

SUBSCRIPTION AGREEMENT

This Subscription Agreement (the "SA") sets forth the terms under which Customer may use certain Ariba Products and purchase certain Ariba Services under Order Forms governed by this SA.

1. DEFINITIONS

- 1.1. "**Agreement**" means, for any Order Form referencing the SA, collectively the Order Form and the SA.
- 1.2. "**Ariba**" means the Ariba entity identified in an applicable Order Form.
- 1.3. "**Ariba Services**" refers to any Consulting Services or Enablement Services.
- 1.4. "**Consulting Services**" means any consulting services provided to Customer hereunder, typically involving a scope of work, as may be identified in an applicable Order Form. Consulting Services do not include Enablement Services as defined below.
- 1.5. "**Customer**" means the party identified in an applicable Order Form.
- 1.6. "**Documentation**" means the authorized user and installation guides and manuals that are delivered or made available by Ariba to its customers, as well as the solution package descriptions made available on Ariba's documentation portal, for use with the OnDemand Solution Packages. Documentation for the Site will be provided electronically only.
- 1.7. "**Enablement Services**" means a set of pre-defined services provided by Ariba as part of an OnDemand Solution Package (e.g. services packaged with "Ariba Sourcing, Professional Package") as described in the Documentation.
- 1.8. "**Fees**" means the fees stated in any Order Form.
- 1.9. "**including**" means "including but not limited to"
- 1.10. "**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 Form Effective Date.
- 1.11. "**OnDemand Solution Package**" means a combination of access to a Site and the Enablement Services for the Site.
- 1.12. "**Operating Policies**" means the operational guidelines and policies used by Ariba in the operation of its internal systems used to provide and support the OnDemand Solution Packages (and are the Security Policy, Service Level Program, and Data Policy and Privacy Statement), as updated from time to time. Ariba's Operating Policies can be viewed at: www.ariba.com/legal/operating_policies.cfm.
- 1.13. "**Order Form**" means a separate document by which Customer orders OnDemand Solution Packages, whether titled an order form or statement of work.
- 1.14. "**Order Form Effective Date**" means the date identified on an applicable Order Form upon which such Order Form becomes effective.

- 1.15. "**Services Term**" means the period of time during which Ariba is obligated to provide the applicable Ariba Services purchased by a customer as identified on an applicable Order Form
- 1.16. "**Site**" means the Technology Features and the set of internet web pages through which the Technology Features can be accessed.
- 1.17. "**Subscription Term**" means the period of time during which Customer may access the applicable OnDemand Solution Package as set forth in the applicable Order Form and commencing upon the applicable Order Form Effective Date.
- 1.18. "**Technology Features**" means the most current version of remote-access electronic functionality for an OnDemand Solution Package as identified in the Documentation.
- 1.19. "**Term**" means Subscription Term or Services Term, as applicable.
- 1.20. "**Usage Limit**" means the usage limit(s) applicable to Customer's use of the OnDemand Solution Packages as specified in the applicable Order Form (e.g., number of Registered Users, project owners, projects, geographic areas, transaction volumes, or otherwise).
- 1.21. "**Registered User**" means an individual to whom Customer grants access to use the applicable OnDemand Solution Package pursuant to an Order Form.
- 1.22. "**Written Notice**" means a written notice in accordance with section 13.6 (Notices).

2. USE OF ONDEMAND SOLUTION PACKAGES

- 2.1. **OnDemand Solution Package Use.** During the Subscription Term, subject to the terms and conditions of the Agreement (including Usage Limits stated in the Order Form) and payment of all fees when due, for each OnDemand Solution Package to which Customer subscribes, Ariba (i) grants Customer a non-exclusive, non-transferable right to allow Registered Users to access the associated Site solely for support of Customer's internal business operations, and (ii) shall provide the Enablement Services included in the applicable OnDemand Solution Package. 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.** As between the parties, Ariba retains all right, title, and interest to all Intellectual Property Rights in all: (i) OnDemand Solution Packages; (ii) Work Product developed by Ariba resulting from the Ariba 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). Customer shall comply with the terms and use restrictions stated in this Agreement, and shall be responsible for the compliance of its Registered Users with the terms and use restrictions stated in this Agreement. No representative of Customer's affiliate and/or subsidiary may access the applicable OnDemand Solution Package unless authorized in the Order Form or in writing by Ariba. The rights to use the OnDemand Solution Packages are also conditioned upon Customer's payment of all Fees.

3. ARIBA SERVICES.

- 3.1. Customer may obtain Consulting Services under an Order Form at the rates set forth in an applicable Order Form.

- 3.2. If Customer purchases Consulting Services, (a) Customer agrees to provide Ariba with full, free and timely access to Customer's computer equipment and software, as is reasonable under the circumstances, at all reasonable times for the purpose of fulfilling its obligations to provide such Consulting Services under this SA, and (b) in order to facilitate the direction and provision of Consulting Services, Customer shall designate a project advisor who shall be principally responsible for Customer's obligations set forth above and the direction and management of Customer's employees engaged in the project. Ariba will similarly designate a Project Advisor who shall be principally responsible for Ariba's provision of the Consulting Services.
- 3.3. Anything resulting from or arising in the course of performance of the Ariba Services shall be deemed "Work Product." Customer shall own all data and applications developed solely by it in connection with the Ariba Services. However, as between the parties, Ariba will own all rights, title, interest and Intellectual Property Rights with respect to the Work Product and all derivatives, enhancements and modifications of the Site or any other Ariba products, all of which are hereby retained by it or assigned to it by Customer.

4. FEES AND PAYMENT

- 4.1. Customer agrees to pay to Ariba the Fees in the amounts and at the times set forth in the applicable Order Form (if the Order Form does not otherwise specify, payment shall be made in U.S. dollars within thirty (30) days from the date of invoice). Except as otherwise provided in this SA or the applicable Order Form, 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 Form, all variable fees that become due under the Order Form, and all applicable taxes. Terms of a purchase order will not modify the Agreement, 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 Form. Customer agrees to pay all fees and expenses payable hereunder from Customer's location specified in the applicable Order Form. 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.
- 4.2. Charges for Ariba Services do not cover, and Customer agrees to separately reimburse Ariba for all out-of-pocket expenses incurred by Ariba in connection with the Ariba Services including: (i) travel expenses including airfare and car rental and travel time in excess of four hours per week; (ii) living expenses including hotels; (iii) meal expenses including breakfast, lunch, and dinner; (iv) translation and/or interpretation services; (v) materials costs; and (vi) an amount equal to the individual's mobile phone charges for calls related to the Ariba Services.
- 4.3. All amounts payable under this SA 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 SA 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 SA, 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 SA. Each party shall be responsible for reporting, withholding and payment of all income, unemployment, FICA or similar taxes for its employees.

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

5. **TERMINATION OR SUSPENSION**

- 5.1. A party ("**Non-Defaulting Party**") may provide a Written Notice of default to the other party ("**Defaulting Party**") to either terminate this Agreement or suspend access to the OnDemand Solution Packages: (a) in whole or in part, such as any Order Form or Order Forms (a) if the Defaulting Party has materially breached the Agreement, and the Defaulting Party does not cure such material breach within thirty (30) calendar days after its receipt of Written Notice of such breach (ten (10) days in the case of Customer's non-payment); or (b) immediately following the failure to resolve the suspension of business, insolvency, institution of bankruptcy, liquidation proceedings by or against the Defaulting Party, appointment of a trustee or receiver for the Defaulting Party's property or business, or any assignment, reorganization or arrangement by the Defaulting Party for the benefit of its creditors; or (c) immediately upon breach by the Defaulting Party of either Section 2 (Use of OnDemand Solution Packages) or Section 9 (Confidential Information); or (ii) terminate any individual Order Form (or suspend access to the OnDemand Solution Packages) if the Defaulting Party fails to perform any provision of such Order Form and does not cure the breach within thirty (30) calendar days after receipt of Written Notice thereof.
- 5.2. Upon expiration or termination of the Agreement, and during any suspension pursuant to section 5.1, all of Customer's access rights to use the OnDemand Solution Packages, and all other access rights or services as set forth in the Agreement shall cease immediately (except for those rights, licenses and obligations that are expressly stated to survive termination of the Agreement). Prior to expiration of the Subscription Term or earlier termination, Customer may obtain Customer Data from the Site.
- 5.3. Termination of the Agreement or suspension of any 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 Sites 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) permits Ariba to control and direct the investigation, preparation, defense and settlement of the IP Claim; and (c) assists and fully cooperates 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 Sites, (b) replace the Sites, or (c) modify the Sites to make them non-infringing. If Customer's use of the Site 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 the license for the allegedly infringing Sites and refund the pre-paid and unused Fees paid by Customer for such allegedly infringing Sites.

- 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 Sites 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 Sites, (b) modification of the Sites by anyone other than Ariba if such IP Claim would have been avoided by use of the unmodified Site, (c) Customer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, or (d) Customer's use of the Site in a manner not strictly in accordance with this SA, (e) Ariba's modification of the Site in compliance with Customer's specifications.
- 6.2. 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 agrees 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.
- 6.3. THIS SECTION 6 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. **Site Limited Warranty.** Ariba warrants that, during the applicable Subscription Term, the Site will conform in all material respects to the then current Documentation for the applicable Site. This limited warranty only covers problems identified in a Written Notice delivered to Ariba during the warranty period. 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 Site or, if Ariba fails to correct the warranted nonconformity after using reasonable commercial efforts, Ariba will terminate access to the non-conforming Site and refund the subscription Fees for such Site (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 Site.
- 7.2. **Ariba Services Limited Warranty.** Ariba warrants that any Ariba Services will be performed in a workmanlike and professional manner consistent with generally accepted industry practices and in material conformance with the descriptions set forth in the applicable Documentation (as applies to Enablement Services) or Order Form (as applies to Consulting Services). For any breach of this services warranty, Customer's exclusive remedy, and Ariba's entire liability, shall be the re-performance of such deficient Ariba Services; and if Ariba fails to re-perform such Ariba Services as warranted, Customer shall be entitled to recover the Ariba Services Fees paid to Ariba for such deficient Ariba Services. Customer must identify in a Written Notice to Ariba any deficiencies in such Ariba Services within ninety (90) days of completion of such deficient Ariba Services in order to receive the above warranty remedies.
- 7.3. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION 7, THE ONDEMAND SOLUTION PACKAGES AND ARIBA SERVICES 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 ONDEMAND SOLUTION PACKAGES OR ARIBA SERVICES, OR ANY PORTION THEREOF, ARE ERROR OR BUG FREE. CUSTOMER ACKNOWLEDGES THAT ARIBA DOES NOT CONTROL 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 SA 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 FORM 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 FORM 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) for indemnities under Section 6 (Indemnities) or violations of the other party's Intellectual Property Rights, (iii) violation of Section 9 (Confidentiality), or (iv) Customer's breach of Section 2 (Use of OnDemand Solution Packages).

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 as confidential and/or proprietary ("**Confidential Information**"). Notwithstanding anything to the contrary herein, Confidential Information shall be deemed to include the OnDemand Solution Packages in any embodiment, the terms and conditions of this SA (including pricing), and either party's technical and business information relating to inventions or software, research and development, future product specifications, implementation methodologies, engineering processes, costs, profit or margin information, and marketing and future business plans. The parties agree, unless required by law, not to use or make each other's Confidential Information available to any third party for any purpose other than as set forth in the Agreement, without the prior consent of the other party; provided that: Ariba may disclose Customer's Confidential Information to its third party providers solely to the extent necessary to provide products or services under the Agreement, provided that Ariba has a non-disclosure agreement in place with such third party provider that protects such Confidential Information against disclosure in a manner no less protective than the Agreement. Recipient shall protect the Confidential Information of Discloser by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication by its employees or agents. 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 OnDemand Solution Packages 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; (iv) is independently developed by the Recipient without violation of this SA; or, (v) which is disclosed by Recipient as needed to comply with a court order, subpoena, or other government demand (provided that Recipient first notifies Discloser and gives Discloser the opportunity to challenge such court order, subpoena, or government demand). Notwithstanding anything to the contrary herein, Ariba may use all Customer Data (i) in compliance with the Ariba Data Policy and Privacy Statement applicable to such OnDemand Solution Package or Ariba Services; and, (ii) as permitted under the terms of an Order Form. If Customer provides any feedback for or make recommendations for OnDemand Solution Packages, Ariba is free to use such feedback or recommendations in any manner, and Customer waives any interest in any OnDemand Solution Package modifications related to such feedback or recommendations. Ariba's obligations regarding data management, privacy and security are described in the Operating Policies.

- 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 services specified under an Order Form. 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. TRADEMARKS

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.

11. 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 Form 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.

12. CUSTOMER'S CONTENT & CUSTOMER LIST

12.1. Customer grants to Ariba (and applicable Third Party Providers) during any Subscription Term, the non-exclusive, worldwide right to use or display (a) any data, information or other materials, provided to Ariba by Customer in the course of Ariba's provision of OnDemand Solution Packages and/or Ariba Services ("Customer Data") solely to the extent necessary to provide the products and services to Customer and subject to Section 9 (Confidentiality), and (b) any trademarks that Customer provides Ariba for the purpose of inserting them in Customer's user interface for the Site ("Marks").

Customer will comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with use of the Site, and international communications. Customer shall have the sole responsibility for the accuracy, legality, and integrity of Customer Data and data transactions. 12.2 Customer agrees that Ariba may issue a news release regarding Customer's selection of the applicable OnDemand Solution Package or Ariba Service. 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 OnDemand Solution Packages and/or Ariba Services. Ariba will seek Customer's permission prior to any further media discussions concerning Customer's experience using Ariba solutions.

12.2. Customer agrees that Ariba may issue a news release regarding Customer's selection of the applicable OnDemand Solution Package or Ariba Service. 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 OnDemand Solution Packages and/or Ariba Services. Ariba will seek Customer's permission prior to any further media discussions concerning Customer's experience using Ariba solutions.

12.3. Customer acknowledges that Ariba has the right, but no obligation, to monitor the Site and any of Customer Data submitted to the Site, 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 Site.

13. MISCELLANEOUS

13.1. Customer shall not assign, sublicense or otherwise transfer this SA, including any Order Forms or Order Forms, in whole or in part, even in the event of merger, spin-off, or acquisition, without the prior written consent of Ariba.

13.2. 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 SA 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 OnDemand Solution Packages.

13.3. The failure of either party to act in the event of a breach of this SA 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 OnDemand Solution Packages are of U.S. origin and may not be exported, re-exported, transferred, or used in violation of U.S. export law. Some OnDemand Solution Packages and/or Ariba 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. This Section shall survive expiration or termination of this SA.

13.5. In the event of termination of this SA, 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), 2.2 (Use of OnDemand Solution Packages), 4 (Fees and Payment), 5 (Termination or Suspension), 6 (Indemnities), 7.3 and 8 (Limitation of Liability), 9 (Confidentiality), 10 (Trademarks), and 13 (Miscellaneous).

- 13.6. Written Notices. All notices under this SA 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 at the address set forth on the Order Form to which the matter relates, with a copy to Ariba's General Counsel, and (in the case of a notice to Customer) be sent to the address set forth in the address block in an applicable Order Form or to any other address Customer specifies in writing.
- 13.7. 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 SA 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.
- 13.8. If any end user of the Site 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 Site and the Technology Features offered on the Site by the Government is further restricted in accordance with the terms of this SA.
- 13.9. This SA 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.
- 13.10. If any provision of this SA 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 SA shall otherwise remain in full force and effect and remain enforceable between the parties.
- 13.11. The section headings appearing in this SA 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 such 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 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. In the event of a conflict between the terms and conditions of the SA and any individual Order Form, the Order Form shall govern. Neither party may without mutual written consent modify the terms of the SA or the terms of the Order Form.

13.13. Third Party Websites. A Site 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.

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