



MASTER TERMS AND CONDITIONS FOR PROVIDER OFFERINGS

These Master Terms and Conditions for Provider Offerings apply to Customer's purchases of products and services from Provider, including in any Order (as defined below), and are incorporated by reference into one or more Order(s) that correspond to Customer's purchases of Offerings. Any conflicting or additional terms and conditions on or accompanying any purchase order or other communication from Customer are void. Provider's failure to object to provisions contained in any purchase order or other communication from Customer will not be construed as a waiver of this section and such terms and conditions shall have no effect on these Master Terms and Conditions or the Agreement.

GENERAL TERMS

1. **DEFINITIONS.** Capitalized terms that are not defined in context shall have the following meanings:
 - a. **Agreement**—These Master Terms and Conditions for Provider Offerings and the individual Order entered into between Provider and Customer. Each Order is considered a separate Agreement between the parties thereto.
 - b. **Affiliate**—an entity controlling, controlled by, or under common control with a party, for so long as such control relationship exists.
 - c. **Bank Holidays**—official bank holidays at the place of registered business of the Provider or a branch office of Provider relevant for the Order.
 - d. **Cloud Services**—the hosting of Software Product by Provider where the Software Product is installed and executed on servers housed, operated and managed by Provider or its designee. The choice of hosting facility for Cloud Services shall be in the sole discretion of Provider.
 - e. **Confidential Information**—information of a party marked confidential or with a similar proprietary legend or that, due to the nature of the information and/or the circumstances under which it was disclosed, should reasonably be assumed to be confidential information of the Discloser. Offerings, Documentation, Provider pricing and other financial information, the results of any performance or benchmark tests of the Software Products, these Master Terms and Conditions, information regarding Provider personnel, and any product plans of Provider provided to Customer prior to general announcement are all Confidential Information of Provider. Confidential Information includes copies, summaries and other derivatives of Confidential Information.
 - f. **Consumer Price Index - CPI-U, US City Average, All Items**, as published by the U.S. Bureau of Labor Statistics.
 - g. **Credentials**—any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Offerings.
 - h. **Customer**—the legal entity (other than any Provider Affiliate or Provider Business Partner that signs an Order).
 - i. **Customer Data**—Customer Data means (i) all data and information provided or submitted by, or caused to be provided or submitted by or on behalf of, Customer or its Affiliates in connection with the Services; (ii) all data and information regarding the business of Customer or its Affiliates provided or submitted by, or caused to be provided or submitted by, Provider and/or its Affiliates in connection with its performance of Services; and (iii) all Output resulting from the foregoing.
 - j. **Customer Systems**—Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or third party services.
 - k. **Deliverable**—the work product or work of authorship resulting from the performance of Professional Services or any item that Provider designates as a Deliverable in an Order. Hardware Products, Software Products, Documentation and Services are not Deliverables.
 - l. **Documentation**—user manuals and online help materials related to a Product or Cloud Service that are contained in or accompany the Provider Software Product or Cloud Services or that are otherwise made available to Customer by Provider.
 - m. **Hardware Product**—a computer, server, bar code reader, printer, or a handheld, mobile, wireless, or other device or item of equipment that is manufactured by a third party, listed on an Order and provided to Customer by Provider, and all related Documentation and accessories and parts for such device.

- n. **License Count Restrictions**— the quantity-based limitation on the license granted for a Software Product specified in an Order. License Count Restrictions include, but are not limited to:
- **Named Users** -- the number of user sign-ons and/or login IDs.
 - **Device Licenses (Devices)** – the maximum number of devices with which users can simultaneously use the Software Product, including without limitation, bar code fixed terminals, portable terminals, virtual terminals, PDAs, or PC workstations. This number does not include hardware utilizing the Software Product through other license count restrictions.
 - **Concurrent Users** -- the maximum number of users that can simultaneously access or use the Software Product at one time.
 - **Designated Sites** -- the location(s) specified in an Order. Unless otherwise specifically stated in an Order, Customer may use and execute the Software Products only at the Designated Sites.
 - **Test and Development (Sandbox) License** a license provided to Customer to use the Software Products in a non-production environment to support testing of application fixes and enhancements prior to introducing the same into Customer's production environment.
 - **Disaster Recovery Environment License** -- each Designated Site license allows Customer to use the Software Product on a single set of production servers situated at the Designated Site or in the cloud ("**Production Environment**"). Per the terms of the Agreement, Customer is also granted a license to create with the Software Product a software environment which allows disaster recovery by installing the Software Products on one set of redundant servers for use solely as a back-up ("**Disaster Recovery Environment**").
- Customer is responsible for obtaining the appropriate licenses for any operating system, third party software, which, in addition to the Software Products, is housed in the Disaster Recovery Environment.
- The Disaster Recovery Environment shall be used in production only if the Production Environment fails or is otherwise unavailable. The Disaster Recovery Environment and Production Environment shall not be concurrently used by Customer for production purposes. Should Customer elect to convert the Disaster Recovery Environment to an additional full time Production Environment, instead of using it as back-up, Customer shall advise Provider immediately and pay Provider's then-current license fees for such use. To the extent that Provider learns or an audit reveals unauthorized production use of the Software products installed in the Disaster Recovery Environment and notwithstanding to any further claims of Provider, Customer shall be responsible for procuring from Provider the additional licenses to remedy such unauthorized use.
- o. **Offerings**—Software Products, Cloud Services, Support Services, Professional Services and Hardware Products.
- p. **Order**—an order, quote, work request, statement of work, registration form or other document that is signed by duly authorized representatives of Customer and Provider that identifies (i) the Offering to be provided to Customer by Provider, (ii) fees to be paid by Customer, method of payment and payment terms, and (iii) any additional rights and obligations of the parties.
- q. **Output**—the by-product resulting from the use of the Offerings to the extent it contains or is expressly derived from Customer Data, but excluding the Offerings, Documentation, Preexisting Materials, any general know-how and derivative works or other improvements.
- r. **Permitted Users**--any employee of Customer or (if permitted in the Agreement) of Affiliates of Customer or of independent contractors using a Provider Software Product on behalf and for the benefit of the Customer or to support the Customer in using a Provider Software Product, , or any customers of Customer or its Controlled Affiliates for which Customer is providing third party logistics services under a signed and active services contract.
- s. **Preexisting Materials**—any intellectual property or other proprietary information or material owned or created by, or otherwise licensed to Provider or its Affiliates prior to the date of the Agreement, or which is created or prepared other than as required in order for Provider to provide Services pursuant to the Agreement. Hardware Products, Software Products, Support Services and Cloud Services are all Preexisting Materials.
- t. **Professional Services**—consulting, integration, customization, training or other technical services performed for Customer by Provider under an Order.
- u. **Provider**—the legal entity that signs an Order with Customer.
- v. **Provider Affiliate**—any legal entity, directly or indirectly, controlled by or under common control with Körber Supply Chain GmbH. The Provider legal entity signing an Order, and not any Affiliate of such entity, is solely responsible for performance under the Agreement and claims arising out of it
- w. **Provider Business Partner**—a company authorized by Provider to sell, support, deliver or implement a Hardware Product, Software Product, Support Service or Cloud Service.

- x. **Provider Software Product**—a software program, software provided as a service, or a resource (such as an information database), that is generally available from Provider, updates or modifications to any of the foregoing provided to Customer by Provider, associated Documentation, and all copies of the foregoing. Provider Software Products may be delivered to Customer by Provider or a Provider Business Partner or may be made accessible to Customer via remote access through the Internet. Support Services, Professional Services, Hardware Products, Third-Party Software Products and Deliverables are not considered Provider Software Products.
- y. **Services**—Cloud Services, Support Services and Professional Services.
- z. **Software Products**—Provider Software Products and Third-Party Software Products.
- aa. **Support Services**—the (a) maintenance, and (b) help desk and defect correction and related services offered by Provider and procured by Customer to support Customer's use of Software Products or Cloud Services.
- bb. **Third-Party Software Product**—a software program produced and branded by one or more third party provider(s) for which Customer procures a license from Provider as specified in an Order.
- cc. **Support Term**—the period of time Provider is to provide Support Services pursuant to the applicable Order and these Master Terms and Conditions.

2. SCOPE OF THE AGREEMENT.

- a. **Scope.** Neither party is obligated to sign any Order. Any Offerings provided prior to the execution of an Order are subject to the Agreement.
- b. If, upon Customer's request, Provider transfers existing Customer Data to a Provider Software Product, Provider shall not be responsible and shall not assume any liability for the content and consistency of the Customer Data, unless otherwise agreed in the relevant Order.
- c. **Use of Software Products and Services by Customer's Affiliates.** Customer's Affiliates may only use Hardware Products, Software Products, and Services on the same terms as Customer, if expressly agreed upon in the relevant Order or if Provider has otherwise approved such use in writing. A Customer Affiliate may in any case only use such items if an authorized representative of the Customer Affiliate confirms in writing that the Customer Affiliate has agreed to be bound by the Agreement and that Provider may enforce the Agreement directly against both Customer and the Customer Affiliate. Customer Affiliates using Software Products and Services under the Agreement must not be direct competitors of Provider or a Provider Affiliate. Customer guarantees and agrees to be liable for its Controlled Affiliates' compliance with the Agreement.
- d. **Purchases from Provider Business Partners.** Software Products acquired from a Provider Business Partner are subject to the Agreement, but Customer may be responsible to the Business Partner for the payment of fees, in which case the payment terms in the following section of the Agreement do not apply to Customer. Provider Business Partners are independent legal entities and separate from Provider Affiliates. Provider Affiliates are not responsible for the actions or statements of Provider Business Partners or obligations they have to Customer.

3. PAYMENT AND DELIVERY.

- a. **Fees.** Fees and other charges for Offerings are specified in the Order. Unless a different period is specified, fees specified in an unsigned Order are valid for thirty days from the date the Order is proposed to Customer and thereafter are subject to change at any time prior to Provider and Customer entering into the Order. Provider may otherwise revoke any offer to enter into an Order at any time prior to its execution for any reason.
- b. **Taxes.** Customer shall pay all sales taxes, use tax, excise taxes, goods and services taxes, value added taxes and similar taxes (or any local equivalent) and duties, levies, imposts or similar governmental indirect tax assessments levied by any taxing authority on the Agreement or the procurement of any Offerings ("**Goods and Services Tax**"), other than taxes imposed on Provider's net income, property or personnel. The Provider shall therefore charge the Indirect Taxes to the Customer in addition to the Contract Price or the relevant price to the extent required by applicable tax laws. Unless Customer provides Provider with appropriate resale or exemption documentation for the delivery location and Provider agrees that Customer may resell the Offerings being acquired, fees and charges specified in an Order are stated exclusive of Taxes and Customer shall be responsible for all Taxes.

Customer shall promptly provide to Provider its federal, state, provincial, local, goods and services or value added tax identification number(s) as applicable ("Tax ID") for (i) the country where Customer has established its business and/or (ii) any other country where Customer has a permanent establishment and which is relevant for the Offerings. Provider shall not be liable for any Goods and Services Tax arising from Customer's incorrect indication of the Tax ID. Customer shall use the Offerings for Customer's business use at the Designated Site in accordance with the provided Tax ID.

Parties shall be authorized to disclose the Agreement to a party's affiliate and to file a copy of the Agreement with any governmental authorities, if this is required under applicable tax laws.

- c. **Withholding Tax.** The Customer is only allowed to apply withholding tax on payments if this is required for a certain part of the Offerings under applicable tax law. Customer will provide Provider with documentation evidencing payment of such taxes. All and any other payments will be made free and clear of and without deduction or withholding for or on account of any and all taxes, levies, duties, and charges or similar governmental assessments imposed by law. The same applies if the Provider is exempted, in whole or in part, from withholding tax due to a valid (partial) certificate of exemption issued by the relevant tax authority. If the Customer has to apply withholding tax on a certain amount, the parties shall cooperate during all stages of the process of withholding taxation and income taxation with best endeavors, in particular with regard to the Provider's efforts to benefiting from applicable double taxation agreements and reclaiming any paid withholding tax. This includes in case of any mandatory tax deduction that the Customer shall furnish to Provider any available documents relating to such deduction and proving the remittance of the taxes withheld to the relevant authorities.
- d. **Financing.** Customer purchases that will be financed by a third-party must be approved in advance by Provider to determine appropriate Tax treatment.
- e. **Delivery.** Provider will deliver certain Software Products by arranging for them to be made available for electronic download by Customer or for use over the Internet or other electronic delivery system. Provider will deliver certain Hardware Products, and may, in its sole discretion, elect to deliver certain Software Products via shipment to the address specified in the Order. For Hardware Products or Software Products shipped to a physical address, Customer shall pay related transportation and handling charges as specified in a Provider invoice, unless the Order provides otherwise.
- f. **Payment.** Customer agrees to pay, without deduction, all amounts stated on a Provider invoice in accordance with the terms of the Order. Unless expressly stated otherwise in the Agreement, Customer shall pay such amounts within thirty (30) days after the invoice date. Late payments shall accrue interest on the sum due, from the date due, at the rate of one and one-half percent (1½%) per month or the highest rate permitted by law, whichever is less. Provider may without liability suspend the further delivery of any or all the Offerings during any period in which Customer is not in compliance with its payment obligations to Provider or is otherwise in breach of the Agreement. Provider may suspend any license or Services, including Cloud Services, until Customer has paid all outstanding applicable fees. Licenses, or access to the Cloud Services, may be canceled by Provider if the fees are not paid in accordance with the terms of the Agreement. Provider will not suspend or terminate any Cloud Services until payment of the applicable fees is more than ninety (90) days past due and without reasonable notice and a period of at least ten (10) days for Customer to cure the non-payment. Provider's rights relating to late payment charges and the suspension of the Offerings shall be in addition to any other right that Provider may have if Customer fails to make any payment due to Provider under, or is otherwise in breach of, the Agreement. No endorsement or statement on or accompanying any check or payment shall be deemed an accord and satisfaction and Provider may accept the check or payment without prejudice to Provider's right to recover the balance due or pursue any other remedy permitted under the Agreement. Notwithstanding other provisions of the Agreement, and without prejudice to any termination right Provider may otherwise have pursuant to the Agreement, Customer shall be responsible for any costs Provider incurs in enforcing collection of any amounts due under the Agreement, including reasonable attorneys' fees, court or arbitration costs, or collection agency fees.
- g. **Payment Disputes.** Customer shall notify Provider in writing within thirty (30) days after receiving an invoice of any good faith dispute concerning the invoice. The notice shall include reasonable details relating to the dispute, including the specific amount disputed by Customer. Customer's dispute of an amount due will not relieve Customer of its obligation to pay any undisputed amounts. The failure of Customer to dispute invoiced amounts in accordance with this section shall constitute a waiver by Customer of any objection to such amounts.

4. WARRANTIES.

- a. **Warranty Statements.** Provider's limited warranty statements for Provider Software Products, Services and Deliverables are set forth in the applicable sections below as such apply to each Offering.
- b. **Warranty and Support Exclusions.** Provider warranties and Support Services obligations shall not apply to any Customer claims resulting from (i) any nonconformance that Provider cannot recreate after exercising reasonable efforts in an attempt to do so; (ii) misuse or use of a Software Product, Service or Deliverable in a manner not contemplated by its Documentation (including unauthorized distribution to a third party); (iii) any modification made by any party other than Provider, a Provider Affiliate, or its or their personnel; (iv) third-party software, hardware, or services, including Customer's use of a Software Product, Service or Deliverable in combination with third-party software, hardware, or services not provided by Provider whether or not specified as compatible by Provider in applicable Documentation; (v) Customer's failure to promptly implement or allow the implementation of new releases made available by Provider or to follow Provider instructions in their implementation; or (vi) a virus or similar malicious code not introduced by Provider.
- c. **Third-Party Software Products and Hardware Products.** Provider provides Third-Party Software Products (including software licensed without fee or charge, also referred to as freeware or open source) and Hardware Products "AS IS" and without warranties or indemnities of any kind, although the original manufacturers or third-party suppliers of such items may provide their own warranties or indemnities. Provider will pass through to Customer any available warranties and indemnities that may be passed through to Customer. Provider may from time to time recommend third-party software, hardware or services to Customer for Customer's consideration. PROVIDER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING SOFTWARE, HARDWARE OR SERVICES THAT ARE NOT LISTED IN AN ORDER. Customer's use of any such software, hardware and services is governed solely by the terms of Customer's agreement with the third party provider of such items.

- d. **Disclaimer.** THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THE AGREEMENT ARE EXCLUSIVE. NO OTHER WARRANTIES, WRITTEN OR ORAL, ARE EXPRESSED OR IMPLIED BY PROVIDER OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PROVIDER DISCLAIMS AND CUSTOMER WAIVES ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, UNINTERRUPTED OR ERROR-FREE OPERATION, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO CUSTOMER WITH RESPECT TO ANY WARRANTIES THAT ARE REQUIRED BY APPLICABLE LAW WITHOUT THE POSSIBILITY OF CONTRACTUAL WAIVER. NO ORAL OR WRITTEN INFORMATION OR ADVICE OUTSIDE OF THE AGREEMENT SHALL BE DEEMED TO CREATE A WARRANTY OR IN ANY WAY INCREASE THE EXPRESS WARRANTIES AND REMEDIES IN THE AGREEMENT. ANY WARRANTIES REQUIRED BY APPLICABLE LAW THAT BY LAW CANNOT BE DISCLAIMED OR EXCLUDED ARE LIMITED IN DURATION TO THE APPLICABLE WARRANTY PERIOD AND THE REMEDIES SPECIFIED IN THE AGREEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

5. INDEMNITIES.

- a. **Third-Party Infringement Claims.** If a third party brings a claim against Customer (or a Customer Affiliate authorized to use a Provider Software Product, Service or Deliverable under the Agreement) alleging that the Provider Software Product, any Deliverable or the manner in which Provider performs the Services infringes any enforceable patent or copyright owned by the third party then Provider shall defend the claim at its expense. Provider shall pay defense costs, any settlement amount negotiated by Provider, and damages finally awarded by a court.
- b. **Remedies for Infringement Claims.** If a third-party infringement claim is made or appears likely, in Provider's sole opinion, then Provider shall be entitled, but not required, to modify the Provider Software Product, Deliverable or Service to make it noninfringing, procure any necessary license, or replace the affected item with one that is functionally comparable. If Provider determines that none of these alternatives is reasonably available, then upon Provider's written request Customer shall return the infringing Provider Software Product or Deliverable to Provider or discontinue using the infringing Service and Provider shall issue Customer a refund equal to: (i) a pro-rata amount of the fees paid for the Provider Software Product or Deliverable, based on a five (5)-year amortization schedule; or (ii) if the claim relates to an infringing Service, the lesser of twelve (12) months' charges for the Service or the amount paid by Customer for that Service.
- c. **Exclusions.** Provider has no obligation for any claim of infringement arising from, and Customer shall indemnify Provider and its Affiliates against, any third-party claim arising from: (i) Customer Data, (ii) Provider's compliance with Customer's or Customer-provided third-party designs, specifications, instructions, or technical information; (iii) modifications made by any party other than Provider, a Provider Affiliate, or its or their personnel; (iv) Customer's noncompliance with applicable Documentation; (v) use of Offerings for purposes not contemplated by the Agreement or applicable Documentation (including unauthorized distribution to third parties) or use after Provider notifies Customer to discontinue use due to an infringement claim; (vi) Customer's use or combination of the Offerings with products, software, or services that are not provided by Provider or a Provider Affiliate; or (vii) a Provider Software Product, Service, or Deliverable that is not at the most current release level available from Provider if the most current release level is noninfringing.
- d. **Sole and Exclusive.** This INDEMNITIES section states Provider's entire liability for claims the Offering infringe intellectual property rights. The indemnification and defense obligations expressly stated in this INDEMNITIES section are the only indemnification and defense obligations of Provider, notwithstanding any language to the contrary which might be set forth in the Order and any such additional obligations shall be void.
- e. **Bodily Injury Cross-Indemnity.** Customer and Provider shall each defend and indemnify the other and the other's Affiliates and its and their employees, officers, directors and agents, against all damages for bodily injury, including death, or damage to real or tangible personal property to the extent proximately caused by the indemnifying party in the course of performing under the Agreement.
- f. **Conditions.** Each party's indemnification and defense obligations under this INDEMNITIES section are conditioned on the indemnified party: (i) promptly notifying the indemnifying party of any indemnifiable claim in writing; (ii) cooperating with the indemnifying party in the defense of the claim; and (iii) granting the indemnifying party sole control of the defense or settlement of the claim.

6. INTELLECTUAL PROPERTY RIGHTS.

- a. **Provider Software Products, Services, and Deliverables.** Provider Software Products and Deliverables are licensed for Customer's use as indicated in the *Software Terms* section of these Master Terms and Conditions. These items are not sold to Customer and no title transfers to Customer. Provider retains exclusive ownership of all Provider Software Products, Services, and Deliverables and all intellectual property rights, title and interest in them, and in any ideas, concepts, know how, documentation, or techniques developed or learned by Provider in connection with its performance of Services. Services and Deliverables are not considered "works made for hire" under United States copyright law. All rights not expressly granted to Customer are reserved by Provider and there are no implied licenses.
- b. **Third-Party Software Products.** Third-Party Software Products are licensed for Customer's use as indicated in the *Software Terms* section of these Master Terms and Conditions. Third-Party Software Products are owned by a third-party provider. Third-

party providers are intended beneficiaries of the LIMITATIONS OF LIABILITY AND REMEDIES section of these Master Terms and Conditions and independently may protect their rights in Third-Party Software Products in the event of any infringement.

- c. **Customer Data.** Provider shall use Customer Data provided to it by Customer solely to perform its obligations under the Agreement. No other right, title or interest of any kind is granted to Provider pursuant to the Agreement in or to Customer Data that Provider may have access to while providing Services or that is processed by Provider Software Products.
- d. **Suggestions.** If Customer suggests any new features, functionality or improvements for the Offerings they shall become the sole and exclusive property of Provider and Provider shall not be subject to any confidentiality restrictions or royalty obligations.
- e. **Anonymous Data.** Provider may, subject to full compliance with any applicable data protection laws and restrictions (i) collect, develop, create, extract, compile, synthesize, analyze and commercialize statistical, benchmark, and other information related to the performance, operation and use of the Offerings, and (ii) use data from the Offerings in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (subsections (i) and (ii) are collectively referred to as "Service Analyses"). Provider may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Data or Confidential Information in a form that could serve to identify Customer or any individual. Service Analyses do not constitute personal data. Provider retains all intellectual property rights in Service Analyses
- f. **Trademarks.** Customer shall not register or use any mark or internet domain name that contains any trademark, service mark or logo owned by Provider or its Affiliates, or that is confusingly similar to such marks or logos.

7. CONFIDENTIAL INFORMATION.

- a. **Nondisclosure Obligation.** If a party receives Confidential Information (in such role, "Recipient") from the other party (in such role, "Discloser"), then Recipient shall protect such Confidential Information from disclosure to third parties by exercising at least the same degree of care it uses to protect its own similar information, and in any event not less than reasonable care. Recipient agrees that the Confidential Information will not be used by it for any purpose than effectuating the Agreement. Customer agrees to use Provider Confidential Information only in connection with its licensed use of the Offerings. For purposes of clarity, the nondisclosure obligation shall also apply to any Confidential Information disclosed prior to the execution of the Agreement. Provider may engage independent contractors to assist in the performance of the Professional Services provided to Customer under the Agreement. Such independent contractors for Professional Services are bound by the confidentiality obligations set forth in the Agreement. Confidential Information disclosed by any Affiliate or agent of Discloser will be subject to the terms of the Agreement and treated by Recipient as if disclosed by Discloser. Recipient is responsible for use of any Confidential Information by its Affiliates or agents.
- b. **Exceptions.** The foregoing obligations shall not apply to any Confidential Information that (i) is or becomes available to the public, other than by breach of a duty by Recipient; (ii) is in the rightful possession of the Recipient without an obligation of confidentiality; or (iii) is independently developed by Recipient without use of or reference to Confidential Information of Discloser. Confidential Information may be disclosed by Recipient as required by a court or governmental authority of competent jurisdiction, provided that: (i) prior to any such disclosure Recipient provides Discloser with prompt written notice so that Discloser may seek an appropriate protective order, and (ii) Recipient furnish only that portion of the Confidential Information that is legally required to be disclosed and the Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure. The obligations under this CONFIDENTIAL INFORMATION section shall survive for a period of five (5) years following return or destruction of the Confidential Information, except that a party's obligations under this CONFIDENTIAL INFORMATION section with respect to any Confidential Information that constitutes a trade secret of a party shall continue in effect for so long as the Confidential Information remains a trade secret.
- c. **Return or Destruction of Confidential Information.** All Confidential Information disclosed or otherwise revealed to Recipient shall be and remain the property of Discloser. Recipient agrees that, upon request from Discloser, it will promptly deliver to Discloser all Confidential Information. Notwithstanding the foregoing, Recipient shall have the right to retain one or more copies of the Confidential Information to the extent required by applicable legal, professional or regulatory obligation and Recipient may retain electronic copies of the Confidential Information created pursuant to standard archival/back-up procedures.
- d. **Use of Business Contact Information.** Notwithstanding any language to the contrary elsewhere in the Agreement or under applicable law, Customer authorizes Provider and its Affiliates (and their successors and assigns, contractors and Provider Business Partners) to store and use Customer's business contact information wherever Provider and its Affiliates do business, in connection with the delivery of the Offerings, or in furtherance of Provider's business relationship with Customer and its Affiliates.

8. LIMITATIONS OF LIABILITY AND REMEDIES.

- a. **Limitation of Liability.** Each party's total aggregate liability for damages is limited to the amount paid by Customer for the Offering that is the subject of a claim. For items for which Customer pays on a recurring basis, such as monthly or yearly, the maximum liability equals twelve (12) months of fees paid to Provider.
- b. **Disclaimer of Indirect Damages.** NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES INCLUDING DOWNTIME COSTS; LOST BUSINESS, REVENUES, PROFITS OR MANAGEMENT TIME; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OF GOODWILL; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION.

- c. **Legal Theory.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE AND REGARDLESS OF WHETHER DAMAGES WERE FORESEEABLE.
- d. **Exceptions to Limitations and Exclusions.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THIS **LIMITATIONS OF LIABILITY AND REMEDIES** SECTION SHALL NOT BE APPLIED TO LIMIT (i) CUSTOMER'S OR ITS AFFILIATES' PAYMENT OBLIGATIONS; (ii) CLAIMS BY A PARTY FOR BREACH OF A CONFIDENTIALITY OBLIGATION AGAINST THE OTHER PARTY OR ITS AFFILIATES; (iii) CLAIMS FOR PERSONAL INJURY (INCLUDING DEATH) TO THE EXTENT A PARTY IS LIABLE FOR SUCH ITEMS UNDER APPLICABLE LAW; (iv) PROVIDER'S INDEMNITY OBLIGATIONS UNDER SECTION 5.a OF THE AGREEMENT; (v) CUSTOMER'S INDEMNITY OBLIGATIONS UNDER SECTION 5.c OF THE AGREEMENT (vi) LIABILITY BASED ON WILLFUL MISCONDUCT OR FRAUDULENT MISREPRESENTATION, BUT ONLY TO THE EXTENT SUCH LIABILITY MAY NOT BE EXCLUDED, LIMITED OR WAIVED AS A MATTER OF APPLICABLE LAW; OR (vii) ANY OTHER LIABILITY TO THE EXTENT THE LIABILITY MAY NOT BE EXCLUDED, LIMITED OR WAIVED AS A MATTER OF APPLICABLE LAW.
- e. **Application to Third Parties.** UNLESS PROHIBITED BY LAW OR EXCLUDED IN SECTION 12.b(i) BELOW, PROVIDER AND ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND BUSINESS PARTNERS, AND CUSTOMER AND ITS AFFILIATES ARE INTENDED BENEFICIARIES OF THE LIMITATIONS AND EXCLUSIONS IN THIS **LIMITATIONS OF LIABILITY AND REMEDIES** SECTION. EXCEPT FOR THE FOREGOING AND SUCH OTHER PARTIES EXPRESSLY INDEMNIFIED UNDER THE AGREEMENT, THERE ARE NO OTHER THIRD-PARTY BENEFICIARIES UNDER THE AGREEMENT. PROVIDER AND ITS AFFILIATES AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND BUSINESS PARTNERS SHALL HAVE NO LIABILITY FOR CLAIMS MADE BY CUSTOMER'S AND ITS AFFILIATES' CUSTOMERS, SERVICE PROVIDERS, AND OTHER THIRD PARTIES.
- f. **Limitations Period.** Neither party will bring a legal action against the other more than two years after the cause of action arose unless applicable law prohibits this contractual limitation unless a shorter limitations period is stated in these Master Terms and Conditions.

9. TERMINATION.

- a. **Termination for Convenience.** Customer may terminate the Agreement for convenience upon ninety days' prior written notice to Provider.
- b. **Termination for Cause.** Either Customer or Provider may terminate the Agreement on written notice if the other party fails to comply with a material term of these Master Terms and Conditions or the Agreement after it has been notified in writing of the nature of the failure and, if curable, has been provided with a reasonable period of time to cure the failure.
- c. **Termination Upon Change in Financial Position.** Either party may terminate the Agreement by giving written notice to the other party if the other party (i) ceases to do business as a going concern; (ii) becomes insolvent, bankrupt or the subject of a receivership or administration; (iii) has a trustee or liquidator appointed for it; or (iv) has any substantial part of its property subjected to any levy, seizure, assignment or sale for or by a third party.
- d. **Effects of Termination.** Customer's payment obligations shall survive the termination of the Agreement; provided, however, if Customer terminates any Professional Services, Provider shall wind up the Professional Services in an orderly manner and Customer shall pay Provider only for Professional Services performed and expenses incurred by Provider in order to wind up the Professional Services; provided further, however, if any Professional Services are subject to a fixed price, Customer will remain obligated to pay any outstanding fees. Provider will not be obligated to refund any fees paid as of the effective date of termination. In addition, Customer understands and agrees that if Customer terminates a Subscription License or Cloud Services for Customer's convenience prior to the end of the applicable term, Customer shall pay Provider an early termination fee to be calculated as the remaining unpaid months in the term multiplied by the then current monthly fee.
- e. **Procedures upon Termination.** Upon termination of the Agreement for any reason, licenses to Software Products and Deliverables shall immediately terminate and Customer shall, within a reasonable period of time: (i) return to Provider all Hardware Products that have not been fully paid for; (ii) cease using and return, if applicable, to Provider all Software Products and Deliverables, together with all Documentation and other materials provided by Provider and all copies of any of the foregoing, or destroy such items, and cease using all Services; (iii) purge all copies of Software Products, Deliverables and Documentation from all computers and network servers and from any computer storage device or medium on which Customer has placed such items; (iv) pay Provider all amounts remaining due which are not disputed in good faith; and (v) provide Provider written certification from an officer of Customer that Customer has complied with all of the foregoing obligations. Customer Data processed by Provider Software Products and stored on Provider owned or leased servers may be purged within thirty (30) days after the termination or expiration of the Agreement.
- f. **Survival.** Any provisions of the Agreement that require or contemplate performance or application after termination are enforceable against the other party and its respective successors and assignees notwithstanding termination or expiration, including the PAYMENT, INDEMNITIES, INTELLECTUAL PROPERTY RIGHTS, CONFIDENTIAL INFORMATION, LIMITATIONS OF LIABILITY AND REMEDIES, DISPUTES, and TERMINATION sections of these Master Terms and Conditions. Any termination will be without prejudice to the terminating party's legal rights and remedies as provided under the Agreement,

including injunction and other equitable remedies, subject to the limitations and exclusions set forth in these Master Terms and Conditions.

10. DISPUTES.

a. **Good Faith Negotiations.** In the event of any dispute, claim, question, or disagreement arising from or relating to the Agreement, or an alleged breach of the Agreement (a "**Dispute**"), the parties agree to use their best efforts to settle the Dispute through good faith negotiations ("**Good Faith Negotiations**"). Failure by either party to engage in Good Faith Negotiations to resolve a Dispute shall be considered a material breach of the Agreement.

b. **Mandatory Arbitration.** If the parties are unable to resolve a Dispute through Good Faith Negotiations within a period of sixty days, then, upon written notice by either party to the other, the Dispute shall be finally settled by arbitration.

c. **Arbitration Rules.**

(i) *Customer Located in the UK, Europe, Middle East, Africa or Asia (excluding China).* If Customer is located in the UK, Europe, Middle East, Africa or Asia (excluding China), the arbitration will be conducted in accordance with the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause and for that purpose:

a. The number of arbitrators shall be one;

b. The seat, or legal place, of arbitration shall be in accordance with clause 10.g(iii) of the LCIA Rules; and

c. The language to be used in the arbitral proceedings shall be English in accordance with clause 10.f of the LCIA Rules.

(ii) *Customer Located In the United States.* If Customer is located in the United States, the arbitration shall be administered by the American Arbitration Association ("**AAA**") in accordance with its Commercial Arbitration Rules, which are available at the AAA web site at www.adr.org. The Agreement shall be considered to be made pursuant to a transaction involving interstate commerce and shall be governed by the U.S. Federal Arbitration Act.

(iii) *Customer Located in Canada.* If Customer is located in Canada, the arbitration will be conducted in accordance with the provisions of the Arbitration Act, 1991 (Ontario) or its successor legislation.

(iv) *Customer Located in Australia or New Zealand.* If Customer is located in Australia or New Zealand, all disputes arising out of or in connection with the present contract shall be conducted under the rules of Arbitration of the Australian Centre for International Commercial Arbitration.

(v) *Customer Located In China.* If Customer is located in China, the arbitration shall be conducted under the rules of the Shanghai International Economic and Trade Arbitration Commission.

(vi) *Customer located in Brazil or any other country in South America* If Customer is located in Brazil or any other country in South America, all disputes arising out of or in connection with the present contract shall be finally settled by arbitration in accordance with the rules of the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("**CAM-CCBC**") (the "**Rules**"). If the Rules established by CAM-CCBC are silent on any procedural aspect, they shall be supplemented by the provisions of Federal Law No. 9,307, of September 23, 1996. . Either party shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the Rules for a Pre-Arbitral Referee Procedure (*Procedimento Cautelar Pré-Arbitral*) in accordance to articles 22 "A" and 22 "B" of Federal Law n° 9.307/96). The arbitral tribunal shall consist of three (3) arbitrators, appointed in accordance with the Rules of the CAM-CCBC.

(vii) *Customer Located in any country or region not specified above.* If Customer is located in any country or region not specified above, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce ("**ICC**"), which are available at the ICC website at <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/>. Either Party shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the ICC in accordance with its Rules for Pre-Arbitral Referee Procedure.

d. **Preliminary Relief.** Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under the Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitral tribunal's determination of the merits of the controversy.

e. **Final and Binding.** The arbitral award shall be final and binding and the parties renounce any form of appeal or revision, provided that either party may within two weeks after the date of the award request the arbitrator to give a written clarification of the award or to correct any computational or typographical errors. Any such clarification or correction shall be provided by the arbitrator to the parties within thirty days after the date of the request and shall become part of the award. The execution of the arbitral award shall be suspended until the arbitrator provides any requested clarification or correction.

Waiver of Right to Jury Trial. If applicable under local law, each party waives their right, if any, to a jury trial with respect to any Dispute and agrees that no Dispute may be brought as a class action or as a private attorney general. Neither party may act as a class representative or participate as a member of a class of claimants with respect to any Dispute.

f. **Language of Proceedings.** All arbitration proceedings shall be conducted in the English language.

g. **Venue.**

(i) *Customer Located in the UK, Europe, Middle East, Africa, or Asia (excluding China).* If Customer is located in the UK, Europe, Middle East, Africa, or Asia (excluding China), then any arbitration proceeding shall be conducted in London, England.

(ii) *Customer located in the United States.* If Customer is located in the United States, then any arbitration proceeding shall be conducted in Minneapolis, MN, USA.

(iii) *Customer Located in Canada.* If Customer is located in Canada, then any arbitration proceeding shall be conducted in Toronto, Ontario, Canada.

(iv) *Customer Located in Australia or New Zealand.* If Customer is located in Australia or New Zealand, then any arbitration proceeding shall be conducted in Melbourne, Victoria, Australia.

(v) *Customer Located in China.* If Customer is located in China, then any arbitration proceeding shall be conducted in Shanghai, People's Republic of China.

(vi) *Customer located in Brazil or any other country in South America.* If Customer is located in Brazil or any other country in South America, any arbitration proceeding shall be conducted in the city of São Paulo – State of São Paulo, Brazil.

(vii) *Customer located in any country or region not listed above.* If Customer is located in any country or region not listed above, then any arbitration proceeding shall be conducted in Minneapolis, Minnesota, USA.

h. **Evidence and Limitations.** No written or oral statements of position or offers of settlement made in the course of the Dispute resolution process shall (i) be offered into evidence for any purpose; or (ii) constitute an admission or waiver of rights by either party. The arbitrator shall have no authority to award punitive damages or other damages not measured by the prevailing party's actual damages or to exceed the contractual limitations on damages and remedies set forth in the Agreement.

i. **Fees.** Except as expressly provided otherwise in the Agreement, each party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration.

j. **Confidentiality.** Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

k. **If Customer is a U.S. Government Agency.** If Customer is a U.S. government agency, the Agreement is subject to the Contract Disputes Act of 1978, as amended, in lieu of the arbitration provisions of this Disputes section.

11. EXPORT CONTROL

a. **General.** The supply or provision of the Offerings may be subject to domestic and/or foreign statutory provisions and regulations regarding export control or economic sanctions. The parties acknowledge that such provisions and regulations may change from time to time and are applicable according to the wording valid at the relevant time. Customer and Provider will adhere to all such provisions and regulations and cooperate with the competent authorities accordingly. The parties shall not take any action which would be in breach of export control statutory provisions or regulations, including economic sanctions.

b. **Obtaining permits.** If applicable, the Offerings may not be sold, supplied, leased or otherwise transferred nor may any related services be performed nor may the Offerings be used for a purpose other than that agreed upon without a necessary export or re-export permit from competent authorities. Provider shall use its best efforts to receive the required export permits and shall, upon receipt, furnish Customer with a copy of the export permits for his information. Provider has the right to withdraw from the Agreement, without incurring any liability for either party, if the required export permits cannot be obtained or cannot be obtained within reasonable time or, if once granted, are thereafter revoked or modified by the competent authorities.

c. **Non-compliance.** Provider has the right at any time to withdraw from the Agreement, without incurring any liability for either party, if (a) Customer, despite request, does not provide either any or sufficient enough information about the final destination and the end use of the Offerings, (b) Provider obtains knowledge of an unintended end use or knowledge of any previously unknown person involved in the business and therefore cannot perform the contract, including any after sales services due to any export control regulations, (c) the Offerings are intended for military end use, civil nuclear use or for use in connection with weapons of mass destruction or for missiles capable of delivering such weapons (substantive evidence shall be sufficient to prove this intent) or (d) a possibly illegal or unlicensed export or an infringement of applicable embargo rules cannot be fully ruled out or a fundamental change in the appraisal of the commercial risks attached to the business becomes apparent, this could include,

amongst others, any listing of Customer, its affiliates, owners or other persons involved on his part in the business on either the consolidated EU or US screening list.

12. GENERAL.

a. **Majeure.** Neither party shall be liable for performance delays or nonperformance due to causes beyond its reasonable control (such as armed conflicts, civil war, riot rebellion, revolution, acts of terrorism, sabotage, acts of authority, compulsory acquisition, seizure of works, strikes, **Force** boycott, epidemic or pandemic outbreaks, natural disaster, war, terror, nuclear accidents, prolonged break-down of transport, telecommunication or electric current, etc.). Force Majeure shall include labor disputes in the parties' operations or labor disputes in third-party operations and similar circumstances which directly or indirectly affect the parties in such a way that Customer's cooperation obligations and/or Provider's delivery and/or service obligations. This provision shall not apply to Customer's payment obligations. If an event of Force Majeure lasts longer than three (3) months, both parties shall have the right to terminate the respective Agreement.

b. **Governing Law and Jurisdiction.**

(i) *Customer Located in the UK, Europe, Middle East, Africa or Asia (excluding China).* If Customer is located in the UK, Middle East, Africa or Asia (excluding China), unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of England without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the courts of England with respect to any Dispute. In addition, if the Agreement is controlled by the laws of England: (a) no person who is not a party to the Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999 and will not be able to enforce or take benefit from the terms of the Limitations of Liabilities and Remedies section of the Agreement pursuant to clauses 6.b and/or 8.e; and (b) clause 5.e, and shall not apply under any circumstances. Neither party (nor any person acting in connection with the agreement) has taken or will take any action or engage in any activity which is likely to lead to the other party committing an offence under the Bribery Act 2010.

(ii) *Customer Located in the United States.* If Customer is located in the United States, the Agreement shall be governed by and interpreted pursuant to the laws of the State of Minnesota, U.S.A., without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in Hennepin County, Minnesota with respect to any Dispute.

(iii) *Customer Located in Canada.* If Customer is located in Canada, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of the Province of Ontario, Canada without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the provincial and federal courts located in Ontario, Canada with respect to any Dispute.

(iv) *Customer Located In China.* If Customer is located in China, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed and interpreted pursuant to the laws of the People's Republic of China, without regard to its conflict of laws principles that might require the application of law from another jurisdiction.

(v) *Customer Located in Australia or New Zealand.* If Customer is located in Australia, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of Victoria, Australia without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the courts located in Melbourne, Victoria, Australia with respect to any Dispute.

(vi) *Customer Located in Brazil or any other Country in South America:* If Customer is located in Brazil or any other Country in South America, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of Brazil without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Each party retains the right to seek judicial assistance: (a) to compel arbitration; (b) to obtain interim measures for protection of rights prior to institution of arbitration, and any such action shall not be construed as a waiver of arbitration as the only means of dispute resolution selected by the parties, (c) to enforce any decision of the Arbitration Tribunal, including the Arbitration Award, and (d) to seek annulment of the Arbitration Award when permitted by Law. In case the parties seek judicial assistance in the circumstances provided above, the Courts of the City São Paulo – State of São Paulo, Brazil shall have jurisdiction.

(vii) *Customer Located in any other country or region not listed above.* If Customer is located in any other country or region not listed above, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of the State of Minnesota, USA, without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in Hennepin County, Minnesota with respect to any Dispute.

(viii) *Inapplicability of U.N. Convention.* In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any version of the Uniform Computer Information Transactions Act adopted by any state in the United States apply to, or govern, the Agreement

- c. **Language.** To the extent permitted by law, any language translation of the Agreement is for convenience only and no such translation will be binding against the parties except as required by applicable law without the possibility of contractual waiver.

If Customer is located in France or Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that the Agreement be drafted in English. Les parties contractantes confirment qu'elles ont exigé que le présent contrat et tous les documents associés soient rédigés en anglais.

- d. **Publicity.** Either party may in its discretion disclose the existence of the Agreement (but not the terms or conditions of the Agreement) and that Customer is a customer of Provider and/or a Provider Affiliate.
- e. **Assignment.** Except as expressly provided otherwise in the Agreement, Customer may not assign, delegate or otherwise transfer all or any part of the Agreement without prior written consent from Provider. A change of control of Customer shall be deemed an assignment for purposes of the Agreement, but Provider shall not unreasonably withhold its consent to a deemed assignment arising as a result of a change of control of Customer. Any attempted assignment, delegation, or transfer without consent is void. Provider shall have the right to assign the Agreement to any successor to its business or assets to which the Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.
- f. **Code of Conduct, Anti-Bribery.** Provider is part of the Körber group of companies, and as such has a strict responsibility to follow the Körber Code of Conduct which includes observing high standards of ethical conduct and respect for human rights. A copy of the Körber Code of Conduct may be found at <https://www.koerber.com/en/compliance-and-code-of-conduct/>. No portion of any payment made by Provider to Customer or Customer to Provider shall be used as a bribe, kickback, rebate or political influence, or in violation of applicable foreign exchange control regulations, tax laws or regulations or other laws or regulation of any applicable jurisdiction, and any such use shall be a material breach of the Agreement. No gift or gratuity, or any promise of such, has been or will be given, offered, or made to or for the benefit of any employee or agent of either party, as a result of, or in any way in connection with the Agreement or the parties to the Agreement or an Order.
- g. **Notices.** All notices that are required under the Agreement shall be in writing, delivered by a method providing for proof of delivery to the address stated on an Order unless notified otherwise, and shall be considered effective upon the date of delivery.
- h. **Entire Agreement.** The Agreement is the entire understanding between Provider and Customer regarding Customer's acquisition of the Offerings specified in the Order, as applicable. The Agreement supersedes and replaces any previous communications, representations, or agreements, or Customer's additional or inconsistent terms, whether oral or written. In the event any provision of the Agreement is held invalid or unenforceable, the remainder of the Agreement shall remain enforceable and unaffected thereby.
- i. **Enforceability of Limitations.** THE TERMS OF THE AGREEMENT THAT LIMIT, DISCLAIM, OR EXCLUDE WARRANTIES, REMEDIES, OR DAMAGES ARE INTENDED BY THE PARTIES TO BE INDEPENDENT AND REMAIN IN EFFECT DESPITE THE FAILURE OR UNENFORCEABILITY OF ANY OTHER PROVISION OF THE AGREEMENT. THE PARTIES HAVE RELIED ON THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THE AGREEMENT IN DETERMINING WHETHER TO ENTER INTO IT.
- j. **Waiver.** Neither party's failure to exercise or delay in exercising any of its rights under the Agreement shall constitute or be deemed a waiver or forfeiture of those rights.
- k. **Amendment.** For a change to the Agreement to be valid, authorized representatives of each party must sign a written amendment. Changes in any other form are void, including any handwritten interlineations to any portion of the Agreement unless contemporaneously initialed by both parties. Any conflicting or additional terms and conditions on or accompanying any purchase order or other communication from Customer are void. Provider's failure to object to provisions contained in any purchase order or other communication from Customer will not be construed as a waiver of this section, and such terms and conditions shall have no effect on the Agreement.
- l. **Electronic Copies.** A version of the Agreement or an Order signed and transmitted by .pdf or electronic copy shall have the same binding effect as an original signature. Each party hereby agrees that its electronic signature, if used, is the legal equivalent of its manual signature on the Agreement.
- m. **Interpretation.** Headings are for convenience only and do not affect the meaning or interpretation of the Agreement. The Agreement shall not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used it shall be construed in each case to mean "including, but not limited to."
- n. **Order of Precedence.** In the event of a conflict, the terms of an Order shall prevail over the Agreement, except that no indemnities shall bind Provider or its Affiliates to the extent such are set forth in the Order or elsewhere, and the LIMITATIONS OF LIABILITY AND REMEDIES section of the Agreement may not be modified in an Order or elsewhere in the Agreement.

- o. **Relationship of the Parties.** Each party is an independent contractor in the performance of the Agreement. Neither party is nor will claim to be a legal representative, partner, franchisee, agent or employee of the other, unless explicitly provided otherwise in the Agreement. Personnel of each party and their Affiliates shall not be deemed employees or agents of the other party.
- p. **Provider Subcontractors.** Provider retains the right to subcontract the performance of any Service, or any part of a Service, to its Affiliates or subcontractors selected by Provider, so long as Provider remains liable to Customer for the performance of the Service as specified in the Agreement. Upon Customer's request, Provider will notify Customer of the utilization of any subcontractors in the performance of Services.

SOFTWARE TERMS

13. LICENSES.

13.1. License Grant. Subject to the terms and conditions of the Agreement, including but not limited to any License Count Restrictions, Provider grants Customer a limited, nonexclusive, nontransferable license to use the Provider Software Products specified in an Order for the purposes set forth in Section 12.2(a) below.

- a. **Perpetual Licenses.** If Provider licenses a Provider Software Product to Customer on a perpetual basis ("**Perpetual License**"), as indicated in an Order, or if Provider does not indicate in the Order that the license is granted on a Subscription License basis (as defined below), then the license shall be deemed perpetual, but subject to termination for breach of the Agreement or as otherwise provided in the Agreement. Additionally, Provider grants Customer a nonexclusive, nontransferable, license to: (i) make a copy of Provider Software Products to be used solely for archival and disaster recovery purposes, provided that the copy is kept in a secure location and contains the copyright and other proprietary notices contained in the original; (ii) make copies of Documentation as reasonably necessary to support its authorized users in their use of Provider Software Products; and (iii) use any training course materials provided by Provider for training authorized users in their use of Provider Software Products.
- b. **Software as a Service, Subscription, or Term Licenses.** If Provider licenses a Provider Software Product to Customer either on a software as a service (SaaS), a subscription basis, or for a specified term (collectively or individually, a "**Subscription License**"), as set forth in an Order, the license shall remain in effect for thirty-six (36) months from the effective date of the Order unless a different period is indicated on the Order (the "**Initial Subscription Term**") and shall automatically renew for subsequent renewal terms of at least twelve (12) months each, or a longer period as specified in an Order, (each a "**Renewal Subscription Term**") unless Customer notifies Provider in writing of its intent not to renew at least sixty days prior to the start of a Renewal Subscription Term. The license is in effect only during the Initial Subscription Term and any applicable Renewal Subscription Terms. Payment of applicable subscription fees is required to use the Provider Software Products during the Initial Subscription Term or Renewal Subscription Term. Subscription fees are subject to an increase not to exceed the greater of: (i) five percent (5%) over the fees charged for the preceding twelve month period or (ii) the increase in the Consumer Price Index over the immediately preceding twelve month period plus 2%, each unless a greater increase is required by an escalation of a Third-Party provider's rates, in which case Provider shall provide Customer reasonable advance notice of the amount of the proposed increase. Customer understands and agrees that if Customer terminates a Subscription License for Customer's convenience prior to the end of the Initial Subscription Term or Renewal Subscription Term, Provider will have no obligation to refund any paid but unused subscription fees and Customer shall pay Provider an early termination fee to be calculated as the remaining unpaid months in the term multiplied by the then current monthly fee.

13.2. Scope of License and Restrictions

- a. **Scope of Licenses and Use of Products by Services Providers.** The licenses granted to Customer apply solely to the executable (*i.e.*, object code) form of Provider Software Products, and solely to Permitted Users use of the Provider Software Products for the internal business purposes of Customer. If Customer contracts with a third party for Provider Software Product implementation, customization, consulting, hosting or outsourcing services, the third party may use the Provider Software Product as licensed solely for purposes of providing such services, provided that (i) the third party is a Provider Business Partner authorized to provide such services; or (ii) Provider grants written approval in advance. No other service providers are entitled to access Provider Software Products. Customer is responsible for the third party's compliance with the Agreement. Customer shall not permit access to Provider Software Products by any other third party (except for Customer Affiliates expressly authorized to use such items under the Agreement). Provider Software Products do not include system software which, in connection with the delivery of Hardware Products, is either already permanently installed on the Hardware Product or has to be installed after the Hardware Product has been set up and/or installed.
- b. **Third-Party Software Products.** Third-Party Software Products are licensed to Customer under the terms of the license agreement accompanying the Third-Party Software Product or the Order. If no license agreement accompanies the Third-Party Software Product or the Order, then Provider grants Customer a nonexclusive, nontransferable license to use the Third-Party Software Product for its own internal business purposes only. This license for Third-Party Software Products is subject to all the limitations and restrictions applicable to Provider Software Products. Software provided under any open source licensing model is governed solely by such open source licensing terms, which shall prevail over the Agreement.
- c. **Use Restrictions.** Unless expressly provided otherwise in the Agreement, Customer shall not sublicense, resell, lease, rent, copy, distribute or permit access to Software Products or Services or operate a software service bureau, outsourcing, time-

sharing, application service provider, hosting, or similar business using them or otherwise use them for the benefit of another party. Customer shall not exceed the license counts (e.g., the number of server or desktop copies, number of devices, number of concurrent users, number of "seats") or other numeric restrictions or authorizations specified in an Order and paid for by Customer. Some Software Products may require license keys or contain other technical protection measures. Provider will provide Customer with software keys to the extent required to allow Customer to use Software Products in accordance with the Agreement. Customer acknowledges that Provider may monitor Customer's compliance with license counts and other use restrictions through the Internet or other remote access to Software Products.

- d. **Customer Compliance.** Customer will not nor will Customer allow any third party to (i) attempt to gain unauthorized access to the Software Products, or its related systems and networks; (ii) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Software Products; (iii) use the Software Products to post, transmit or store material or information in violation of any applicable local, state, federal or foreign law, regulation or treaty, or any third party privacy or intellectual property rights, including without limitation those related to privacy, electronic communications and anti-spam legislation; (iv) publish, post, upload or otherwise transmit Customer Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (v) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Software Products.
- e. **Prohibition on Reverse Engineering.** Customer shall not modify, reverse engineer, disassemble, decrypt, decompile, create a patent based on, make derivative works of, or attempt to discover or modify in any way the underlying source code of Software Products and Services. If, despite the foregoing, Customer has rights under applicable law, Provider will honor those rights.
- f. **U.S. Government Use.** Software Products are "commercial computer software" and "commercial computer software documentation" pursuant to DFAR Section 227.7202 and FAR Section 12.212 (and any successor sections). Use of Software Products, including reproduction and display of them, by the United States of America and/or any of its instrumentalities, regardless of form (collectively, the "**Government**"), is governed by the Agreement. Under no circumstances shall Provider be obligated to comply with any Government requirements regarding cost or pricing data or cost accounting requirements. If any Government requirement might apply, Customer shall notify Provider of the Government requirement and obtain a waiver or exemption for the benefit of Provider before Customer may use the Software Product.
- g. **Statement of Verification.** Upon Provider's written request, which shall be made no more frequently than once per calendar year, Customer shall furnish Provider with a document signed by Customer's authorized representative listing the locations where Software Products are installed on Customer's owned and operated hardware (if any) and the number and type of licenses being used for each Software Product. Customer is responsible for implementing reasonable procedures to ensure its compliance with the Agreement.
- h. **Audit.** During the term of the Agreement and for two years thereafter, Provider or its independent audit firm may audit Customer's and its Affiliates' compliance with the terms and conditions of the Agreement. Any such audit shall be at Provider's expense, require reasonable notice, and shall be performed during normal business hours and in such a manner as to minimize, to the extent reasonably possible, any impact to Customer's business. Customer agrees that it will provide access to Customer's sites for the purposes of, and shall cooperate in, such audit. If an audit reveals a breach of the Agreement by Customer or its Affiliates, including, but not limited to, the unlicensed use of any Software Products, then Customer, in addition to such other rights and remedies as may be available to Provider as a result of such breach, shall, if applicable, immediately pay Provider the applicable license fee for the Software Products at list price for the period of unauthorized use, and shall pay to Provider, within thirty (30) days of Provider's provision of the results of such audit to Customer, the costs reasonably incurred by Provider in connection with the audit.
- i. **Limits.** If Customer and its Affiliates fully comply with the requirements of the above "Statement of Verification" and "Audit" sections and Customer's unlicensed use of Software Products was not willful, then Provider's remedy for Customer's unlicensed use shall be limited to the retroactive recovery of license fees at list price and reimbursement for the cost of the audit. If Customer or its Affiliates do not fully comply with the above "Statement of Verification" and "Audit" sections and/or their unlicensed use of Software Products is willful, in addition to the foregoing remedies Provider shall be entitled to all remedies and penalties legally available.

13.3. Beta / Pre-Release. From time to time, Provider may offer Customer an opportunity to use a beta or prerelease version of a Software Product ("**Beta Version**") for a limited period of time ("**Beta Period**"), for demonstration, testing, evaluation, or other nonproduction purposes ("**Beta Purposes**"). Beta Versions are covered by the provisions of the Agreement, except that all Beta Versions are provided "AS IS" and without any warranty of any kind, express or implied.

- a. **Beta / Pre-Release Software Products.** For Beta Versions which have not been made generally available by Provider, Customer agrees that such Beta Version: (i) may not be used in a production environment; (ii) is not expected to function with the same reliability as generally available Software Products and may contain defects that are not found in generally available Software Products; (iii) will not be subject to any obligation by Provider to correct defects; and (iv) may not ever be made generally available for commercial use.

- b. **Return or License of Beta / Pre-Release Products.** If Customer does not pay for and acquire a standard license to use the Beta Version at the end of the Beta Period (if such is made available to Customer as an option), then Customer shall promptly return the Beta Version to Provider and destroy all copies and any related Documentation in Customer's possession. The nature, features, functionality, and performance of all Software Products, including Beta Versions, constitute Confidential Information of Provider subject to the "Confidential Information" section of the Agreement.

14. SOFTWARE WARRANTIES AND REMEDIES.

a. **Provider Software Product Warranty.**

(i) **for Perpetual Licenses.** Provider warrants that each Provider Software Product licensed by Customer shall conform in all material respects with its Documentation for a period of thirty (30) days from the delivery date, unless a longer warranty period is agreed in an Order. Thereafter, fees paid by Customer for Support Services will cover the reporting and correction of any non-conformance of the Software Products.

(ii) **for Subscription Licenses.** Provider warrants that each Provider Software Product licensed by Customer shall conform in all material respects with its Documentation for the term of the Subscription License.

- b. **Warranty Limitation.** Provider does not warrant that the operation of Provider Software Products will be uninterrupted or error free, will meet Customer requirements, or will be compatible with other software products except for compatibility committed in the Documentation or expressly set forth in an Order.
- c. **Exclusive Remedies.** If notified by Customer in writing of a valid warranty claim for a Provider Software Product licensed by Customer during the warranty period, Provider shall, at its option, use commercially reasonable efforts to correct the defect at Provider's facilities or replace the Provider Software Product with a functionally comparable product that complies with the warranty. If Provider is unable, within a reasonable period of time, to provide a correction or replace the Provider Software Product with a functionally equivalent substitute, Provider shall notify Customer and Customer shall be entitled to a refund of (i) for Perpetual Licenses, the purchase price paid for the Provider Software Product licenses and a refund of fees paid for unused Support Services for the Provider Software Product upon prompt return of the Provider Software Product and all copies of it to Provider; or (ii) for Subscription Licenses, the Subscription License fees paid during the preceding twelve month period for the affected Provider Software Product. Upon return of the Provider Software Product all licenses shall be deemed cancelled. This section states Provider's entire liability and Customer's sole remedy for Provider Software Product warranty claims.
- d. **Regulatory Requirements.** Certain Software Products may include functionality designed to assist Customer in complying with various regulatory requirements that may be applicable to Customer. Customer is solely responsible for understanding the regulatory requirements that apply to its business and for selecting and using Software Products in a manner that complies with applicable requirements.

CLOUD SERVICES TERMS

15. CLOUD SERVICES

- a. **Cloud Services.** If an Order includes Cloud Services (whether Cloud Services are charged separately or are included in the fees paid under a Subscription License), Provider will provide the Cloud Services in accordance with the terms, specifications and service levels, if any, set forth in the Order, and for the indicated period of time (the "**Cloud Initial Term**"). Cloud Services that are separately chargeable shall automatically renew for subsequent renewal terms of at least twelve months each, or a longer period as specified in an Order (each a "**Cloud Renewal Term**"), unless Customer notifies Provider in writing of its intent not to renew at least sixty (60) days prior to the start of a Cloud Renewal Term. If for separately chargeable Cloud Services no Cloud Initial Term is specified in the Order, the Cloud Initial Term shall be for a period of thirty-six (36) months. Payment of applicable Cloud Services (or if included with a Subscription License then applicable Subscription fees) is required to use the Cloud Services during the Cloud Initial Term or Cloud Renewal Term. Separately chargeable Cloud Services fees are subject to an increase not to exceed the greater of: (i) five percent (5%) over the fees charged for the preceding twelve month period or (ii) the increase in the Consumer Price Index over the immediately preceding twelve month period plus 2%, unless a greater increase is required by an escalation of a third-party provider's rates, in which case Provider shall provide Customer reasonable advance notice of the amount of the proposed increase. Customer understands and agrees that if Customer terminates Cloud Services (or a Subscription License if Cloud Services are included) for Customer's convenience prior to the end of the Cloud Initial Term or Cloud Renewal Term, Provider will have no obligation to refund any paid but unused fees and Customer shall pay Provider an early termination fee to be calculated as the remaining unpaid months in the term multiplied by the then current monthly fee.
- b. **Customer Responsibilities for Cloud Services.** Customer agrees to use the Cloud Services in accordance with the terms of the Agreement and the Order. Customer further agrees that:
 - (i) Customer will not nor will Customer allow any third party to (a) or attempt to gain unauthorized access to the Cloud Services or its related systems and networks or disrupt the Cloud Services or its related systems and networks; (b) use the Cloud Services for the benefit or business needs of a person or entity other than Customer or its Controlled Affiliates or if otherwise agreed in an Order, including sublicensing, leasing, lending, transferring or permitting access to the Cloud Services on a time-share or service bureau basis other than as expressly permitted in the Agreement, or use the Cloud Services in any way that could harm the Cloud Services or Provider systems or impair anyone else's use of the Cloud Services, or in a way which may violate the rights of others; (c) copy,

modify, adapt, translate or otherwise create derivative works of the Cloud Services; (d) disassemble, de-compile, decode, or reverse engineer the Cloud Services; (e) breach the obligations of confidentiality under the Agreement; (f) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Cloud Services or Software Products or to distribute spam or malware; (g) use the Cloud Services to post, transmit or store material or information in violation of (i) any local, state, federal, or foreign law, regulation, governmental order or decree, or treaty; or (ii) any third-party privacy or intellectual property rights; or (h) in any application or situation where failure of the Cloud Services could lead to death or serious bodily injury of any person, or to severe physical or environmental damage. If Provider has reasonable grounds to believe that Customer is using the Cloud in a manner inconsistent with this section, Provider may suspend or terminate Customer's access and use of the Cloud Services immediately provided, however, that Provider will provide reasonable notice, if possible.

(ii) Customer is solely responsible, at its own cost, for: (a) acquiring, licensing, installing, maintaining, and testing all Customer Systems required to connect to and use the Cloud Service and determining the sufficiency of backup and support; (b) preparing the Customer site for installation of any hardware, if installation is required. Installation includes, but is not limited to, data communication, access/wiring, and providing power for the hardware; (c) populating the database(s) with accurate and complete Customer Data; (d) providing Internet connectivity with sufficient quality and bandwidth for use of the Cloud Service and a supported web browser. The selection of security controls and permissions for the access and use of the Cloud Service is Customer's responsibility; (e) ensuring that all Customer Systems, if any, are covered under valid support and maintenance agreements with the software publisher or other third party provider. In the event that Customer fails to maintain this support or the version of the third-party software or hardware utilized by Customer is no longer supported, Customer recognizes that Cloud Services may be adversely impacted due to outdated ("end of life") Customer Systems and the unavailability of patches or fixes to correct problems.

(iii) Customer (or, as applicable, its third party providers) retains all right, title, and interest or license in and to the Customer Data and Customer Systems. Provider agrees not to remove or alter any copyright or other proprietary notice on or in any Customer Systems or Customer Data without consent of Customer's or, as applicable, Customer's third party providers. Before Customer makes any of the Customer Systems available to Provider, Customer agrees to obtain any licenses or approvals for Provider, its subcontractors, or designees to use, access, and modify the Customer Systems to the extent necessary for Provider to provide the Cloud Service.

SUPPORT TERMS

16. SUPPORT SERVICES GENERALLY. If Customer is enrolled in a Provider Support Services plan and has paid applicable Support Services fees or has paid applicable subscription fees under a Subscription License, then for each Software Product covered by the Support Services plan to the extent included in it or licensed under a Subscription License Provider shall owe to Customer, depending on the relevant Order, all, or a combination of, the following obligations as applicable to the specific Support Services plan purchased by Customer:

- a. **Defect correction.** in response to reports from Customer that a Provider Software Product does not conform in material respects with its Documentation, exercise commercially reasonable efforts to reproduce and remedy the nonconformance. If a nonconformance in a Provider Software Product is materially affecting Customer's ability to operate its business and Customer notifies Provider of this fact, Provider will address the nonconformance with an effort that is commensurate with the extent to which the error affects Customer's ability to operate its business using the Priority Levels detailed in Section 16.1 below;
- b. **Maintenance.** make available to Customer new releases of Provider Software Products made generally available to Provider's other customers, provided, however, that Provider reserves that right to charge additional license fees for new releases of Provider Software Products that provide substantial new functionality or that incorporate new third-party components; and
- c. **Help Desk.** During the support hours indicated on an Order (or if none stated the hours indicated on Provider's website), make Support Services personnel available to answer operational questions and to accept reports of any nonconformance.

16.1 PRIORITY LEVELS AND RESPONSE TIMES. Customer may log Support Services requests via telephone or e-mail provided or published by Provider, or via Provider's customer portal where Customer may also view the status of Support Service requests. Unless otherwise agreed, upon Provider's receipt of a Support Service request, Provider will evaluate the reported issue and assign and work to resolve the reported issues based on the following priority level definitions:

Priority 1: Critical Business Impact – Highest Priority

- (a) Priority 1 shall mean a nonconformance that renders the Software Product inoperable and causes a significant, time-dependent stoppage of Customer's business operations.
- (b) Priority 1 Errors must be reported via telephone.
- (c) Provider will use commercially reasonable efforts to acknowledge Priority 1 tickets within 1 hour of the initial contact via telephone and commence providing resolution or workaround.
- (d) Provider will use commercially reasonable efforts to comply with the following target time in 90% of Priority 1 instances: Provide resolution or workaround within four (4) hours from Customer reporting the Priority 1 issue.

Priority 2: Significant Business Impact – High Priority

- (a) Priority 2 shall mean a nonconformance that causes the Software to fail resulting in significant revenue or operational impact on Customer's business, although certain functions of Customer's business remain in operation.

- (b) Priority 2 Errors must be reported via telephone.
- (c) Provider will use commercially reasonable efforts to acknowledge Priority 2 tickets within 1 hour of the initial contact via telephone and to manage the ticket in Provider's high priority queue until a satisfactory workaround or resolution has been provided.
- (d) Provider will use commercially reasonable efforts to comply with the following target time in 90% of Priority 2 instances: Provide resolution or workaround within eight (8) hours from Customer reporting the Priority 2 issue.

Priority 3: Low Impact Failure – Medium Priority

- (a) Priority 3 shall mean a nonconformance which causes a feature of the Software to fail resulting in a non-critical situation which allows the Customer's business to remain in operation. A Priority 3 failure may include issues only impacting a limited number of users or issues where the business impact under a Priority 1 or Priority 2 is resolved, but there is ongoing research needed to determine the root cause of the failure.
- (b) Provider will use commercially reasonable efforts to acknowledge Priority 3 tickets within 24 hours of the initial contact and to comply with the following target time in 80% of Priority 3 instances: Provide resolution for the issue within 30 days or as otherwise agreed upon by the Customer.

Priority 4: Assistance – Low Priority

- (a) Priority 4 shall mean tickets opened when Customer has general software questions or needs that do not impact day-to-day functionality.
- (b) Provider shall use commercially reasonable efforts to acknowledge Priority 4 tickets within 48 hours of the initial contact and to either provide an answer within 45 days or provide resolution in the next Software Release of the Software if appropriate.

16.2 ADDITIONAL SUPPORT TERMS – CUSTOMERS WITH NO CLOUD SERVICES.

- a. In the event Provider intends to withdraw Support Services for a Provider Software Product licensed by Customer, Provider will notify Customer at least twelve (12) months in advance.
- b. Provider will provide Support Services for the most current version of each Provider Software Product licensed by Customer under a Perpetual License and the immediately preceding version.
- c. Customer will:
 - (i) install and maintain any hardware and software necessary to permit Provider remote Internet access to Customer's system for the purpose of problem diagnosis, delivery corrections, and monitoring compliance;
 - (ii) maintain adequate and current back-up copies of software, Customer Data and configuration information as necessary to ensure that a failure of a Software Product will not have a materially negative impact on Customer's business operations;
 - (iii) provide to Provider such back-up copies of software, Customer Data and configuration information as requested by Provider to perform Support Services for Customer;

16.3 ADDITIONAL SUPPORT TERMS - CUSTOMERS WITH CLOUD SERVICES.

- a. In the event Provider intends to withdraw Support Services for a Provider Software Product licensed by Customer under a Subscription License, Provider will not withdraw support until expiration of, and will provide notice to Customer at least six months prior to, the expiration of Customer's current Subscription term; and
- b. During the Subscription term, provider will provide Support Services for the version of each Provider Software Product licensed by Customer under a Subscription License and provided to Customer via Provider's Cloud Services. Customer understands and agrees that it must maintain an applicable Support Services plan (and be current in the payment of applicable fees) in order to receive Support Services during any period under which Provider is providing Cloud Services.

17. CUSTOMER RESPONSIBILITIES GENERALLY.

- a. Customer shall:
 - (i) obtain adequate training for its personnel that interact with Provider's Support Services personnel and that assist in the implementation of Provider Software Products and upgrades to them;
 - (ii) appoint no more than two system administrators per shift, per site to server as the primary points of contact for Provider;
 - (iii) consult Provider Software Product Documentation and the Provider Support Services web site regarding the proper operation of Provider Software Products and for available fixes and workarounds before reporting any nonconformance;

(iv) allow Provider access to and use of Customer Data required for Provider to perform Support Services;

(v) employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to (i) securely administer the distribution and use of all Credentials and protect against any unauthorized access to or use of the Offerings, and (ii) control the content and use of Customer Data, including the uploading or other provision of Customer Data through the Offerings. Customer shall notify Provider of any unauthorized access or use of the Offerings upon becoming aware thereof; and

(vi) be solely responsible for: (A) the operation, maintenance, and management of, and all access to and use of, the Customer Systems; (B) all Customer Data, including its use, completeness, accuracy, quality, legality and reliability; (C) all information, instructions, and materials provided by or on behalf of Customer in connection with the Offerings; and (D) all access to and use of the Offerings directly or indirectly by or through the Customer Systems or Customer's Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

b. Customer represents, warrants, and covenants that Customer owns or otherwise has (and, prior to Provider's receipt of the Customer Data, will have) the necessary rights and consents in and relating to the Customer Data, so that Provider's receipt, possession, processing, and (if applicable) hosting of the Customer Data in accordance with the Agreement does not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or any privacy or other rights of any third party or violate any applicable laws.

18. SUPPORT SERVICES FEES AND COVERAGE FOR PERPETUAL LICENSES.

a. **Support Services Fees for Perpetual Licenses.** Support Services fees shall be due and payable annually in advance. Fees for the initial Support Term set forth in the Order are mandatory. Unless otherwise expressly agreed in the Order, after the initial Support Term (and at the end of each Renewal Term), Support Services will automatically renew for twelve-month period(s) (each, a "**Renewal Support Term**") beginning on the expiration of the initial Support Term or a preceding Renewal Support Term, unless Customer notifies Provider that it is canceling Support Services as provided in the following "Cancellation of Support Services" section. Payment of the fees for the Initial Support Term and each Renewal Support Term is required for Customer to receive Support Services during such period. Support Services fees for Renewal Support Terms are subject to an increase not to exceed the greater of: (i) five percent (5%) over the fees charged for the preceding twelve month period or (ii) the increase in the Consumer Price Index over the immediately preceding twelve month period plus 2%, unless a greater increase is required by an escalation of a Third-Party Software Product provider's rates, in which case Provider shall provide Customer reasonable advance notice of the amount of the proposed increase.

b. **Cancellation of Support Services for Perpetual Licenses.** Customer may cancel its enrollment in a Provider Support Services plan by providing Provider written notice of such cancellation 90 days prior to the beginning of a Renewal Support Term. Cancellation of Support Services will not relieve Customer of its payment obligations for the Initial Support Term or for the current or any previous Renewal Support Term, nor will it obligate Provider to provide Customer a refund or credit for any unused Support Services during such previous periods. Customer may re-enroll in a Provider Support Services plan at any time by paying a reinstatement fee equal to the total Support Services fees that would have been paid to Provider had Customer not terminated Support Services or the then-current license fee for the applicable Product, whichever is less. Termination of Support Services for a perpetual license will not terminate Customer's rights to use a Provider Software Product, which shall be determined by the license grant.

19. ADDITIONAL FEES AND CHARGES.

a. **After Hours Support and Out-of-Scope Support Services.** Provider shall not be required to provide *After Hours Support* (unless Customer has acquired 24x7 Support Services under an Order or the parties expressly agreed otherwise in an Order), or to perform Out-of-Scope Support Services, but Provider may in its discretion agree to do so upon request from Customer. Where Customer has not acquired 24x7 Support Services, fees for After Hours Support and Out-of-Scope Services are separately chargeable, on a time and expenses basis, at Provider's then-current hourly rates and will be charged to Customer within thirty (30) days after such Services are performed or the charges are incurred. Provider shall have no obligation to provide Support Services or Out-of-Scope Support Services at Customer's site, but if Provider agrees to do so at Customer's request Customer shall reimburse Provider for any travel expenses incurred in accordance with Provider's then-current travel expenses policy, which will be made available by Provider upon request. "*After Hours Support*" means Support Services performed outside of the agreed upon hours specified in an Order (or if none stated, specified on Provider's website), at Customer's request.

b. **Support for Third-Party Software Products and Hardware Products.** Support Services for Third-Party Software Products and Hardware Products may be available from Provider or Provider's third-party supplier, or a combination of the two (i.e., with Provider providing "first level" Support Services and the supplier providing "second level" Support Services). When Provider's third-party supplier is involved that supplier may require a separate agreement between Customer and the supplier and separate charges may apply.

c. **Out-of-Scope Services.** "*Out-of-Scope Services*" includes: (i) Support Services for, or arising or made more time consuming as a result of customer modifications to a Provider Software Product; (ii) Support Services arising as a result of the use of a Provider Software Product outside its intended operating environment or in a manner not contemplated by its Documentation; (iii) training and consultation for issues clearly covered by Documentation; (iv) training covered by Provider training classes; (v) additional time

required to provide Support Services as a result of Customer's use of unqualified personnel as Provider's point of contact; (vi) Support Services required to be performed on Customer's premises; (vii) Support Services arising as a result of Customer's failure to promptly install new releases or versions of Provider Software Product that Provider makes available; (viii) assistance with installing new releases or versions of a Provider Software Product; (ix) consulting covered by other Provider Services offerings, such as assistance with implementation, modification, or training; and (x) providing any Support Services to Customer's customers. Out-of-Scope Services will be billed in hour increments with a minimum charge of one hour.

If Provider is not providing Cloud Services to Customer, then Out-of-Scope Services also includes: (A) Support Services for, or arising or made more time consuming as a result of problems with operating systems, data bases, hardware, third-party software or other environmental problems not caused by a Provider Software Product; (B) assistance with routine operating procedures, for example running backups;

d. Custom Modifications.

(i) **Support for Custom Modifications.** If Provider has created custom modifications to a Provider Software Product for Customer ("**Custom Modifications**") then Customer shall be entitled to Support Services for the Custom Modifications if Customer is paying Support Services fees for them.

(ii) **Migration of Custom Modifications to New Releases.** If Customer desires to have Custom Modifications migrated to a new release or version of a Provider Software Product, Provider may accept this work as a Professional Service if Provider determines the work is feasible and/or required. Provider will provide Customer a quote for such work and if Customer desires the work to be performed, Customer and Provider must sign an Order describing the Professional Services to be performed and incorporating the Professional Services terms. Payment of Support Services fees does not entitle Customer to have Custom Modifications migrated to new releases and versions of Provider Software Products.

20. SUPPORT SERVICES WARRANTY AND REMEDY. Provider warrants that its Support Services personnel shall use a reasonable level of care and skill in performing Support Services. This warranty applies for a period of thirty days after Provider completes the performance of Support Services with respect to a nonconformance reported by Customer. If Provider does not perform Support Services in accordance with this warranty and Customer notifies Provider in writing within the thirty day warranty period, Provider shall promptly re-perform the Support Services in accordance with the warranty without additional charge to Customer. If Provider is unable re-perform the Support Services consistent with the foregoing warranty, Provider shall refund a reasonable, pro-rata share of the fees paid solely for the Support Services during the month in which such warranty is breached and cannot be re-performed in compliance thereof; Customer agrees that this is Customer's sole and exclusive remedy for breach of the warranty set forth in this Section. If Provider notifies Customer that it is unable to correct a material nonconformance in a Provider Software Product after exercising commercially reasonable efforts in an attempt to do so, and the nonconformance materially diminishes Customer's ability to obtain value from the Provider Software Product, upon written request from Customer Provider shall accept a return of the Provider Software Product and shall issue Customer a refund equal to: (a) the fees paid for any unused portion of the current term; and (b) a pro-rata amount of the Perpetual License fees, if applicable, paid for the Provider Software Product, based on a five (5)-year, straight line amortization schedule. This section states Provider's entire liability and Customer's sole remedy for a Support Services warranty claim.

PROFESSIONAL SERVICES TERMS

21. PROFESSIONAL SERVICES.

- a. **Professional Services.** Provider shall perform any Professional Services and provide any Deliverables specified in an Order signed by Provider and Customer. Professional Services specified in the Order will be performed either on a time and expenses basis at the hourly rates specified in the Order, or on a fixed fee basis (if so specified). If no hourly rates are specified in an Order, Provider's standard hourly rates as of the effective date of the Order shall apply. The Order, if time and expenses based, also may contain an estimate of the total fees required to perform the Professional Services. This estimate is based on Provider's experience with previous similar engagements and is not a guarantee. Customer will be billed for the actual hours worked, which may be greater or less than the hours estimated in the Order.
- b. **Changes to an Order for Professional Services.** Requests by Customer and recommendations by Provider for changes to an Order for Professional Services, or to a Detailed Project Plan or Business Process Review Document, shall become effective only from the date mutually agreed by the parties in writing via change request. Any such changes are subject to any Provider change management procedures that may be set forth in the Order.
- c. **Customer Materials Required to Perform Professional Services.** If Customer provides Provider with any of its own or any third-party materials or data for use by Provider in the performance of Professional Services, then Customer grants Provider a nonexclusive, royalty-free right and license (or sublicense) to use such materials solely to the extent necessary for Provider to perform its obligations.
- d. **Authorization to Accept Software License Terms.** In the course of providing services, Provider may be required to install copies of Third-Party Software Products or third-party software products not provided by Provider on the Customer Systems. As part of the installation process, Provider may be required to accept "shrink-wrap," "click-wrap" or similar license agreements accompanying such software ("**Shrink-Wrap Terms**") on behalf of Customer. Shrink-Wrap Terms may be in electronic format or contained with the software documentation. Customer acknowledges that it is Customer's responsibility to review Shrink-Wrap Terms at the time of installation and Customer authorizes Provider to accept Shrink-Wrap Terms on its behalf.

- e. **License for Deliverables and Restrictions.** Deliverables are licensed to Customer under the same license, and subject to the same restrictions, as Provider Software Products. The license and restrictions are set forth in Section 13 of the Agreement.
- f. **Scheduling.** In the event Customer schedules Professional Services to be performed by Provider at Customer's site and Customer cancels the Professional Services on less than five business days' advance notice to Provider, Customer will pay Provider for eight hours of time for each Provider consultant scheduled to be on Customer's site for each day they were scheduled to be on site up to a maximum of three days per consultant. All non-refundable airline tickets or other non-refundable travel arrangements made as a result of the scheduled Professional Services will be invoiced to the Customer if the Customer cancels or postpones a scheduled Professional Services trip. Customer may request Provider use refundable airline tickets only, and no airline ticket charges will be incurred by the Customer for cancellation or postponement of a Professional Services trip.
- g. **Reimbursement of Travel and Living Expenses.** Customer is responsible for the reasonable travel and living expenses of Provider personnel traveling to Customer's site to perform Professional Services. Provider personnel will comply with Provider's travel and expense reimbursement policies when traveling to Customer's site, a copy of which is available from Provider upon request. If a project requires a Provider consultant to work at Customer's site for longer than a week, the consultant shall have the option of returning home on weekends at Customer's expense. Provider's travel and expense reimbursement policy is subject to change at any time upon reasonable prior notice to Customer. Provider will give Customer at least thirty (30) days' advance notice of any changes that would result in higher payments by Customer
- h. **Customer Responsibilities and Dependencies.** Customer shall comply with the general obligations specified in the Agreement and any specific Customer obligations described in the Order. Customer acknowledges that Provider's ability to deliver Professional Services in accordance with its warranty obligations is dependent upon Customer's full and timely cooperation with Provider, and the accuracy and completeness of any information and data Customer provides. Additionally, the parties acknowledge that successful completion of the Professional Services will require their full and mutual good faith cooperation. When agreement, approval, acceptance, consent or similar action by either party is required by the Agreement or otherwise reasonably requested by a party, such action will not be unreasonably delayed or withheld by the other party. Customer agrees that to the extent its failure to meet its responsibilities results in a failure or delay or cost incurred by Provider in performing its obligations under the Agreement, Provider shall not be liable for such failure or delay. Customer shall bear the resulting costs and a reasonable extension shall apply to agreed time schedules. Customer shall provide Provider personnel, as reasonably necessary, with (i) use of and access to Customer's systems, facilities, working space, office services, and other resources; (ii) access to and support of qualified Customer personnel; and (iii) accurate, reliable and timely Customer information (in particular, information on existing installations, equipment, programs and program parts, that are intended to interact with the Offerings), data (including test data), and documentation. and; (iv) appoint a person duly authorized to make decisions for Customer concerning the Offerings.
- i. **Hiring of Provider Employees.** Each party agrees to not to solicit, or make offers of employment to, or enter into consultant relationships with, the other party's employees or subcontractors involved, directly or indirectly, in the performance of the Agreement during the term of the Agreement and within a one-year period after its termination. Neither party shall be prevented from hiring any such employee or consultant who responds to a general hiring program conducted in the ordinary course of business and not specifically directed at the other party's employees or consultants.
- j. **Similar Services.** Nothing in the Agreement shall prohibit Provider from providing Professional Services or Deliverables similar to those provided under the Agreement to other Provider customers.

22. PROFESSIONAL SERVICES AND DELIVERABLES WARRANTIES AND REMEDIES.

- a. **Professional Services Warranty.** Provider warrants the Professional Services will be provided by trained personnel with the requisite skill and knowledge to perform the Professional Services in a professional and workman like manner using good industry practice.
- b. **Deliverables Warranty.** For any Deliverables consisting of a modification to or the configuration of a Provider Software Product ("Software Deliverable"), Provider warrants for a period of thirty days from the date the Software Deliverable is moved into production that the Software Deliverable shall substantially conform to relevant acceptance criteria for the Software Deliverable specified in the Order, provided that if no acceptance criteria are specified in the Order, Provider warrants for a period of thirty days from the date the Software Deliverable is moved into production that the Software Deliverable shall substantially conform to the description of the Software Deliverable set forth in the applicable Order.

For all other types of Deliverables, Provider warrants for a period of thirty days from the date of delivery that the Deliverable shall substantially conform to relevant acceptance criteria for the Deliverable specified in the Order, provided that if no acceptance criteria are specified in the Order, Provider warrants for a period of thirty days from the date of delivery that the Deliverable shall substantially conform to the description of the Deliverable set forth in the applicable Order.

- c. **Exclusive Remedies.** If Professional Services or Deliverables are not provided in accordance with the terms of the Provider warranty and Customer notifies Provider in writing within the applicable warranty period, Provider shall attempt to correct any nonconformance confirmed by Provider within a reasonable period of time by re-performing the Service or correcting the Deliverable without additional charge to Customer. Customer shall provide Provider with sufficient information to permit Provider to confirm the nonconformance and shall provide assistance and cooperation as reasonably requested by Provider to permit Provider to make required corrections. If Provider is unable to comply with the foregoing obligations, Provider shall refund a

reasonable portion of the fees paid by Customer for the Professional Services or the Deliverable to compensate Customer for the deficiency in the Professional Services or Deliverable and Customer shall promptly return the Deliverable to Provider. This section states Provider's entire liability and Customer's sole remedy for warranty claims relating to Professional Services and Deliverables.

- d. **Warranty Exclusions.** Provider shall not be responsible for a breach of warranty that would not have occurred but for (i) changes to a Deliverable that were implemented by someone other than Provider personnel or Provider's subcontractors working at Provider's direction; (ii) changes to or errors in software or hardware with which the Deliverable operates or interfaces, or on which the Deliverable or Professional Services otherwise rely (excluding Provider Software Products); or (iii) improper use of a Deliverable.

HARDWARE TERMS

23. TITLE AND RESPONSIBILITIES BEFORE FULL PAYMENT. Provider transfers title to Hardware Products to Customer upon receipt of Customer's full payment for it and Customer grants Provider any security interest required to enforce ownership or any similar rights in an insolvency situation (e.g. purchase money security interest in each Hardware Product and all related goods and proceeds) whenever acquired, until such time as Provider receives full payment. Customer will comply with all requirements relating to the security interest and authorizes and directs Provider to file, without signature of Customer where permitted by law, one or more financing statements (and amendments thereto and continuations thereof) relative to the security interest granted herein. At Provider's request, Customer shall execute and deliver to Provider additional documentation that Provider deems necessary or desirable to perfect Provider's security interest. A photographic or electronic reproduction of the Order and these Hardware Terms shall be sufficient as a financing statement where permitted by law. Until Provider has received full payment for each Hardware Product, Customer shall: (i) maintain adequate replacement value insurance on it from the time it is delivered to Customer's location; (ii) not assign, transfer, dispose of or alter it; and (iii) keep it free of encumbrance of any kind. Noncompliance with these obligations is considered a material breach.

24. RISK OF LOSS; SALE AND DELIVERY. Provider bears the risk of loss or damage to Hardware Products until delivery to the address specified in an Order. Provider will arrange for shipment of purchased Hardware Products on Customer's behalf. Quoted delivery dates are estimates only. Provider is not liable for shipping delays. Customer is responsible for providing a suitable physical environment for each Hardware Product.

25. INSTALLATION. Unless stated otherwise in an Order, Customer is responsible for installing Hardware Products.

26. LICENSED INTERNAL CODE. Certain Hardware products may contain internal software or firmware code ("**Internal Code**"). If a license for Internal Code does not accompany the Hardware Product, the following terms apply: The Hardware Product manufacturer owns Internal Code (including any update, replacement or copy of it). Customer is entitled to execute Internal Code on the specific Hardware Product that it accompanies. Customer shall not otherwise use, copy, display, adapt, modify or distribute any Internal Code, in whole or in part, electronically or otherwise. Customer also shall not reverse assemble, reverse compile or otherwise translate Internal Code. Customer may transfer possession of Internal Code to another party only in connection with a transfer of the associated Hardware Product. The transferee is entitled to use the Internal Code only if the transferee accepts these license terms. Customer shall not otherwise sublicense, assign or transfer Internal Code.

[Signatures on following page.]

Customer acknowledges that Customer has read, understands and agrees to be bound by the terms of the Agreement.

Effective Date: _____

Agreed to by:

Agreed to by:

Provider Entity: _____

Customer Name: _____

Jurisdiction of organization: Delaware

Jurisdiction of organization: _____

Authorized Signature: _____

Authorized Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Email: _____

Email: _____

Fax: _____

Fax: _____

[Signature page to Master Terms and Conditions for Provider Offerings.]