OnDemand Subscription Agreement | Ariba, Inc.

This Subscription Agreement (the "**SA**") is a legally binding contract between the company or organization that you have identified on the order page of this web site ("Customer") and Ariba, Inc. ("Ariba") which sets forth the terms under which Customer may use the Solution(s) which you purchase via the order page of this web site (your "Order"). By checking the box next to "I have read and accept the terms and conditions of the Subscription Agreement" you agree that: (i) you are authorized to legally bind the Customer 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.

1. **DEFINITIONS**
   1.1. **"Agreement"** means collectively your Order and this SA.
   1.2. **"Documentation"** for Solutions means the authorized user and installation guides and manuals that are delivered or made available by Ariba to Customer and Ariba's other customers, as well as the solution package descriptions made available on Ariba's documentation portal, for use with the Solutions.
   1.3. **"Enablement Services"** means a set of pre-defined services offered by Ariba in association with the Solution and purchased by Customer in your Order as part of an Solution (e.g. services packaged with "Ariba Sourcing, Professional Package") as identified in the Documentation.
   1.4. **"Fees"** " means the fees stated in your Order and any applicable Renewal Term Fees pursuant to section 5.1 below.
   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 therefor, 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. **"Month" or "Monthly"** calendar month during the Subscription Term.
   1.8. **"Operating Policies"** means the operational guidelines and policies used by Ariba in the operation of its internal systems used to provide and support the Solutions (and are the Security Policy, Service Level Program, and Data Policy), as updated from time to time. Ariba's Operating Policies can be viewed at: www.ariba.com/legal/operating_policies.cfm .
   1.9. **"Order Effective Date"** means the date on which you place your Order.
   1.10. **"Project"** means a specific sourcing project in a particular services or commodity category initiated by Customer for Customer's internal use and benefit, and can consist of any one event. Examples of events include: (a) on-line auction, (b) sealed bid, (c) e-negotiation, or (d) a RFQ, RFI, or RFP. A Project will be counted for purposes of Usage Limits only in the Month in which the Project is created within the Ariba StartSourcing Solution.
   1.11. **"Services Term"** means the period of time during which Ariba is obligated to provide the applicable Enablement Services included in the Solution Customer purchases through your Order.
   1.12. **"Solution"** means a combination of electronic functionality accessible via the internet ("Technology Features") and Enablement Services, to which Customer subscribes in an Order (identified by the name of the Solution) and which is described in the most current version of the Documentation.
   1.13. **"Subscription Term"** means the period of time during which Customer 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. **"Team Member"** means an individual Customer employee or contractor who is provided access to a Solution to perform limited activities on the Solution (contrasted with Users who can perform and utilize all functionality of the Solution available to customers as described in the Documentation). Limitations on Team Member activities are described below in the section containing specific terms for the applicable Solution. Team Members do not include suppliers or other third parties (other than Customer's contractors) interacting with Customer via the Solution.
   1.15. **"Term"** means Subscription Term or Services Term, as applicable, and any applicable Renewal Term.

1.16. **"Usage Limit"** means the usage limit(s) applicable to Customer's use of the Solutions as specified in your Order (e.g., number of Registered Users, project owners, projects, geographic areas, transaction volumes, or otherwise).

1.17. **"Registered User"** means an individual to whom Customer grants access to use the applicable Solution pursuant to your Order.

1.18. **"User"** means an individual Customer employee or contractor who is provided with access to the Solution(s) purchased by Customer in your Order to perform all activities and utilize all functionality available to customers on the Solution, and receive Enablement Services as described in the applicable Documentation.

1.19. **"Written Notice"** means a written notice in accordance with section 13.6 (Notices).

2. **USE OF SOLUTIONS**

   2.1. **Solution Use.** For each Solution that Customer purchases from Ariba, Ariba grants Customer the right to allow Registered Users to access the associated Solution solely for support of Customer's internal business operations during the Subscription Term and any applicable Renewal Term subject to the terms and conditions of the Agreement (including Usage Limits stated in the Order). Registered User accounts cannot be shared or used by more than one individual. Customer shall be solely responsible for connection of Customer's computers to a telecommunications service that provides Internet access in a secure manner. All rights not expressly granted to Customer are reserved by Ariba.

   2.2. **General.**

      2.2.1. Rights and Restrictions. As between the parties, Ariba retains all right, title, and interest to all Intellectual Property Rights in all: (i) Solutions; (ii) work product developed by Ariba resulting from the Enablement Services; (iii) Ariba Confidential Information, and, (iv) 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. No representative of Customer's affiliate and/or subsidiary may access the applicable Solution unless authorized in the Order or in writing by Ariba. The rights to use the Solutions are also conditioned upon Customer's payment of all Fees.

      2.2.2. Authorized Administrator. Customer authorizes the person designated your Order as the shipping contact as the "Customer's Authorized Administrator" to receive official notices of updates and changes to elements of the applicable Solution, manage the User access as authorized under this Agreement, and respond to other questions that may arise regarding Customer's usage of the applicable Solution. Customer shall notify Ariba to change the person assigned to this role.

      2.2.3. User IDs and Passwords. Ariba will assign a distinct user ID and password to Customer for access to the applicable Solution, with an administrative role, to Customer's initial Authorized Administrator. Customer may then create additional User IDs and passwords using that administration account. Customer may assign only one (1) person for each User allocation. Individuals may not share user IDs and passwords.

      2.2.4. Personal Data. When Customer uses the Solution, the data that Customer enters is processed and stored on Ariba's servers. Depending on the location of Registered Users, the data may cross geographic and/or country borders in route to the servers ("Routing"). If a Registered User or Customer elects to enter personal contact details into the Solution (such as name, email address, or otherwise), Customer must inform Registered Users of the potential Routing and obtain any required consent.

3. **FEES AND PAYMENT**

   3.1. If Customer elects to pay the Fees by approved debit or credit card ("Payment Card"), Customer agrees that that the Payment Card name, number and date of expiration, and debit authorization which you provided on behalf of Customer via your Order on this web site is valid and proper for purposes of allowing Ariba to charge via such Payment Card (that is, to "e-Charge") the applicable account to collect fees and any applicable taxes (pursuant to section 3.3 below) due under this Agreement, including, without limitation, any applicable Renewal Term Fees pursuant to section 5.1 below.

By authorizing Ariba to e-Charge the provided account, Customer is authorizing Ariba or its respective designated representatives or agents to automatically continue charging that Payment Card (or any replacement Payment Card account if the original Payment Card is renewed, lost, stolen, or changed for any reason by the debit or credit-issuing entity, and such entity informs Ariba of such new replacement Payment Card account) for the Fees, including, without limitation, any applicable Renewal Term Fees pursuant to section 5.1 below, and applicable taxes. If the Payment Card you provide fails to validly pay the Fees due to Ariba, Ariba will give Customer ten (10) days notice to supply a valid alternative Payment Card. If Customer fails to provide a valid alternative Payment Card within such time frame, Customer acknowledge that Ariba may terminate Customer's access to or license to use the applicable Solution for which e-Charging was the designated form of payment of the Fees.

3.2. If you contact Ariba to make other payment arrangements (other than e-Charge) on behalf of Customer, then Customer agrees to pay to Ariba the Fees in U.S. dollars within thirty (30) days from the date of invoice unless otherwise agreed with Ariba in writing. Except as otherwise provided in this SA, all Fees shall be non-cancelable and non-refundable. If Customer requires a purchase order to pay vendors, Customer will provide Ariba with approved purchase order information and complete and accurate billing and contact information upon execution of the Order Form. If a purchase order is required, Customer shall ensure that its purchase order is sufficient to cover all fees in the Order, any variable fees that become due under the Order, and all applicable taxes. Terms of a purchase order will not modify the SA, and the content of such purchase order shall not be binding upon either party except to reaffirm Customer's payment obligation under the applicable Order. Customer agrees to pay all fees and expenses payable hereunder from Customer's location specified in your Order. Any amounts payable by Customer hereunder that remain unpaid after the due date shall be subject to a late charge equal to the lesser of 1.5% per month or the maximum legal interest rate, which interest will accrue from the due date for payment until the date of actual receipt by Ariba of the amount in cleared funds. Customer shall pay all fees and expenses via electronic funds transfer to Ariba's designated account.

3.3. All amounts payable under this Agreement are exclusive of taxes. Customer shall pay, or reimburse Ariba in the event it has paid, any and all taxes imposed by any government upon the amounts payable under this Agreement whether invoiced by Ariba or otherwise collected, including sales, use, value-added, goods and services, consumption, personal property, withholding, duties, fees, and levies of any kind, and penalties and interest related thereto, but excluding taxes imposed upon Ariba's net income, net worth, capital, or employees. Upon request by Ariba, Customer shall provide Ariba with original or certified copies of all receipts or other evidence of tax payments made relating to this Agreement, within the time periods as required by applicable law. Customer and Ariba shall cooperate in obtaining any favorable tax treatment for the parties with respect to amounts payable under this Agreement. Each party shall be responsible for reporting, withholding and payment of all income, unemployment, FICA or similar taxes for its employees.

3.4. If Customer increases the Usage Limits, there will be a corresponding increase in the Fees that was specified in the Order (**"Expansion Fee"**). A reduction in usage by Customer shall not reduce the Usage Limit or the Fees.

4. **DELIVERY**
   Solution. The Solution is a hosted internet based service which Customer may only access remotely. Any Documentation for the Solution will be provided electronically only.

5. **TERM AND TERMINATION**
   5.1. Renewal Term(s). At the end of the initial Subscription Term (and each period of renewal thereafter as applicable), unless a party gives Written Notice of non-renewal at least thirty (30) days in advance of the end of such Subscription Term, such subscription shall automatically renew for additional consecutive terms of either 12 months or a period equal in duration to the initial Subscription Term (whichever is greater)("Renewal Term"), and Customer shall pay Ariba the applicable then-current standard Renewal Term Fees (excluding any special promotional fees) for each such Renewal Term. The Renewal Term Fees for the applicable Renewal Term shall be due on the first day of the Renewal Term, and Customer shall pay such Renewal Term Fees in accordance with section 3 above.

5.2. <u>Termination for Breach.</u> A party (**"Terminating Party"**) may provide a Written Notice of default to the other party (**"Terminated Party"**) to either terminate this Agreement or suspend access to the Solution: (a) if the Terminated Party has materially breached this Agreement, and the Terminated Party does not cure such material breach within thirty (30) calendar days after its receipt of Written Notice of such breach; or (b) immediately following the failure to resolve within a reasonable period of time any of the following: the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the Terminated Party, appointment of a trustee or receiver for the Terminated Party's property or business, or any assignment, reorganization or arrangement by the Terminated Party for the benefit of its creditors; or (c) immediately upon breach by the Terminated Party of either Section 2 (Use of Solutions) or Section 9 (Confidential Information).

5.3. <u>Termination for Bankruptcy/ Insolvency.</u> Upon expiration or termination of this Agreement, all of your access rights to use the Solutions, 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). Prior to expiration of the Subscription Term or earlier termination, Customer may obtain Customer Data from the Solution.

5.4. <u>Remedies.</u> Termination of this Agreement or access right shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all Fees that have accrued or are otherwise identified as being owed by Customer, now or at some future date, under any Order Form.

6. **INDEMNITIES**

6.1. Subject to this Section 6, Ariba agrees, at its own expense, to pay all Damages and defend Customer from (or at Ariba's option, settle) any claim instituted by a third party and asserted against Customer that the Solutions when used in accordance with the Documentation infringe any United States patent, copyright, trade secret, or other proprietary right of a third party ("IP Claim"), provided that Customer: (a) promptly notifies Ariba in writing of any such IP Claim; (b) permit Ariba to control and direct the investigation, preparation, defense and settlement of the IP Claim; and (c) assist and fully cooperate with Ariba in the defense of same. Ariba agrees to pay any damages or liabilities awarded against Customer (or agreed to in a settlement by Ariba) resulting from the IP Claim, including any awarded costs and attorneys' fees (collectively "Damages"). Ariba will not be responsible for any settlement it does not approve in writing prior to such settlement.

6.1.1. Following notice of an IP Claim or any facts which may give rise to such IP Claim, Ariba may, in its sole discretion and at its option, (a) procure for Customer the right to continue to use the Solutions, (b) replace the Solutions, or (c) modify the Solutions to make them non-infringing. If Customer's use of the Solution is enjoined in a non-appealable judgment, and Ariba determines that it is not commercially reasonable to perform any of alternatives (a) through (c), Ariba will terminate access to the allegedly infringing Solutions and refund the pre-paid and unused Fees paid by Customer for such allegedly infringing Solutions.

6.1.2. In no event will Ariba have any obligations under this Section 6 or any liability for any claim or action if the IP Claim is caused by, or results from: (a) Customer's combination or use of the Solutions with non-Ariba software or services, software or data, if such IP Claim would have been avoided by the non-combined or independent use of the Solutions, (b) modification of the Solutions by anyone other than Ariba if such IP Claim would have been avoided by use of the unmodified Solution, (c) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, (d) Customer's use of the Solution in a manner not strictly in accordance with this Agreement, (e) Ariba's modification of the Solution in compliance with Customer's specifications, or (f) use of other than Ariba's most current release of the Solutions if the claim or action would have been avoided by use of the most current release, provided Customer is given an opportunity to use such most current release for no additional Fee.

6.1.3. Customer shall pay all Assessments and defend Ariba against any claim instituted by a third party and asserted against Ariba that Customer Data or the Marks infringe any United States patent, copyright, trade secret, or other proprietary right of a third party ("Claim"); provided that Ariba (a) promptly notifies Customer in writing of any such Claim; (b) permits Customer to control and direct the investigation, preparation, defense and settlement of the Claim; and (c) assists and fully cooperates in the defense of same. Customer agree to pay any damages or liabilities awarded against Ariba (or agreed to in a settlement by the Customer) resulting from the Claim, including any awarded costs and attorneys' fees (collectively "Assessments"). Customer will not be responsible for any settlement Customer does not approve in writing prior to such settlement.

6.2. THIS SECTION STATES EACH PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR ALLEGATIONS BY A THIRD PARTY.

7. **LIMITED WARRANTIES AND DISCLAIMERS**

7.1. Solutions Limited Warranty. Ariba warrants that, during the applicable Subscription Term, the Solution will conform in all material respects to the then current Documentation for the applicable Solution. Customer's sole and exclusive remedy, and Ariba's entire liability for breach of this limited warranty, shall be correction of the warranted nonconformity in the Solution or, if Ariba fails to correct the warranted nonconformity after using reasonable commercial efforts, Ariba will terminate access to the non-conforming Solution and refund the subscription Fees for such Solution (as identified in an applicable Order Form) paid by Customer for the remainder of the Subscription Term (beginning with the date Customer reported the nonconformity). This limited warranty shall not be valid to the extent the warranty nonconformity was caused by Customer's abuse, misuse, accident, alteration, or unauthorized modification or installation of the Solution. Customer must identify in a Written Notice to Ariba any nonconformity of the Solution within ninety (90) days of discovery of such nonconformity, in order to received the above warranty remedies.

7.2. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION 7, THE SOLUTIONS ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY WHATSOEVER. ARIBA HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. ARIBA DOES NOT WARRANT THAT THE SOLUTIONS, OR ANY PORTION THEREOF, ARE ERROR OR BUG FREE. CUSTOMER ACKNOWLEDGES THAT ARIBA DOES NOTCONTROL THE TRANSFER OF DATA OVER THE INTERNET, AND THAT ARIBA IS NOT RESPONSIBLE FOR ANY DELAYS OR DELIVERY FAILURES CAUSED BY THE INTERNET.

8. **LIMITATION OF LIABILITY**

8.1. IN NO EVENT SHALL EITHER PARTY (INCLUDING AS IT APPLIES TO ARIBA'S THIRD PARTY PROVIDERS) BE LIABLE: (A) UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING CUSTOMER'S LOST PROFITS, COST OF COVER, LOSS OR CORRUPTION OF DATA NOT BACKED UP BY CUSTOMER, DATA INACCURACY CLAIMS, OR BREACHES IN SYSTEM SECURITY DESPITE ARIBA FOLLOWING REASONABLE SECURITY TECHNIQUES, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS; and (b) FOR A TOTAL AND AGGREGATE LIABILITY AMOUNT UNDER THIS AGREEMENT IN EXCESS OF (i) IN THE CASE OF ARIBA, THE AMOUNT OF FEES PAID BY CUSTOMER WITHIN ONE (1) YEAR PRIOR TO THE DATE OF SUCH CLAIM FOR THE APPLICABLE Order GIVING RISE TO SUCH LIABILITY AND (ii) IN CUSTOMER'S CASE,

An AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER (AND ANY OWED BUT UNPAID FEES) WITHIN ONE (1) YEAR PRIOR TO THE DATE OF SUCH CLAIM FOR THE APPLICABLE ORDER GIVING RISE TO SUCH LIABILITY.

8.2. The limitations set forth in section 8.1 (A) and (B) shall not apply to (i) damages due to bodily injury or death, (ii) intentional violation of Section 9 (Confidentiality), or (iii) Customer's breach of Section 2 (Use of Solutions).

9. **CONFIDENTIALITY**

9.1. A party (the **"Discloser"**) may disclose to the other party (the **"Recipient"**) information that the Discloser considers to be confidential and at the time of disclosure is identified in writing as confidential and/or proprietary (**"Confidential Information"**). Confidential Information shall include the Solutions in any embodiment, the terms and conditions of this Agreement (including pricing), and either party's technical and business information relating to inventions or software, research and development, future product specifications, implementation methodologies, and engineering processes. Recipient shall use the same degree of care to protect the confidentiality of Discloser's Confidential Information that Recipient uses to protect its own Confidential Information of a like nature, but in no event less than reasonable care. Ariba may disclose Customer's Confidential Information to its third party providers solely to the extent necessary to provide products or services under the SA, provided that Ariba has a confidentiality agreement in place with such third party provider that protects such Confidential Information against disclosure in a manner no less protective than the SA. Both parties acknowledge that any breach of its obligations with respect to Confidential Information may cause the other irreparable injury for which there are inadequate remedies at law and that Discloser shall be entitled to seek equitable relief in addition to all other remedies available to it. Customer shall not disclose the results of any performance tests of the Solutions to any third party without Ariba's prior written approval. A party's Confidential Information shall not include information that: (i) is or becomes publicly available through no act or omission of Recipient; (ii) was in the Recipient's lawful possession prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Discloser; (iii) is lawfully disclosed to the Recipient by a third party without restriction on Recipient's disclosure, and where Recipient was not aware that the information was the confidential information of Discloser; or, (iv) is independently developed by the Recipient without violation of this SA. Recipient may disclose Confidential Information of Discloser as needed to comply with a court order, subpoena, or other government demand (provided that, unless otherwise prohibited by applicable law, Recipient first notifies Discloser and gives Discloser the opportunity to challenge such court order, subpoena, or government demand).

9.2. Notwithstanding anything to the contrary in this SA, Ariba shall not be prohibited or enjoined at any time by Customer from utilizing any "skills or knowledge of a general nature" acquired during the course of performing the Enablement Services. For purposes of this SA, "skills or knowledge of a general nature" shall include, without limitation, information publicly known or that could reasonably have been acquired in the conduct of similar work performed for another customer, but shall not include the Customer's Confidential Information.

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 the Force Majeure Event prevents performance of a material obligation and continues for a period of sixty (60) 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. CUSTOMER'S CONTENT & CUSTOMER LIST

11.1. Neither party grants the other party any rights to use its trademarks, service marks, or other proprietary symbols or designations ("Trademarks") without the written consent of the other party, except as otherwise described herein. Neither party will combine the other's Trademarks so as to effectively create a unitary composite mark, nor shall it use any product name or trademark in a manner that is confusingly similar to the other party's Trademark. Customer grants to Ariba (and applicable Third Party Providers), the non-exclusive, royalty free, worldwide right to use or display any Trademarks that Customer provides Ariba for the purpose of inserting them in Customer's user interface for the Solution on the Solution pages utilized or attributed to Customer. As between the parties, Customer is responsible for the entry, completeness, and accuracy of data it enters in the Solution ("Solution Data"), as well as determining the suitability of the Solution for Customer's business and complying with any regulations, laws, or conventions applicable to Customer's data. Ariba will use reasonable efforts to operate the Solution and manage Customer's data entered into the Solution in compliance with the Operating Policies.

11.2. Customer agrees that Ariba may issue a mutually agreeable news release regarding Customer's selection of the applicable Solution(s). Once a press release has been issued, Ariba may publicly refer to Customer as being a customer of Ariba and use the Customer's name in any publicity material regarding Customer's selection and use of the Solution(s). Ariba will seek Customer's permission prior to any further media discussions concerning Customer's experience using Ariba solutions.

11.3. Customer acknowledges that Ariba has the right, but no obligation, to monitor the Solution and any of Customer 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.

11.4. f Customer provides any feedback for or makes recommendations for Solution, Ariba is free to use such feedback or recommendations in any manner, and Customer waives any interest in any Solution modifications related to such feedback or recommendations.

12. MISCELLANEOUS

12.1. Customer 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.

12.2. The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to cause this SA 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 Customer and either Ariba or any employee or agent of Ariba. Ariba reserves the right to use third party providers in the provision of the Solutions.

12.3. 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.

12.4. The Solutions are of U.S. origin and may not be exported, re-exported, transferred, or used in violation of U.S. export law. Some Solutions and/or Enablement Services may include the export of Customer Data outside of the U.S.; therefore Customer must ensure that any Customer Data provided to Ariba does not contain any data that is controlled for export purposes by the U.S. or other applicable governments. Customer hereby represents and warrants that neither it, nor any of its affiliates included as Registered Users under this Agreement or any Order Form, is: (i) prohibited by U.S. export laws or regulations from receiving or using U.S. origin goods or services; (ii) located in, a legal entity formed in, or a citizen of, any country that is subject to U.S. sanctions or embargoes, or, (iii) controlled by an entity described in (i) or (ii). This Section shall survive expiration or termination of this Agreement.

12.5. 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), 2.3 (General), 3 (Fees and Payment), 5 (Termination), 6 (Indemnities),7.3, 8 (Limitation of Liability), 9 (Confidentiality), 10 (Trademarks), and 13 (Miscellaneous).

12.6. 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., 807 11th Avenue, Sunnyvale California 94089, and (in the case of a notice to Customer) be shall be sent to the address you provide in your Order.

12.7. This SA 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 SA the United Nations Convention on Contracts for the International Sale of Goods. Any legal action or proceeding relating to this SA 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.

12.8. 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 Technology Features, 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 Technology Features operate based on commercial computer software and commercial computer software documentation. The use of the Solution and the Technology Features offered on the Solution by the Government is further restricted in accordance with the terms of this Agreement.

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

12.10. 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.

12.11. 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.

12.12. 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 SA, 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 site 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.

12.13. Third Party Websites. A Solution may allow access to other websites. These linked websites are not under the control of Ariba, and Ariba is not responsible for the contents of any linked website. Ariba provides links only as a convenience, and such inclusion of any link does not imply endorsement by Ariba of the linked website or any part of its contents. Such linked websites may subject Customer to terms and conditions between Customer and the website owner, and/or fees for use such website.

13. **STARTSOURCING - SPECIFIC TERMS AND CONDITIONS**
   13.1. <u>Solution Access and Usage.</u> Subject to the terms of the Agreement, up to the maximum number of Users indicated in your Order under may access the StartSourcing Solution during the Subscription Term and any applicable Renewal Term to conduct, in the aggregate, up to the maximum number of Projects per Month indicated. In addition, Team Members may access the StartSourcing Solution during the Subscription Term solely for purposes of participating in a Project managed by a User. Team Members are not permitted to initiate or manage Projects on the StartSourcing Solution.
   13.2. <u>Compliance with Laws.</u> Customer shall not conduct any unlawful Project. Customer shall be solely responsible for all information that Users or suppliers interacting with Customer post on the StartSourcing Solution. Ariba will retain the data on the StartSourcing Solution for the lesser of three (3) years or the remaining Subscription Term, subject to legal requirements imposed upon auction site operators.
   13.3. <u>Data Policy Applicability.</u> Due to the way in which StartSourcing is designed, certain aspects of the posted Data Policy and Privacy Statement ("Data Policy") do not apply to that product. Customer acknowledges that the Data Policy is modified as stated below in regards to StartSourcing, and that such changes will similarly apply to Ariba's then current Data Policy throughout the Subscription Term. Except as modified below, Ariba's Data Policy will continue to apply, including but not limited to Ariba's commitment to treat Customer's transaction data (e.g. RFX/Auction data) as confidential information and only use it for the limited purposes described in the Data Policy.

   a. If a company running a Project (a "Buyer") uploads (i) documents to the Ariba Sourcing Library/content library within the StartSourcing Solution, or (ii) adds suppliers to the supplier database, all such information is non-confidential and is included in the public database accessible by other users of the StartSourcing Solution. The entire document, including the creation data and identity will be in the public database. With this in mind, Ariba recommends that Buyers not upload any confidential documents or add suppliers that the Buyer desires to keep confidential.
   b. As will be explained in the invitation email to a prospective new supplier invited by a Buyer, if a supplier accepts an invitation from a Buyer, the supplier will be placed in the supplier public database and its profile information (whether entered by the original Buyer or updated by the supplier) will be visible to all Buyers across all companies on the StartSourcing realm.
   c. For suppliers in the public database, the supplier's profile and contact information will be searchable by all Ariba StartSourcing realm users, including Buyers.
   d. Ariba will not accommodate a Buyer's or supplier's request to purge information from the StartSourcing Solution.
   e. To the extent this section conflicts with anything stated in Ariba's then-current Data Policy, the terms of this section 13.3 supersedes such conflicting term in the posted Data Policy. Buyer is responsible for informing its suppliers of the contents of this section 13.3.
   f. Customer agrees to notify its users of the contents of this section 13.3, so that the users are informed of these changes to the Data Policy.

14. **STARTCONTRACTS - SPECIFIC TERMS AND CONDITIONS**
   14.1. <u>Solution Access and Usage.</u> Subject to the terms of your Order and the Agreement, up to the maximum number of Users indicated in your Order may access the Solution during the Subscription Term. In addition, Team Members may access the Solution during the Subscription Term to view, edit, revise, request and reference contracts, but not to create any new contract workspaces, or to serve as the "Owner" of any active Contract Workspace. "Owner" means, in regards to an active Contract Workspace, the individual: (a) listed as "Owner" on the tab titled "Overview"; (b) included in the list of individuals under the group titled "Project Owner" on the team tab; or, (c) included in a Project Group (as an individual or as a member of another group) where such Project Group is assigned the role of "Project Owner".

For purposes of this section, "Contract Workspace" includes any Sales Contract Workspace, Internal Contract Workspace, or Procurement Contract Workspace, but does not include any Sales Contract Request or Procurement Contract Request. Capitalized terms not defined in this section or elsewhere in the Agreement are defined in the Solution's Documentation.

14.2. <u>eSignature.</u> In order for Customer to utilize the eSignature Technology Features, Customer must separately contract with DocuSign, Inc. for its signature processing service.

14.3. <u>No Legal Advice.</u> Customer acknowledges and agrees that Ariba is not in the business of providing legal advice, and that no content available within the StartContracts Solution or in connection therewith should be misconstrued as legal advice.

eStore SA v8 Mar 2011

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