APPEXCHANGE WEB SITE, THIS AGREEMENT WILL ALSO COVER THAT FREE TRIAL.

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1. Definitions

1.1 "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2 "Agreement" means collectively your Order and this Agreement.

1.3 "User Documentation" means the authorized user guide that is made available by Ariba to You from within the Solution.

1.4 "Fees" means the fees stated in your Order.

1.5 "including" means "including but not limited to".

1.6 "Intellectual Property Right" means any patent, patent application, copyright, moral right,

trade name, trademark, service mark, trade secret, and any applications or right to apply for registration related thereto, internet domain names, logos, designs, slogans, and general intangibles of like nature, computer software programs or applications, tangible or intangible proprietary information, know-how, proprietary processes, formulae, algorithms, or any other intellectual property right, whether registered or unregistered, and whether first created before or after the Order Effective Date.

1.7 "Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

1.8 "Order" means your submission of a request for a subscription to the Solution using either the form on the ariba.com web site or a printed Order Form provided by an Ariba sales person, if such option is made available to you.

1.9 "Order Effective Date" for Orders submitted via the ariba.com web site, will be identified to you at the time of the Order and will generally be four (4) days after you submit your Order to Ariba for processing, provided that the Order has not been rejected by Ariba. For Orders processed manually by Ariba, the Order Effective Date will be identified at the time the Order is confirmed by Ariba.

1.10 "Paid Subscription" means a subscription to the Solution for which You have agreed to pay, as distinguished from a Trial Subscription.

1.11 "Trial Subscription" means short term subscription to the Solution that You are provided pursuant to a free trial.

1.12 "SFDC" means salesforce.com

1.13 "Subscription Term" means the period of time during which You may access the applicable Solution (as well as any services bundled therewith), as set forth in Your Order commencing upon the applicable Order Effective Date.

1.14 "Term" means Subscription Term.

1.15 "Usage Limit" means the usage limit(s) applicable to Your use of the Solution as specified in your Order (e.g., number of Users).

1.16 "User" means Customer employees, representatives, consultants, contractors or agents who are authorized to use the Service subject to the terms of this Subscription Agreement as a result of a subscription to the Solution having been purchased for such User, and have been supplied user identifications and passwords by Customer (or by Salesforce.com or Ariba at Your request).

1.17 "Customer Data" means all electronic data or information submitted by Customer as and to the extent it resides in the Solution.

1.18 "Written Notice" means a written notice in accordance with section 13.7 (Written Notices).

2. Free Trial

2.1 If You register on the salesforce.com Appexchange website for a free trial to Ariba Contracts on Force.com, Ariba will make the Solution available to You on a trial basis free of charge until the earlier of (a) the end of the Trial Subscription Term for which You registered or are registering to use the Solution or (b) the start date of any Paid Subscription Term ordered by You. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

2.2 ANY DATA YOU (INCLUDING CUSTOMER AND ALL USERS AUTHORIZED BY CUSTOMER) ENTER INTO THE SOLUTION, AND ANY CUSTOMIZATIONS MADE TO THE SOLUTION BY OR FOR YOU, DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SOLUTION (e.g. to Ariba Contracts on Force.com) AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

2.3 NOTWITHSTANDING SECTION 6 (LIMITED WARRANTIES), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

2.4 Please review the User Documentation during the trial period so that You become familiar with the features and functions of the Solution before You make Your purchase.

3. USE OF THE SOLUTION

3.1 Solution Use and Ariba Responsibilities. For the Solution purchased from Ariba, Ariba will make the Solution available to You and grants you access (via Users) to the associated Solution solely for support of Your internal business operations during the Subscription Term and subject to the terms and conditions of the Agreement (including Usage Limits stated in the Order). Ariba shall provide the following for Paid Subscriptions: (i) provide Ariba's basic support for the Solution to You at no additional charge, and/or premium support if available and purchased separately, and (ii) use commercially reasonable efforts to make the Solution available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Ariba or salesforce.com shall use reasonable efforts to give at least 10 hours notice via the Solution and which shall be scheduled to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any unavailability caused by circumstances beyond Ariba's reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Ariba employees), Internet service provider failures or delays, or denial of service attacks. Under Ariba's basic support offering, Ariba will receive service requests via webform from Your Users for functional and technical issues, and will make reasonable efforts to initially respond to service requests within 2 business days. The Solution is a self-service application where You are responsible for configuration and set-up. Ariba does not provide any implementation or other professional services as part of the Solution.

3.2 Third Party Services. The Solution includes use of a Force.com license provided by salesforce.com as a required component of the Ariba Contracts on Force.com solution. As the Solution is primarily hosted by SFDC and many elements of the Solution are under the control of SFDC, there are terms in this Agreement in Section 14 expressly defining restrictions and conditions required by SFDC for use of the Solution. In addition, Ariba may utilize other integrated third party services as part of the Solution. The terms of this Agreement apply to those third party services.

3.2.1 Integration with Non-Ariba Services. The Solution may contain features designed to interoperate with Non-Ariba Applications (e.g., Google, Facebook or Twitter applications, or to other Force.com based solutions). To use such features, You may be required to obtain access to such Non-Ariba Applications from their providers. If the provider of any such Non-Ariba Application ceases to make the Non-Ariba Application available for interoperation with the Solution on reasonable terms, Ariba may cease providing such Solution features without entitling You to any refund, credit, or other compensation.

3.3 User Accounts. Subject to the terms of the Agreement, up to the maximum number of Users indicated in Your Order may access the Solution during the Subscription Term.

3.3.1 Ariba will assign a distinct user ID and password to You for access to the Solution, with an administrative role, to Your initial Authorized Administrator/Technical Contact. You may then create additional User IDs and passwords using that administration account. You may assign only one (1) person for each User allocation. Individuals may not share user IDs and passwords. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Solution.

3.3.2 Notice of Data Transfer. Prior to entering personal information into the Solution to create User accounts, You are responsible to provide any legally required notices to Users that their use of the Solution may involve transfer of their personal data outside the jurisdiction in which they are located for processing by Ariba as described under this Agreement and subject to the Ariba ACF Privacy Statement.

3.3.3 Other Usage Limitations. There are other limitations applicable to the use of the Solution including limits on storage space. Any such limitations are specified in the User Documentation.

3.4 Authorized Administrator. You authorize the person designated on Your Order as the Technical Contact as the person authorized to receive official notices of updates and changes to elements of Ariba Contracts on Force.com, manage the User access as authorized under this Agreement, and respond to other questions that may arise regarding Your usage of Ariba Contracts on Force.com.

3.5 Restrictions and Your Responsibilities.

3.5.1 You may not use the Solution to store or process Sensitive Personal Information, as defined in the [ACF Privacy Statement](#), which includes a prohibition on storage of credit card numbers or other personal financial information.

3.5.2 You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Ariba promptly of any such unauthorized access or use, (iv) use the Services only in accordance with the User Documentation and applicable laws and government regulations, and (v) be solely responsible for connection of Your computers to a telecommunications service that provides Internet access in a secure manner.

3.5.3 You shall not (a) make the Solutions available to anyone other than Users, (b) sell, resell, rent or lease the Solution, (c) use the Solution to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Solution to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Solution or third-party data contained therein, or (f) attempt to gain unauthorized access to the Solution or its related systems or networks. All rights not expressly granted to You are reserved by Ariba.

3.5.4 As between the parties, Ariba retains all right, title, and interest to all Intellectual Property Rights in all: (i) Solution; (ii) Ariba Confidential Information, and, (iii) any modifications to, copies of, or derivatives of any of the foregoing items listed in (i) through (iii). You shall comply with the terms and use restrictions stated in this Agreement. The access to and use of the Solution is also conditioned upon Your payment of all Fees.

4. FEES

4.1 Agreement to Pay Fees. You agree to pay all applicable fees ("Total Fees") for use of the Solution. In addition to the Total Fees, You agree to pay any applicable taxes, VAT, withholding and other government-imposed payments (other than taxes based on Ariba's income) ("Taxes") and interest and penalties related thereto. All such payments shall be in U.S. Dollars (unless the order processing site allows You to select another currency). Any monthly fees billed are based upon calendar month and are not pro-rated meaning that a full month of fees will be charged in the calendar month the order is executed. Subscriptions to the Solution are continuous, and billed annually in advance, at the rates then in effect unless You notify Ariba at least forty-five (45) days prior to the invoice payment date that you wish to cancel Your subscription. If such notification is not received at least forty-five (45) days prior to the invoice payment date, Ariba will not have sufficient time to cancel the charge and such amount will be non-refundable.

4.2 Payment Method. You may pay Ariba per a method accepted by Ariba (e.g., payment card or check) and agreed by you during the ordering process. Unless agreed to by both parties, the default mechanism accepted by Ariba for payment for the Solution is credit card. Subscription and other fees are non-refundable once paid and non-cancelable, provided that if Ariba declines an order request prior to initiating the Paid Subscription, Ariba will refund the total amount of fees that were charged during the ordering process. Customer agrees to pay all fees due during the Subscription Term and upon the renewal date for an automatic renewal via a Card payment discussed below, or upon receipt of the applicable invoice, if payment by check has been approved by Ariba.

4.2.1 Payment by card. If You pay with a payment card (whether a debit card, credit card, or other electronic payment card accepted by Ariba (each referred to herein as a "Card")), You agree to provide Ariba with accurate and sufficient information (including the name on the Card, the account number and date of expiration, the security code, and other authorization details as Ariba may require to enable Ariba to charge the Card for the invoiced amount due under this Agreement. By authorizing Ariba (or its credit processing to charge the Card provided, You agree that Ariba may automatically charge that Card (or any replacement Card if the original Card is renewed, lost, stolen, or changed for any reason by the Card-issuing entity, and the individual associated with the Card or your organization entity informs Ariba of such new replacement Card account) for the portion of the Total Fees due according to the payment schedule at the then-applicable rate, as well as fees for Optional Services selected by You (in any case as reflected on the invoice) until You change or cancel the authorization. If a charge to the Card You provide is declined or is returned unpaid, Ariba will give You ten (10) days notice to supply a valid alternative Card. If You fail to provide a valid alternative Card within such time frame, You acknowledge that Ariba may terminate or suspend your access to the Solution and/or use of the applicable Optional Services.

4.2.2 Payment by Check or Bank Transfer. If Ariba offers you the option to pay by check during the ordering process, Ariba will send or make available to you an electronic or physical invoice at least ten (10) days before each payment is due. The invoice will reflect Ariba's current fees for Your subscription, and will note any changes Ariba may have made to Your subscription.

4.3 Other Charges; Failure to Pay. If You fail to pay any fees or Taxes (for example, if Your Card payment is invalidated), You agree that Ariba may bill such fees, Taxes, and late charges to the Card or send an invoice directly to You. If You have not paid the fees or Taxes on time under this Agreement or fees owed under a separate contract with Ariba, You acknowledge that Your Solution access may be suspended or canceled. All sums due and payable that remain unpaid after any applicable cure period herein will accrue interest as a late charge of 1.5% per month or

the maximum amount allowed by law, whichever is less. Ariba may assign unpaid late balances to a collection agency for collection. You agree to reimburse Ariba for all expenses Ariba incurs to recover amounts due, including attorneys' fees, collection expenses, and other expenses.

4.4 Fees for Adding More Users. If You add more Users (or increases any other applicable Usage Limit), there will be a corresponding increase in the Fees ("**Expansion Fee**"). A reduction in usage by You shall not reduce the Usage Limit or the Fees.

4.5 Fee Changes. Ariba may at any time change the amount of, or basis for determining, any fee, institute new fees or charges. Any Fee changes will not be implemented until the next annual period of Your Subscription. All fees are nonrefundable unless otherwise explicitly stated in this Agreement.

4.6 Bill Inquiries; Refunds. If You believe You have been billed in error for an Optional Service or a Subscription renewal, You must notify Ariba within 30 days of the billing date by contacting ACF_ordermanagement@ariba.com. Ariba will not issue refunds or credits after the expiration of this 30-day period, except where required by law or regulation.

4.7 Delivery. The Solution is a hosted internet based service which You may only access remotely. Any Documentation for the Solution will be provided electronically only.

5. TERMINATION AND EXPIRATION

5.1 Term of Agreement. This Agreement commences on the date You accept it and continues until all subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the Solution for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period. The Subscription Term for any Paid Subscription shall automatically renew unless terminated by either party by providing forty-five (45) days prior Written Notice to the other party.

5.2 Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Your use of the Solution may be immediately terminated and/or suspended upon notice due to a breach of the terms of this Agreement by You or any User that creates an ongoing risk to the operation of the Solution or protection of Ariba Intellectual Property.

5.3 Refund or Payment upon Termination. Upon any termination for cause by You, Ariba shall refund You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. That refund will be your sole and exclusive remedy for breach by Ariba of this Agreement or the warranties provided herein. Upon any termination for cause by Ariba, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Ariba for the period prior to the effective date of termination.

5.4 Upon expiration or termination of this Agreement, all of your access rights to use the Solution, and all other rights, services as set forth in this Agreement shall cease immediately (except for those rights, and obligations that are expressly stated to survive termination of this Agreement).

5.5 Ariba has no obligation to retain Your Data following thirty days after termination of Your subscription term. You have 30 days from the date of termination/expiration of Your subscription term in which to request a copy of Your Data from SFDC, which will be made available by SFDC to You in a .csv format (with attachments in their native format).

5.6 Termination of this Agreement or access to the Solution shall not limit Ariba from pursuing other remedies available, including injunctive relief, nor shall such termination relieve Your obligation to pay all Fees that have accrued or are otherwise identified as being owed by You, now or at some future date, under any Order Form.

6. LIMITED WARRANTIES.

6.1 Ariba Warranties. Ariba warrants that (i) Ariba has validly entered into this Agreement and has the legal power to do so, (ii) subject to Section 3.2.1 (Integration with Non-Ariba Services), the functionality of the Solution will not be materially decreased during a subscription term, and (iii) Ariba will not transmit Malicious Code to You, provided it is not a breach of this subpart (iii) if You or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be for Ariba to repair the materially decreased functionality or, if Ariba determines repair is not practical within a reasonable time, to provide the remedies as provided in Section 5.2 (Termination for Cause) and Section 5.3 (Refund or Payment upon Termination) below.

6.2 Your Warranties. You warrant that You have validly entered into this Agreement and have the legal power to do so.

6.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

7. CONFIDENTIALITY.

7.1 Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2 Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its, and its Affiliates', employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

7.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the

Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

7.4 Publicity. After you have purchased a Paid Subscription, You agree that Ariba may publicly refer to You as being a customer of Ariba's regarding the Ariba Contract on Force.com solution.

8. LIMITATION OF LIABILITY

8.1 Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE LESSER OF \$200,000 OR THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 4 (FEES).

8.2 Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

9. PERSONAL INFORMATION AND PRIVACY

Your use of the Solution is subject to Ariba's Privacy Statement for Ariba Contracts on Force ("[ACF Privacy Statement](#)"), as updated by Ariba from time to time. You agree that you have read the ACF Privacy Statement, and it is reasonable and acceptable to you. Your acceptance of this Subscription Agreement is also your consent to the information practices in the ACF Privacy Statement. You acknowledges and agree that data which identifies an individual provided to Ariba in the use of the Solution may be transferred outside of the country by Ariba and/or Ariba affiliates to Ariba processing centers or other countries where You and Your Users are located to facilitate purposes permitted by the Agreement and that Ariba is acting as a processor of your information. You represent and warrant that you shall take such steps as necessary to inform and receive consent for such processing as may be required under applicable data protection regulations.

10. FORCE MAJEURE

Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by riot, fire, flood, earthquake, natural disaster, terrorist attack, electronic virus, electronic attack or infiltration, internet disturbance, government act or other similar cause beyond such party's (the "Affected Party") control (collectively, a "Force Majeure Event"), provided that Affected Party gives prompt Written Notice of such condition, uses reasonable efforts to resume its full performance as soon as possible, and provided further that the other party (the "Non-Affected Party") may terminate the affected Order if such condition continues for a period of one hundred twenty (120) days. During the Force Majeure Event, the Non-Affected Party may similarly suspend its performance obligations, until such time as the Affected Party resumes its performance

obligations.

11. YOUR DATA

11.1 As between the parties, You shall own all data, information or other materials that You submit to Ariba as and to the extent it resides in the Solution ("Your Data"). You will comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with use of the Solution, and international communications. You shall have the sole responsibility for the accuracy, legality, and integrity of Your Data and data transactions.

11.2 You acknowledge that Ariba has the right, but no obligation, to monitor the Solution and any of Your Data submitted to the Solution, and to comply with legal obligations concerning same, and to take such actions (including removing content or denying routing of certain transactions) if Ariba reasonably believes that such actions are needed to prevent unlawful activity relating to the Solution.

11.3 Data Retention and Obtaining Your Data. Ariba takes on no responsibility for archiving Your Data or contract documents contained therein during the Subscription Term. Please take steps as appropriate to store copies of Your contract documents as necessary to fulfill Your own data retention requirements. Please see Section 5.5 above regarding obtaining Your Data at the end of Your Subscription Term (for a Paid Subscription).

11.4 Protection of Your Data. Ariba shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Solution and prevent or address service or technical problems, or at Your request in connection with customer support matters.

12. GOVERNING LAW

This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the federal U.S. laws applicable therein, excluding its conflict of laws provisions. The parties hereby specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Santa Clara or San Mateo County, California (the "Selected Venue(s)"), and each party hereby consents to personal jurisdiction in such counties. In any action to enforce the provisions of this Agreement the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including fees of retained expert witnesses, in connection with the resolution of such dispute. Each Party hereby irrevocably and unconditionally undertakes to take any and all steps which may be necessary in order to: (i) confer jurisdiction on the Selected Venue; and (ii) facilitate the enforcement, by a court where a Party is domiciled, of any judgment given by a court in the Selected Venue.

13. MISCELLANEOUS

13.1 You shall not assign, sublicense or otherwise transfer this Agreement, in whole or in part, even in the event of merger, spin-off, or acquisition, without the prior written consent of Ariba, not to be unreasonably withheld.

13.2 The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties hereto. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between You and either Ariba or any employee or agent of Ariba. Ariba reserves the right to use third party providers in the provision of the Solution.

13.3 The failure of either party to act in the event of a breach of this Agreement by the other shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver is

provided to the other party in writing and signed by the party against whom enforcement is sought.

13.4 The Solution is of U.S. origin and may not be exported, re-exported, transferred, or used in violation of U.S. export law. Some Solution and/ may include the export of Your Data outside of the U.S.; therefore You must ensure that any Your Data provided to Ariba does not contain any data that is controlled for export purposes by the U.S. or other applicable governments. This Section shall survive expiration or termination of this Agreement. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use Services in a U.S.-embargoed country.

13.5 Anti-Corruption. You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Ariba employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify the Ariba Legal Department at Ariba's General Counsel, Ariba, Inc., 910 Hermosa Court, Sunnyvale California 94085.

13.6 In the event of termination of this Agreement, the following terms will survive such termination and remain binding upon and for the benefit of the parties, their successors and permitted assignees: 1 (Definitions), 3.5.3 (License Restrictions), 4.3, 4.8, 5 (Termination), 7 (Confidentiality), 8 (Limitation of Liability), 12 (Governing Law), 13 (Miscellaneous), 14 (SFDC Services Agreement).

13.7 Written Notices. All notices under this Agreement must (a) be in writing and in the English language; (b) be delivered by certified or registered mail, postage prepaid, return receipt requested or by an overnight courier services with delivery receipt; and (c) (in the case of a notice to Ariba) be sent to the attention of the "Chief Financial Officer" of Ariba, with a copy to Ariba's General Counsel, Ariba, Inc., 910 Hermosa Court, Sunnyvale California 94085, and (in the case of a notice to You) be shall be sent to the address you provide in your Order. A notice of a request to not renew a subscription should also be sent to ACF_ordermanagement@ariba.com.

13.8 If any end user of the Solution is an agency or department of the U.S. Government ("Government"), the use, duplication, reproduction, release, modification, disclosure, or transfer of the software underlying the Solution, or any related documentation of any kind, including technical data or manuals, is restricted in accordance with FAR 12.212 for civilian agencies and DFAR Supplement 227.7202 for military agencies. The Solution operates based on commercial computer software and commercial computer software documentation. The use of the Solution by the Government is further restricted in accordance with the terms of this Agreement.

13.9 This Agreement shall not be construed against the party preparing it but shall be construed as if both parties jointly prepared this Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.

13.10 If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and remain enforceable between the parties.

13.11 The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

13.12 The Agreement constitutes a complete, absolute integration and the entire agreement between the parties hereto relating to the subject matter of your Order and this Agreement, and

supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing, and all contemporaneous oral communications. Notwithstanding the content of any purchase order, sale order, sale confirmation or any other document or web Solution relating to the subject matter of the Agreement, the Agreement shall take precedence over any such document, and any conflicting, inconsistent, or additional terms contained therein shall be null and void. Neither party may without mutual written consent modify the terms of the Agreement.

14. SALESFORCE.COM TERMS ("SFDC Services Agreement")

The following terms are incorporated herein:

14.1 **Definitions:** The following Definitions apply to this Section 14.

- **"AppExchange"** means the online directory of on-demand applications that work with the SFDC Service, located at <http://www.appexchange.com> or at any successor websites.
- **"Org"** means a separate set of Your Data and SFDC product customizations held by SFDC in a logically separated database (i.e., a database segregated through password-controlled access).
- **"Reseller"** means Ariba, Inc.
- **"Reseller Application"** means Ariba Contracts on Force.com.
- **"Platform"** means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller's provision of the Reseller Application to You.
- **"SFDC Service"** means the online, Web-based application and platform service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding AppExchange applications.
- **"SFDC"** means salesforce.com.
- **"Users"** means Your employees, representatives, consultants, contractors or agents who are authorized to use the Service subject to the terms of this SFDC Service Agreement as a result of a subscription to the Reseller Application having been purchased for such User, and have been supplied user identifications and passwords by You (or by Salesforce.com or Reseller at Your request).
- **"You"** and **"Your"** means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.
- **"Your Data"** means all electronic data or information submitted by You as and to the extent it resides in the Service.

14.2 **Use of Service.**

(a) Each User subscription to the Reseller Application shall entitle one User to use the Service via the Reseller Application, subject to the terms of this SFDC Service Agreement, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Service). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services, to use another application other than the Reseller Application, or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been

provided to You by Your Reseller, visit www.salesforce.com to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any SFDC Service functionality within it that is in excess to the functionality described in the Reseller Application's user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access and use such functionality, and You agree that Your use of such functionality, Your use of applications other than the Reseller Application, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller Application in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.

(b) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.

(c) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or Salesforce.com promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform and the SFDC Service.

(d) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.

(e) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.

(f) You acknowledge that to provide the Reseller Application, Your Data leaves the SFDC Service. Salesforce.com has no responsibility for Your Data when it is outside of the SFDC Service.

14.3 Third-Party Providers. Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of AppExchange applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and

online) that interoperate with the Platform, SFDC Service, and/or the Reseller Application, such as by exchanging data with the Platform, the SFDC Service, and/or the Reseller Application, or by offering additional functionality within the user interface of the Platform, the SFDC Service, and/or the Reseller Application through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.

14.4 Proprietary Rights. Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.

14.5 Compelled Disclosure. If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

14.6 Suggestions. You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.

14.7 Suspension and Termination. Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with this SFDC Service Agreement. If You use the Reseller Application in combination with a SFDC Service Org other than the Org provisioned solely for use with the Reseller Application (a "Merged Org"), Reseller shall be solely responsible for provisioning the Reseller Application to You. With respect to any Merged Org, You acknowledge and understand that (i) access to such Org, including the Reseller Application used in connection with such Org, may be suspended due to Your non-payment to SFDC or other breach of Your Agreement with SFDC, and (ii) in the event Your relationship with SFDC is terminated as a result of non-payment or other material breach of Your agreement with SFDC, Your Platform subscriptions would also be terminated. In no case will any such termination or suspension give rise to any liability of SFDC to You for a refund or other compensation.

14.8 Subscriptions Non-Cancelable. Subscriptions for the Platform and the SFDC Service are non-cancelable during a subscription term, unless otherwise specified in Your agreement with

Reseller.

14.9 Data Storage. The Platform and SFDC Service includes a certain cumulative amount of storage per User subscription for no additional charge. Contact Your Reseller for additional information. Additional storage may be available for purchase from the Reseller.

14.10 No Warranty. SALESFORCE.COM MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SALESFORCE.COM DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO RESELLER APPLICATION AND THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

14.11 No Liability. IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14.12 Further Contact. SFDC may contact You regarding new SFDC service features and offerings.

14.13 Google Programs and Services. Platform or SFDC Service features that interoperate with Google programs and services depend on the continuing availability of applicable Google application programming interfaces ("APIs") and programs for use with the Platform and the SFDC Service. If Google Inc. ceases to make such APIs and/or programs available on reasonable terms to SFDC, SFDC may cease providing such features without entitling You or Reseller to any refund, credit, or other compensation.

14.14 Third Party Beneficiary. SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to this SFDC Service Agreement.