

TERMS OF USE OF THE ARIBA NETWORK

Please note that section I (Terms Applicable to All Suppliers) is applicable to all suppliers using the Ariba Network ("Network"). Section II (Terms Applicable Only To Suppliers Using the Invoice Authentication Service) applies only to suppliers using the Invoice Authentication features on Network. Section III (Terms Applicable Only To SMP Members) applies only to suppliers who subscribe to SMP Membership. Section IV (Terms Applicable Only To Suppliers Subscribing to Optional Services) applies only to suppliers who elect to subscribe to optional for-fee premium services ("Optional Services").

I. TERMS APPLICABLE TO ALL SUPPLIERS

The following section I (Terms Applicable to All Suppliers) applies to all suppliers using the Ariba Network.

1. **General.** These Terms of Use of the Ariba Network (the "Agreement") describe the terms and conditions applicable to Your company's ("You", "Your") access of and use of the Network, as well as Ariba's obligations with respect thereto. Your access or use of the Network ("Network Use") is strictly subject to Your compliance with the Agreement (as updated periodically) and Ariba's then-current policies applicable to the Network.
2. **Network Use Eligibility.** The Network and related network services are available only to registered users of the Network. Ariba retains the sole right and discretion to decide whether a supplier may register on the Network, and whether any supplier may use the Network. If a Buyer contracts for Network usage, the contract for such Network usage will describe the terms applicable to such Buyer. No consumer shall act as a member on the Network.
3. **Data Confidentiality.**
 - a. **Your Data.** Ariba understands the sensitive nature of the Data and other information You may send to the Network, and Ariba therefore agrees to handle and protect Data pursuant to the commitments described in this Agreement. Ariba agrees to use reasonable efforts to maintain, safeguard, and not use or disclose Your Data except as needed to facilitate your Network Use or otherwise perform services under this Agreement, as further described in Ariba's [Data Policy and Privacy Statement](#), which is incorporated into this Agreement. The term "Data" shall mean transaction and other data You send to the Network, such as pricing, promotional information, transaction data/details, customer lists, data You maintain about Your customers and suppliers, Personal Data, marketing information, product mix, sales mix or related information.
 - b. **Your Use of Other Users' Information.** In order to facilitate interaction among users of the Network, You may be allowed to access certain information about other users of the Network. By entering into this Agreement, You agree to treat information about other users of the Network in strict accordance with such Agreement. In all cases, You must give such users an opportunity to request to be removed from Your database and a chance to review what information You have collected about them. In addition, under no circumstances, except as defined in this section, can You disclose personally identifiable information about another user to any

third party without Ariba's consent and the consent of such other user after adequate prior written notice provided to such user. Note that law enforcement personnel are given different rights with respect to the information they access.

- c. **Confidentiality of Ariba information.** Information (but not Your Data) about the processing of the Network's processing capabilities, Network technology, Network interface features, and the notices and updates sent by Ariba to You are proprietary and confidential information of Ariba and You hereby agree not to share such information with third parties or use such information except to support Your Network Use.
 - d. **Exceptions.** The restrictions on disclosure or usage of information contained in this section I.3.d will not apply to information that (i) is already known to a party prior to disclosure by the other party; (ii) is or becomes a matter of public knowledge through no fault of the receiving party; (iii) is rightfully received from a third party without a duty of confidentiality; (iv) is independently developed by the receiving party; (v) is disclosed under operation of law; or (vi) is disclosed by a party with the other party's prior written approval.
4. **Your Registration and Sign-up Obligations.** All information that You provide to Ariba must be accurate (e.g., Your name, address, and credit charge information (if applicable)), whether supplied during the registration or SMP Membership sign-up process ("Registration Data"). You are responsible for keeping such information up-to-date and must provide changes promptly to Ariba by logging in to Your Network account and providing the correct information to Ariba.
5. **Ariba Commitment to Privacy.** Ariba's usage and disclosure of Registration Data and other information about You and individual users are subject to the [Data Policy and Privacy Statement](#) for the Network. Ariba adheres to, and is audited by independent third party auditors for compliance with, industry data handling standards (such as WebTrust, EU Safe Harbor, GAPP, PCI, and SAS70). If there are any fees applicable to Your use of the Network (as described in section III or IV, if applicable to you), Ariba will collect information relating to billing You ("Billing Data"). Ariba shall not disclose Billing Data to third parties or use the Billing Data, except that Ariba shall have the right (i) to use the Billing Data as necessary to perform under this Agreement and any Optional Services and charge You as described in this Agreement (including distributing the Billing Data to third parties providing Optional Services requested by You or processing the billing for Ariba); (ii) to maintain the Billing Data as long as necessary or as required by law and used internally for record keeping, internal reporting, and support purposes; and (iii) to provide the Billing Data as required by law or court order, or to defend Ariba's rights in a legal dispute. Note that if You provide a "Business Contact," that person's name, phone and email address will be visible to other organizations using the Network.
6. **Involvement with Third Parties.**
- a. **Links to Third Party Sites.** The Network may allow access to other websites. These linked sites are not under the control of Ariba, and Ariba is not responsible for the contents of any linked site. Ariba provides links only as a convenience, and such inclusion of any link does not imply endorsement by Ariba of the site or any part of its contents.

- b. **Items of Third Parties.** The Network allows users to make or process transactions for Items ("Transactions"), and also allows users to upload or route various information including but not limited to information on Items or information relating to proposed or actual Transactions ("Content"). You acknowledge that, except for Items clearly identified as being those of Ariba, Ariba does not operate, control or endorse any Items listed on the Network or processed by the Network. Except for Ariba Items, all Transactions are solely between You and your trading partner, and Ariba has no responsibility whatsoever relating to the Items. "Items" means all products, services, or information posted on the Network. Except as to a Transaction involving an Ariba Item, or any claim, loss, or liability caused by Ariba, You agree to indemnify and hold harmless Ariba from any and all claims, losses, liabilities, and damages relating to Transactions by You and also for all liability or damages relating to Content you uploaded to the Network.

7. System Integrity, Data Integrity, Data Storage.

- a. **System Integrity.** Concerning Your Network Use, You agree not to knowingly: (i) interfere with or attempt to interfere with the proper working of the Network; (ii) post or transmit to the Network any unlawful, fraudulent, harassing, libelous, or obscene Content; (iii) post or send to the Network any Content that contains a virus, bug, cancelbolt, worm, Trojan Horse or other harmful item; (iv) publish, perform, distribute, prepare derivative works, copy, or reverse engineer (except to the limited extent that applicable law prohibits a restriction on reverse engineering) the Network; or (v) take any action which imposes an unreasonable or disproportionately large load on the Network (guidelines on appropriate load will be posted on the Network, and You will be notified and given an opportunity to cure if You violate this section I.7.a.(v)). Since most Content on the Network will be sent to the Network by third parties or You, You also understand that Ariba cannot and does not guarantee that such Content will be free of infection or viruses, worms, Trojan Horses or other code or defects that manifest contaminating or destructive properties.
- b. **Data Integrity.** You are responsible for confirming the accuracy of any data You send to or receive from the Network, and for maintaining a means external to the Network for the reconstruction of lost data. Ariba has procedures to assist Your efforts to sure that Your Data is accurate, current, and complete. See our [Data Policy and Privacy Statement](#) to learn how to update Your information.
- c. **Storage of Data.** The Network will allow You to access Data You send to or receive from the Network for a limited period of time, as described on the Network. If You would like to have Ariba make Your Data available for a longer period of time, You may subscribe to our Data Retention Service, which is an Optional Service, by clicking **Manage Services** in the Property Navigator in your account. You are solely responsible for saving all of Your Data. Therefore, You should take proactive measures to store Your Data within Your own computers, in order to preserve the accessibility of such Data beyond the Network's retention period applicable to You.
- d. **Security.** Ariba agrees to utilize industry standard security methods to protect the Network. Currently, the Network is audited by independent auditors for conformance with the WebTrust Standards (which include

principles of Availability, Confidentiality, Processing Integrity, and Security). Ariba reserves the right to move to a different compliance standard. Ariba uses reasonable efforts to scan the Network for Ariba-owned content (whether software code, data files, etc.) uploaded by Ariba for the detection and eradication of viruses.

- e. **No Load Testing without Advance Consent.** You agree to not perform, without Ariba's advance consent, any load testing on the Network, even if it is performed using test accounts.
8. **Actions to Prevent Risk.** In order to minimize the legal risk (if any) we may face applicable to Your Network Use, Ariba reserves the right to take any reasonable action (subject to section I.3) with respect to such Network Use we deem necessary or appropriate (such as suspending or terminating Your Network Use if it causes or creates an unreasonable risk to Ariba).
9. **Title to the Network.** You acknowledge that the entire contents of the Network (other than Your Data and others' data) are the intellectual property of Ariba and are copyrighted and protected by the United States and international copyright laws. Ariba grants You a non-exclusive, nontransferable license to print and download content on the Network solely for Your noncommercial use provided You maintain the copyright notice and any other notices that appear on any such copies. *This section does not apply to Your ownership of Data, and does not impose any use restrictions on You as to Your use of Your Data.*
10. **Limited Warranty and Disclaimer.**
 1. Ariba warrants that it has full power and authority to provide the Network and all related services to You and to grant You the rights granted herein.
 2. Ariba warrants that during the period of Your paid SMP Fees, the Network will conform in all material respects to the Documentation for the Network. To make a claim that the Network fails to comply with the warranty, You must identify the non-conformity in a written notice delivered to Ariba during the warranty period ("Warranty Claim Notice"). Your sole and exclusive remedy, and Ariba's entire liability for breach of this limited warranty, shall be correction of the warranted nonconformity in the Network or, if Ariba fails to correct the warranted nonconformity after using reasonable commercial efforts, Ariba will terminate access to the non-conforming Network and refund the unused portion of the SMP Fees for the Network paid by You for the remainder of the SMP subscription term (beginning with the date of Ariba's receipt of the Warranty Claim Notice). This limited warranty shall not be valid to the extent the warranty nonconformity was caused by Your abuse, misuse, accident, alteration, or unauthorized modification or installation of the Network. This section I.10.2 only applies to suppliers that are SMP Members and have paid the applicable SMP fees (pursuant to section III).
 3. OTHER THAN THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, THE NETWORK AND ANY SERVICES OR PRODUCTS PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR

PURPOSE, AND NON-INFRINGEMENT, ALL OF WHICH ARIBA EXPRESSLY DISCLAIMS. ARIBA MAKES NO WARRANTY (i) THAT THE NETWORK WILL MEET YOUR REQUIREMENTS, (ii) THAT THE NETWORK WILL BE UNINTERRUPTED OR ERROR-FREE, OR (iii) AS TO ANY ITEMS (EXCLUDING ARIBA ITEMS) ARIBA ASSUMES NO RESPONSIBILITY FOR ERRORS OR OMISSIONS IN THE NETWORK OR ANY OTHER WEBSITE THAT MAY BE LINKED TO VIA THE NETWORK. ANY CONTENT OBTAINED BY YOU THROUGH THE NETWORK IS DONE AT YOUR OWN DISCRETION AND RISK.

11. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL ARIBA OR ITS SERVICE PROVIDERS BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (A) ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM INTERRUPTION OF USE, LOSS OR CORRUPTION OF DATA, OR LOST PROFITS, WHETHER OR NOT ARIBA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR YOUR NETWORK USE, OR (B) FOR A TOTAL AND AGGREGATE LIABILITY AMOUNT UNDER THIS AGREEMENT IN EXCESS OF THE AMOUNT OF FEES PAID BY YOU WITHIN ONE (1) YEAR PRIOR TO THE DATE OF SUCH CLAIM FOR THE APPLICABLE NETWORK USE OR OPTIONAL SERVICE GIVING RISE TO LIABILITY.

1. The limitations set forth in section I.11 (A) and (B) shall not apply to (i) damages due to bodily injury or death, (ii) for indemnities under Section 15 (Infringement Indemnity), or (iii) violation of Section 3 (Data Confidentiality).

12. **Exclusions and Limitations.** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, TO THAT EXTENT SOME OF THE ABOVE LIMITATIONS OF SECTIONS I.10 AND I.11 MAY NOT APPLY TO YOU.

13. **Termination or Suspension.**

- a. **By You.** You may terminate this Agreement (along with Your Network Use and/or an Optional Service) at any time, for any reason, without prior notice. If You are dissatisfied with the Network or with any term, condition, rule, policy, guideline or practice of Ariba in operating the Network, Your sole and exclusive remedy is to discontinue using the Network. If You have paid Ariba any fees for Network subscription, Optional Services, or otherwise relating to the Network, You will not receive any refund under any circumstances if you cancel.
- b. **Termination or Suspension for Breach.** If You are a SMP Member and you fail to perform any material obligation under this Agreement or another contract with Ariba (either being a breach), and You do not cure such breach within thirty (30) calendar days after receipt of notice of such breach, Ariba may terminate this Agreement or suspend Your Network Use and/or Optional Services. Ariba may terminate the Agreement immediately upon Your being the subject of a bankruptcy proceeding, insolvency, liquidation or similar proceedings. In case of termination or suspension under this paragraph, if You have prepaid SMP Fees or Optional Service Fees, Ariba's only liability to You will be to refund a pro-rata portion of the

fees based on the period of time remaining on Your prepaid SMP subscription. If You use the Network or an Optional Service for illegal, fraudulent or abusive purpose, such use may be referred to law enforcement authorities without notice to You.

- c. If You are not a SMP Member, Ariba may terminate the Agreement or suspend Your Network Use at any time for its convenience, with or without notice.
 - d. **Survival After Termination.** Sections I.3 (Confidentiality), I.7. (System Integrity, Data Integrity, Data Storage), I.9 (Title to the Network), I.10 (Disclaimer of Warranties), I.11 (Limitation of Liability), I.12 (Exclusions and Limitations), I.13. (Termination or Suspension), and I.20 (Miscellaneous) shall survive any termination of this Agreement.
14. **Compliance with Laws.** Subject to the terms herein, You and Ariba agree to comply with all applicable laws, statutes, ordinances and regulations regarding Your Network Use and Your purchase of products or services through the Network, including compliance with U.S. export laws and regulations. Companies and individuals that are citizens of, or located in, or controlled or operated by an entity that is a citizen of or located in, any country subject to U.S. sanctions or embargoes prohibiting transactions with U.S. entities or otherwise prohibited by U.S. law from receiving U.S. exports or importing into the U.S. ("Prohibited Country(ies)") are not permitted to register on or use the Network or any system operated by Ariba or an Ariba contractor. By continued Network use, You represent that You are not (nor is any entity that controls You) a citizen of or located in a Prohibited Country; and also that You are not (nor is any entity that controls You), prohibited from receiving United States exports or importing into the United States by listing on export/import denial lists published by the: US State Department - Directorate of Defense Trade Controls, US Treasury Department - Office of Foreign Assets Control, or US Department of Commerce - Bureau of Industry and Security. The foregoing provision shall survive any termination or expiration of this Agreement. In addition, by providing the Network for use, Ariba certifies that Ariba is not located in, have offices in, or conduct business in any Embargoed Country.
15. **Infringement Indemnity.** This section I.15 only applies to SMP Members that have paid the applicable SMP fees (pursuant to section III).
- a. Subject to this Section I.15, Ariba agrees, at its own expense, to defend You from (or at Ariba's option, settle) any claim instituted by a third party and asserted against You that the Network when used in accordance with its official documentation infringe any United States patent, copyright, trade secret, or other proprietary right of a third party ("IP Claim"), provided that You: (a) promptly notify 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 in the defense of same. Ariba agrees to pay any final award of damages assessed against You resulting from such IP Claim, including any awarded costs and attorneys' fees, or any settlement amount agreed to by Ariba in writing. Ariba will not be responsible for any settlement it does not approve in writing prior to such settlement.

- b. 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 You the right to continue to use the Network, (b) replace the Network, or (c) modify the Network to make it non-infringing. If Ariba determines that it is not commercially reasonable to perform any of these alternatives, Ariba shall have the option to terminate this Agreement and refund a pro-rata portion of the fees based on the period of time remaining on Your prepaid SMP subscription.
 - c. In no event will Ariba have any obligations under this Section I.15 or any liability for any claim or action if the IP Claim is caused by, or results from Your combination or use of the Network with non-Ariba software or equipment, if such IP Claim would have been avoided by the non-combined or independent use of the Network.
 - d. THE FOREGOING STATES ARIBA'S ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR ALLEGATIONS THEREOF.
16. **Relationship of Parties.** Each party shall be and act as an independent contractor of the other and shall not bind nor attempt to bind the other to any contract. No agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended nor created by this Agreement.
17. **Communicating with You.** Any communication sent via email by Ariba to the designated contacts (either the primary or secondary contacts) You provide during the registration process or SMP subscription sign-up process shall constitute valid notice from Ariba to You. You acknowledge and agree to keep Ariba informed in a timely manner of any change in the designated contacts or their correct email addresses. Ariba is entitled to rely on the validity of the contact information (email addresses, fax number, or otherwise) for the designated contacts You provide Ariba, even if Ariba receives an automated response email indicating that the email might not or did not reach its intended recipient.
18. **Your Obligations Regarding User Names, Passwords, and Data.** You will be solely responsible for:
- a. ***Keeping Your user name and password confidential.*** You shall notify Ariba immediately upon learning of any unauthorized use of Your user name or password. For any instruction, communication, or other information ("Transmission") Ariba receives from someone using your user name and password, Ariba is entitled to consider such Transmission as having been sent by You.
 - b. ***Complying with all applicable privacy, consumer and other laws and regulations*** with respect to Your (i) provision, use and disclosure of the Billing Data; (ii) use of the Optional Services; and (iii) use of the Network.
19. **Claims of Copyright Infringement.** Ariba considers itself an online service provider under Subsection 512(c) of the Digital Millennium Copyright Act, Title 17

of the U.S. Code and has this notice in place to address claims of copyright infringement on Ariba internet services. If you believe that material on an Ariba website or service infringes your copyright, you may submit a notification to Ariba's designated agent to receive copyright notices:

RE: Copyright Infringement Claim
Attn: Ahmed Rubaie
Office of the CFO Ariba, Inc.
807 Eleventh Avenue
Sunnyvale, CA 94089

Please provide the following information with your notification:

- The name and contact information of the complaining party,
- Sufficient information to identify the copyrighted work or works,
- The allegedly infringing material and its location on an Ariba website or service,
- A statement by the rights holder that it has a good faith belief that there is no legal basis for the use of the materials complained of,
- A statement of the accuracy of the notification and, under penalty of perjury, that the complaining party is authorized to act on behalf of the rights holder, and
- The notification must be signed physically or using an electronic signature by the rights holder or person authorized to act on behalf of the holder of the exclusive right that is allegedly infringed.

Ariba will take reasonable steps to identify, and deny access to Ariba internet services by, individuals who are repeat offenders of other's copyrights.

20. **Miscellaneous.** Any notice ("Notice") sent to the other party under this Agreement must be in writing and in the English language, where such Notice relates to the Agreement or other legal issues. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. You may not assign or transfer this Agreement without the prior written consent of Ariba. Ariba may assign our interest in this Agreement to any now-existing or future direct or indirect subsidiary of Ariba, Inc., or pursuant to any assignment of the Network, or any corporate sale or restructuring. We may also assign or delegate certain of our rights and responsibilities under this Agreement to independent contractors or other third parties and we agree to bind any such independent contractors or third parties to the same obligations and standards of performance contained in this Agreement. In any case, Ariba will retain ultimate and complete responsibility for the full performance of this Agreement, whether certain responsibilities have been delegated to any such third party, or not. 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 enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of New York and the federal U.S. laws applicable

therein, excluding its conflict of laws provisions, and without regard to the United Nations Convention on the International Sale of Goods. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in San Francisco, Santa Clara or San Mateo County, California (the "Selected Venue(s)"), and each party hereby consents to personal jurisdiction in such counties. Both You and Ariba hereby irrevocably and unconditionally undertake 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. If suit is brought under this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees, court costs, and expert witness fees. This Agreement is the complete and exclusive statement, and an absolute integration of the mutual understanding of the parties and supersedes and cancels all previous and contemporaneous written and oral agreements, representations, proposals, discussions and communications relating to the subject matter of this Agreement. You agree to be bound by the most current version of this Agreement that is posted on the Network. The English version of this Agreement shall govern in the event of any conflict or substantive translation changes into a non-English language. You acknowledge that transaction documents between you and Your trading partner can only be exchanged if both You and Your trading partner are current registered users on the Network and in good standing with the Network. Each party acknowledges that any breach by You of the provisions of the Agreement may cause irreparable damage to the other party and that a remedy at law may be inadequate. Therefore, in addition to any and all other legal or equitable remedies, a party will be entitled to injunctive relief for any breach of this Agreement. All article or section headings, or exhibit names, are for reference and convenience only and shall not be considered in the interpretation of the Agreement.

II. TERMS APPLICABLE ONLY TO SUPPLIERS USING THE INVOICE AUTHENTICATION SERVICE

The following sections II.1 through II.2 are applicable only to suppliers that utilize the Invoice Authentication feature on the Network. This section II does not apply to any buyer, nor any supplier which does not utilize the Invoice Authentication feature.

1. Invoice Authentication (also called "eSignature") Services

- a. **Availability.** The Network currently has a feature, for no additional fee, that provides a confirmation stating that Your Invoice Data as entered by You was accurately transferred to the receiving party without change to such information during transmission.
- b. **Legal Compliance.**

Ariba provides the Invoice Authentication Feature using sufficient care to facilitate the legal evidence users of these Services may need to make available to tax auditors or inspectors in certain countries to demonstrate the identity of the issuer of the invoice and the fact that no changes have been made to the invoice subsequent to its issuance and transmission. Ariba makes no representation as to whether the service satisfies the applicable legal requirements regarding VAT, and hereby advises You to consult with Your tax adviser on such issues.

Ariba does not guarantee the security of Invoice Data and Ariba will not be responsible in the event of any infiltration of its security systems, provided

that Ariba has used commercially reasonable efforts to prevent any such infiltration.

For purposes of clarification this service shall not include confirmation of the accuracy of the actual Invoice Data entered by You.

- c. **Electronic Signing.** The electronic signing and verification of invoices is executed by third parties that are under contract with Ariba for this service, currently TrustWeaver AB is a subcontractor to Ariba providing this service. The signed invoice(s) will expressly mention that it was issued in Your name and on Your behalf by Ariba or an Ariba subcontractor that is identified in the signing certificate. The received invoice will be received in the name and on behalf of the buyer by Ariba.
- d. **Security of Processes.** Measures and controls, which maintain the security of all processes in all phases of the data processing, and how to process the data and give access to such data, are documented in the eSignature Technical Document, which is available on the Ariba website, and which is updated from time to time.
- e. **Non-Receipt.** If You transmitted Invoice Data but such Invoice Data failed to reach the receiving party, then, Your only recourse is to notify Ariba , and Ariba will make reasonable efforts to resend the Invoice Data to the receiving party.
- f. **Your Duties.** As between Ariba and You, You will be solely responsible for:
 - i. Ensuring that the data transmitted in conjunction with the services including but not limited to the information contained in Your invoices and invoicing documents (whether entered by You or on Your behalf or auto-generated ("Invoice Data")) is compliant with applicable law as to its form and content, accurate, complete and in the form as requested by Ariba , and is not corrupted due to Your systems;
 - ii. Ensuring compliance with local requirements (including, but not limited to, requirements concerning taxation requirements, accounting requirements, invoicing obligations, consequences in relation to VAT and data storage periods);
 - iii. Complying with all applicable privacy, consumer and other laws and regulations with respect to Your provision, use and disclosure of the Invoice Data; and
 - iv. Payment of all recurring and nonrecurring fees, taxes, VAT and assessments applicable to Your Invoice Data.
- g. **Regulatory Terms for Invoice Supplying Party.**
 - i. Grant of Authority. You authorize Ariba or a third party Ariba subcontractor, to issue in Your name and on Your behalf, invoices (electronic invoices or paper invoices) to or from your trading partners on the Network. You authorize and entrust Ariba or the

subcontractor to create and issue invoices on Your behalf by signing invoice data electronically that You have provided via means of "Online Invoice Entry," CSV Invoice data upload, cXML* or EDI submission. You authorize Ariba or this subcontractor to transmit the electronic invoice in Your name and on Your behalf to your buyers in the network. [*For cXML submitted invoices that are already signed by the supplier no signing by Ariba will be executed. The certificates used in supplier signed invoices have to allow for OCSP request as part of the signature verification.]

- ii. Duration and Termination. You grant Ariba this authority for an unspecified duration, until terminated by You at any time (but without any refund) through registered letter with confirmation of receipt, addressed to the Ariba giving a one (1) month's notice.
- iii. Transmission. Ariba commits to sign the invoices electronically and to send the electronically signed invoices with the exact same data content as provided by You or your trading partner(s).
- iv. Storage. Subject to Ariba 's then current data retention policy for the Network, Ariba will keep available to You the invoices (which can be downloaded from the Network) sent through the Network in Your name and on Your behalf. You as supplier are responsible for the appropriate storage.
- v. Your Obligations. You remain responsible for Your legal obligations regarding invoicing sent to or from your trading partner, despite this service. Within this framework, You expressly undertake to: (a) declare to the applicable tax authority the due collected tax relating to each invoice; (b) pay to the applicable tax authority such tax; (c) notify Ariba immediately if an invoice has not been made available; and, (d) notify Ariba if you believe the invoice has been modified by Ariba or the Network.
- vi. Assumptions. In the event you attempt to use the service to send Invoice Data relating to a jurisdiction which requires verification from a government-approved certification authority for the authentication to be valid, Ariba is providing the service based on the assumption that (a) such government has actually recognized a certification authority, and (b) Ariba can arrange with such certification authority to obtain such certification services.
- vii. Accuracy of data. According to applicable law, the invoices sent by Ariba in Your name and on Your behalf do not need to be validated by Ariba as regards accuracy and completeness of invoices.
- viii. Disputes. You can contest the accuracy of the electronic version of the invoices (that is, the accuracy of the electronic invoice compared to the non-electronic invoice) for a period of one month from the date of transmission.

h. Access for Tax Authorities.

- i. You shall be solely responsible for providing tax authorities with

access to VAT invoices which have been created and transmitted by Ariba in Your name and on Your behalf.

- ii. You may provide tax authorities access to your data for audit purposes by creating sub-user accounts; but only in accordance and in line with the requirements of Ariba.

2. **Survival.** Survival. Sections II.1.b (Legal Compliance), II.1.f (Your Duties), and II.1.g (Regulatory Terms for Invoice Supplying Party), II.1.h (Access for Tax Authorities), and II.2 (Survival) shall survive any termination of this Agreement.

III. TERMS APPLICABLE ONLY TO SMP MEMBERS

The following sections III.1 through III.2 are applicable only to suppliers with a SMP subscription ("SMP Members"), as defined in this section III. This section III does not apply to any buyer, nor any supplier which is not a SMP Member.

1. SMP Membership Fees.

- a. **Supplier Fees.** The vast majority of suppliers on the Network are not required to pay any fees to Ariba for use of the Network. Suppliers which have High Usage Status are required to subscribe to SMP and must pay SMP Fees in order to continue to use the Network. Alternatively, any supplier may voluntarily subscribe to SMP. Please note that features of the various SMP Member packages (e.g., Business, Integrated, Enterprise, etc.), as well as the fees for such programs, are subject to change from time to time in Ariba's sole discretion. In addition, suppliers may elect to enroll in Optional Services (as described in section IV) for an additional fee per Optional Service to which the supplier subscribes.
- b. **Agreement to Pay Fees.** You agree to pay all applicable fees ("Total Fees") for: (i) each Optional Service for which You enroll; and (ii) the applicable SMP Fees if You are a SMP Member. In addition to the Total Fees, You agree to pay any applicable taxes, VAT and other government-imposed payments (other than taxes based on Ariba's income) ("Taxes"). All such payments shall be in U.S. Dollars (unless the sign-up wizard allows You to select another currency).
 - i. SMP Subscriptions for SMP Members are continuous, and billed at the rates then in effect. You may pay Ariba by check or by use of any payment card accepted by Ariba. 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 level or package. You may cancel Your subscription or change your payment method at any time by accessing Your account on our website. Subscription and other fees are non-refundable once paid. You agree to pay all fees due within net-30 days after the date of the applicable invoice.
 - ii. Payment by card. If You choose to 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 we may require to enable Ariba to charge the Card for the invoiced amount due under this Agreement. By authorizing Ariba to charge Your Card, 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 You or such entity informs Ariba of such new replacement Card account) for the SMP Fees 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 Your authorization. If a charge to Your Card 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 Network and/or use of the applicable Optional Services.

- iii. 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.
- iv. You agree that Your subscription is continuous and that you will be invoiced and charged accordingly at Ariba's then-current rates, unless You notify Ariba at least five (5) days prior to the invoice payment date that you wish to cancel Your subscription. If your notification is not received at least five (5) days prior to the invoice payment date, Ariba will not have sufficient time to cancel the charge and such amount will be non-refundable. At the time of renewal, You agree that Ariba may automatically subscribe You to the SMP Membership level that corresponds to your then-current Network usage. At the time of renewal, if You no longer have High Usage Status, then you will be renewed at the same SMP Membership level as in the prior period.
- v. At the time Ariba generates your annual invoice, You will be subscribed to the SMP Membership level that corresponds to your level of Network usage, and Your Card will be charged the then-current SMP Fee applicable to that level. At the time of renewal, if You no longer have High Usage Status, then Your SMP Membership will be continued at that level and Your Card will be charged the SMP Fee for Your voluntary membership at that level.
- vi. **SMP Fee Exemptions.** You will not be charged a SMP Fee related to a buyer/supplier relationship resulting in High Usage Status if You supply requisite certification to Ariba evidencing that You are a: (w) Hubzone or 8(a) entity, (x) Small Disadvantage Business (certified by the Small Business Administration (SBA), (y) certified woman-owned business (certified by either WBENC (Women's Business Enterprise National Council) or NWBOC(National Women Business Owners Corporation Network)), or (z) certified minority-owned business (certified by NMSDC (National Minority Supplier Development Council) or the SBA). A Buyer organization is "Qualified" if it is a federal, state, or local government agency, or a 501(c)(3) organization under U.S. laws.

c. **Mandatory SMP Membership.** If You have not subscribed to SMP

Membership, Ariba will evaluate You on a monthly basis to determine if You have attained High Usage Status to any of Your Network Buyers. To determine the rules used to determine whether a supplier has High Usage Status, and the price for SMP Membership, please see [ariba.com/suppliemembership](https://service.ariba.com/Supplier.aw/841745/a...). If You attain High Usage Status, Ariba will notify You and You shall have thirty days from such notification to subscribe to SMP Membership and pay the applicable SMP Fee. If You fail to become a SMP Member and pay within such thirty-day period, then Ariba may terminate and/or suspend Your access to the Network. If You are a SMP Member, You must be current on SMP Fees in order to be eligible to receive any Optional Services. In the event that You have paid for Optional Services and if You fail to timely pay SMP Fees, You shall be deemed to have canceled such Optional Services without a right to receive a refund for any portion of such Optional Services for which You prepaid. "Network Buyer" means a customer of Yours with which You transact over the Network.

- d. **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 Your 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 Network access may be suspended or canceled, and Ariba may suspend the processing of any pending or future transaction documents between You and Your trading partner. 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.
- e. **Fee Changes.** Ariba may at any time change the amount of, or basis for determining, any fee, institute new fees or charges, or change the rules for determining whether You qualify for SMP Membership. If You are a SMP Member, any Fee changes will not be implemented until the next twelve month period of Your Membership. All fees are nonrefundable unless otherwise explicitly stated in this Agreement.
- f. **Bill Inquiries; Refunds.** If You believe You have been billed in error for an Optional Service or for SMP Fees, please notify us within 60 days of the billing date by contacting Ariba Support. Ariba will not issue refunds or credits after the expiration of this 60-day period, except where required by law or regulation.
- g. **Definitions.** An "SMP Fee" means the annual Network usage fee that Ariba will charge You for SMP subscription, relating to each of Your buyer/supplier relationships (if any). Supplier Membership Program ("SMP") refers to a subscription to use the Network, such as Network Transaction Services ("NTS"), and/or a bundle of services (e.g., Business package, Integrated package, or Enterprise package). "SMP Member" is a supplier which subscribes to SMP. "High Usage Status" refers to a supplier which, during the preceding twelve-month period (as measured each month), meets or surpasses the threshold published by Ariba indicating the level of Network usage which is not free.
- h. **Multiple Network Accounts.** If You have more than one (1) account on

the Network, and if Ariba believes that these accounts were separated in order to avoid having High Usage Status, Ariba may aggregate Your accounts to determine whether You have High Usage Status.

2. **Survival.** Sections III.1.b (Agreement to Pay Fees), III.1.d (Other Charges; Failure to Pay), III.1.f (Bill Inquiries; Refunds), and III.2 (Survival) shall survive any termination of this Agreement, a TOS, or an Optional Service.

IV. TERMS APPLICABLE ONLY TO SUPPLIERS SUBSCRIBING TO OPTIONAL SERVICES

The following sections IV.1 through IV.6 are applicable only to suppliers that subscribe to one or more Optional Services. This section IV does not apply to any buyer, nor any supplier that does not subscribe to an Optional Service.

1. **Additional Terms Applicable to Optional Services.** When using particular Optional Services, Your use of the Optional Services will be subject to posted guidelines, additional terms, or plan details applicable to such Optional Services ("Policies"). The Policies will be made available to You when You subscribe to, register for, or use those particular Optional Services.
2. **Fees for Optional Services.**
 - a. **Agreement to Pay Fees.** You agree to pay all applicable fees and Taxes for the Optional Services, as stated in **section III.1.b** (Agreement to Pay Fees). This section III incorporates sections III.1.d (Other Charges; Failure to Pay), III.1.e (Fee Changes), and III.1.f (Bill Inquiries; Refunds) above.
 - b. **Cancellation.** You may cancel using an Optional Service at any time, but You will not under any circumstances be entitled to any refund, whether or not You terminated the Optional Service prior to the end of any Optional Services period for which You prepaid.
 - c. **Prerequisite Rule.** To receive Optional Services, You must be a member of the Network in good standing. If You have High Usage Status but have not paid the SMP Fees, You are not eligible for Optional Services. If You subscribe to, pay for, or even use Optional Services but at some point fail to timely pay SMP Fees, You shall be deemed to have canceled such Optional Services without a right to receive a refund for any portion of such Optional Services for which You prepaid.
3. **Optional Services Operational Limits.** Provision of Optional Services is subject to the availability and the operational limitations of the requisite equipment and associated facilities. You also acknowledge that Ariba may establish policies and limits concerning use of the Optional Services. You understand and agree that temporary interruptions of the Optional Services may occur as normal events in the provision of the Optional Services and that Ariba is not liable for such interruptions. You further understand and agree that Ariba has no control over third party networks You may access in the course of Your use of the Optional Services, and therefore, delays and disruptions of other network transmissions are beyond the control of Ariba.
4. **Modifications to Optional Services.** Ariba reserves the right to modify or discontinue, temporarily or permanently, at any time and from time to time, the

Optional Services (or any function or feature of the Optional Services or any part thereof) with or without notice. You agree that if Ariba completely discontinues the Optional Services as to You during any period for which You have prepaid, Ariba's only and maximum liability to You will be to refund You a pro-rata portion of the fees based on the period of time remaining on Your prepaid Optional Services. Ariba does not guarantee the security of the Optional Services or Billing Data and Ariba will not be responsible in the event of any infiltration of its security systems, provided that Ariba has used commercially reasonable efforts to prevent any such infiltration

5. **Survival.** Sections IV.2.a (Agreement to Pay Fees), and IV.5 (Survival) shall survive any termination of this Agreement, a TOS, or an Optional Service.

6. **Current Optional Services Available: Data Retention Services.**

- a. **Plan Subscription.** If You sign up for a particular Data Retention service plan ("DRP"), and later elect to change to a different DRP, You will be moved to the replacement DRP (at the then-current Policies) approximately at the beginning of the next billing cycle, if possible. As to each plan, Ariba may modify the Optional Services from time to time in Ariba's reasonable discretion and upon reasonable electronic or written notice to You, provided that such modifications shall not materially diminish the functionality of the Optional Services during the duration of Your prepaid DRP.
- b. **Expiration and Automatic Renewal.** Prior to the end of Your DRP period, Ariba will endeavor to advise You of the upcoming expiration of Your DRP. If, prior to the expiration date of Your DRP, You do not instruct Ariba in writing to cancel Your DRP subscription, You hereby instruct Ariba to automatically renew Your plan and charge You accordingly (including adjusting the fees to account for the number of Data Years and the data volume at the time of the automatic renewal).
- c. **Data Window.** You may only elect to have Ariba retain Available Data corresponding to one or more calendar year(s) (for each calendar year, all data corresponding to such calendar year is referred to as "Year Data"). You may not elect to have Ariba retain selective data within a calendar year (for example, You may not ask Ariba to retain data from just one month of a year, but delete all other data). That is, if You elect to have Ariba retain any data within a calendar year, Ariba will retain all Available Data. "Available Data" means data applicable to You which is available on the Network at the time You enroll in a DRP and selected for inclusion in Your DRP (the date of the oldest data included in Your DRP shall be referred to as "Start Date"), and which You have not deleted. Any data will cease to be Available Data if it (a) is deleted by You from the Network, (b) is deleted by Ariba if Your subscription expires without renewal, or (c) falls outside of the Data Years covered by Your current DRP (collectively, such data is referred to as "Removed" data).
- d. **Deletion of Data.** You acknowledge and agree that once data is Removed, it is deleted permanently and cannot be restored by Ariba.
- e. **All Data Must be Consecutive.** You may not retain any nonconsecutive data, meaning that You must select for inclusion in the DRP all Available

Data from the Start Date until the present. For example, while You may elect to retain Available Data for calendar years 2008-the present, You may not elect to retain 2008 Year Data and 2010 Year Data without also retaining 2009 Year Data, since 2008 is not consecutive with 2010.

- f. **No Automatic Data Copying.** The Network currently does not have a feature which allows You to transfer or copy Available Data from the Network onto Your systems. You acknowledge that, if You desire to copy any Available Data from the Network, it must be done by a manual process. You may hire Ariba's consulting organization at its applicable rates to assist You in these efforts.
- g. **Additional Fee Terms.** Because pricing is based on the volume of data Ariba retains for You, as well as the number of Data Years in Your DRP, You acknowledge that the price will change as Your data volume changes or the number of Data Years changes. The fees will cover full calendar years, regardless of the Start Date within a calendar year or whether You have data throughout the calendar year.
- h. **If Your credit card fails to validly pay** the fees due to Ariba, Ariba will give You ten (10) days notice to supply a valid alternative credit card. If You fail to provide a valid alternative credit card within such time frame, You acknowledge that Ariba may unsubscribe You and consequently all of Your data stored per the DRP will be Removed from the Network, and it may not be possible to restore such data.
- i. **The Optional Services.** Once You register for and prepay for DRP, Ariba will commence providing the Services, in accordance with the DRP for which You register, and will provide those plan Services during the plan duration for which You register and prepay, subject to the Agreement.

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TOU Supplier v.21 12 August 2010