

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,  
IN AND FOR LEON COUNTY, FLORIDA**

FLORIDA DEPARTMENT OF LAW  
ENFORCEMENT; FLORIDA  
DEPARTMENT OF STATE,

Petitioners,

v.

Case No.: 2008-CA-003619

CMI, Inc., Et al.,

Respondents,

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**FLORIDA DEPARTMENT OF LAW ENFORCEMENT'S RESPONSE  
TO  
REQUEST TO PRODUCE**

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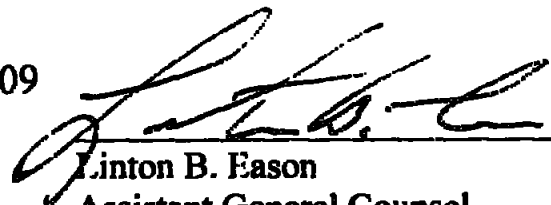
Petitioner Florida Department of Law Enforcement hereby responds to  
Respondents Kyle Woods, Charles Harvey, Sharon Hatchett, William King, Stephen  
Lambert and Robert McGuirk's Request to Produce as follows:

1. The "FL Terms of Use", accepted on August 27, 2004 by Josie Hagan from CMI,  
Inc. (This document is referenced on "CMI 0030" of CMI's Voluntary  
Disclosures dated April 17, 2009).

See attached: Statewide Vendor Registration-MyFloridaMarketPlace

Terms of Use

DATED this 29<sup>th</sup> day of April 2009

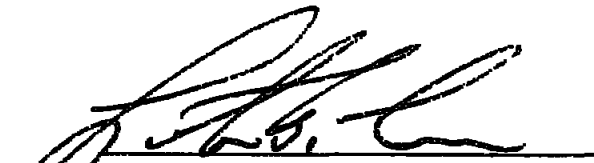


Linton B. Eason  
Assistant General Counsel  
Florida Department of Law Enforcement  
P.O. Box 1489  
Tallahassee, Florida 32302-1489  
(850) 617-1276; Fax: (850) 921-3787  
Fla. Bar # 44423  
Attorney for Department of Law Enforcement

James A. Peters  
Special Counsel  
Office of the Attorney General  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 414-3300; Fax: (850) 414-9650  
Attorney for Petitioners

### CERTIFICATE OF SERVICE

I, Linton B. Eason, do hereby certify a true and accurate copy of the foregoing was furnished to the following by United States Mail and electronically: Robert Harrison, 825 Tamiami Trail South, Suite 2, Venice, Florida 34285; Glenn Burhams, Greenburg, Traurig, P.A., 101 East College Avenue, Tallahassee, Florida 32302; James A. Peters, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; Stephen S. Mathues, Assistant General Counsel, Florida Department of State, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250 this 29 day of APRIL 2009.

  
Linton B. Eason



## Statewide Vendor Registration - MyFloridaMarketPlace

### Terms of Use

There are three separate agreements (i.e., user terms) set forth below. The first agreement is between the State of Florida and the Vendor. The second agreement is between Accenture LLP and the Vendor. The third agreement is between Ariba and the Vendor. For any issue involving MyFloridaMarketPlace, the first agreement shall take precedence in the event of any conflict among the three agreements.

When presented with the Terms of Use at vendor registration, you will be given an opportunity to click "I Accept", which means you agree to the terms set out herein. If you click "I decline", your information will be retained for update by you, the vendor; however, you will not be a registered Supplier on MyFloridaMarketPlace and, therefore, you will not be allowed to receive Purchase Orders through the Service.

- 1. ACCEPTANCE OF TERMS** Welcome to MyFloridaMarketPlace ("Service"), the statewide e-procurement system implemented by the State of Florida, through the Department of Management Services ("State"), with the assistance of a third-party agent ("Service Provider"). This service is provided to you, the Vendor, subject to the following Terms of Use ("TOU"). In addition, when using the Service, you shall be subject to any posted guidelines or rules applicable to such services. All such guidelines or rules are hereby incorporated by reference into this agreement.
- 2. DESCRIPTION OF SERVICE** MyFloridaMarketPlace provides State Vendors the ability to register with the State and conduct electronic commerce. Unless explicitly stated otherwise, any new features that augment or enhance the current Service shall be subject to the TOU. You are responsible for obtaining access to the Service through the MyFloridaMarketPlace Vendor Registration process. That access may involve third party fees such as Internet service provider or airtime charges. You are responsible for those fees. Registrants who do not have the equipment necessary for Internet access may contact Customer Support (1-866-FLA-EPRO) to obtain a list of available access locations.
- 3. TRANSACTION FEE** Pursuant to section 287.057(23), Florida Statutes (2002), the State hereby imposes a one percent (1.0%) Transaction Fee, effective July 1, 2003, to all transactions between you and the State or any other customer using the service, unless exempted by rules in Chapter 60A-1, F.A.C., provided however, that the fee does not apply to any contract in effect on the day you complete this Vendor Registration process: The fee shall be paid by the Vendor to the State, and shall not be added to any transaction as a separate item.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall report and pay the the Transaction Fee pursuant to procedures established by rules in Chapter 60A-1, F.A.C. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State.

Vendor shall receive a credit for any Transaction Fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the applicable purchase order or Contract.

**VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM BIDDING ON STATE CONTRACTS.**

4. **YOUR ACCOUNT** In consideration of your use of the Service, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the Service's registration form (such information being the "Registration Data") and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or the State has reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, the State has the right to suspend or terminate your account and refuse any and all current or future use of the Service, or any portion thereof. You will receive a password and account designation upon completing the Service's registration process. You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your password or account. You agree to (i) immediately notify Customer Support of any unauthorized use of your password or account or any other breach of security, and (ii) ensure that you exit from your account at the end of each session. You are entirely responsible for all content that you upload, post, email, transmit or otherwise make available to the State through the Service. The State and its third party agents involved, directly or indirectly, in the delivery and operation of the System, including the Service Provider ("Third Party Agents") shall not be liable for any loss or damage arising from your failure to comply with this section.
5. **ELECTRONIC INVOICING** You agree to supply electronic invoices in lieu of paper-based invoices for those transactions processed through the System. Electronic invoices shall be submitted to customers through the Ariba Supplier Network (ASN) in one of the following mechanisms - EDI 810, cXML, or web-based invoice entry within the ASN.
6. **CATALOG DATA** This section shall apply to any Vendor whose product catalog is authorized for sale to the State via term contract or other solicitation.

Service Provider is responsible for converting Contract catalog information into a format supported by the System. To accomplish this conversion, the Vendor shall provide certain information in electronic format directly to Service Provider; alternatively, the Vendor may follow the "punchout" solution described in more detail below.

Within ten (10) days of written notice from Service Provider, Vendor shall provide all information necessary to facilitate electronic purchases from this contract, or shall contact Service Provider and begin work on the "punchout" solution described below. Such information may include, but is not limited to, Vendor name, SKU, brand/manufacturer, product name and brief description, unit of measure, and price. Vendor shall provide this information in the format requested by Service Provider. No costs or expenses associated with providing this information shall be charged to the State or Service Provider. With Vendor's timely assistance, Service Provider shall create and maintain web-based placement of the requested contract information.

**"Punchout" Alternative**

The Vendor may offer, as an alternative to providing the information discussed above, an online "punchout" solution, in which the Customer accesses the Vendor's website directly from the System, rather than the System maintaining the Vendor's data. This solution must allow the Customer to reach the Vendor's site, browse for contracted items only, and return to the System with a list of items ready to be inserted into a requisition. If Vendor selects this alternative, it must meet the following requirements:

- o The solution must conform to cXML 1.0 or 1.1 standards.
- o The solution must conform to the technical specifications and implementation requirements provided by Service Provider, and the Vendor must work with Service Provider to ensure successful integration of the punchout solution into the System
- o The solution must have the capability to provide only those products awarded under the contract, and block any non-contract item(s) from being added to the

requisition.

**Warranty**

For the purposes of this section, the Vendor warrants and represents that it is authorized and empowered to and hereby grants the State and Service Provider the right and license to use, reproduce, transmit, distribute and publicly display within the System the information outlined above. In addition, the Vendor warrants and represents that it is authorized and empowered to and hereby grants the State and Service Provider the right and license to reproduce and display within the System the Vendor's trademarks, system marks, logos, trade dress or other branding designation that identifies the products made available by the Vendor under the Contract.

If the Vendor is not the manufacturer, it shall be the Vendor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this section, including securing any intellectual property rights of the manufacturer. If the Vendor is the manufacturer, it shall only authorize dealers, outlets, distributors, value-added resellers, etc. within their network that can comply with the provisions of the Contract.

7. **CUSTOMER SUPPORT** The State's Service Provider shall provide customer support to you sufficient for questions involving use of the Service and for inquiries relating to the operation and hosting of the Service during the hours of 8:00 AM Eastern Standard Time and 5:30 PM Eastern Standard Time. The following support services will be included: (i) a customer support telephone number (1-866-FLA-EPRO); (ii) a customer support email address (vendorhelp@myfloridamarketplace.com); and (iii) an online training feature to instruct you on conducting procurement through the Service (<http://www.myflorida.com>).
8. **THE FLORIDA PUBLIC RECORDS ACT** Any information provided to the Service is subject to the conditions set forth in the Florida Public Records Act, Section 119.07, Florida Statutes. The Florida Statutes may be accessed at: <http://www.flsenate.gov/>. Subject to the foregoing, neither the State, its Third-party Agents, nor the Vendor shall, without prior written permission, disclose to others confidential information exchanged among themselves pursuant to the TOU or rules related to the Service, except as reasonably required for the successful delivery and operation of the Service. For purposes of this paragraph, "confidential information" means any information that is either (1) exempted from disclosure under the Florida Public Records Act or (2) both (a) conspicuously marked as such by the provider and (b) considered a "trade secret" as defined in the Uniform Trade Secrets Act, Chapter 688, Florida Statutes.
9. **E-PROCUREMENT SERVICE PRIVACY POLICY** Registration Data and certain other information about you are subject to our Privacy Policy. For more information, see our full privacy policy at the bottom of every page.
10. **DISPUTES AND EXTENSIONS** Disputes shall be handled by submitting a written request via email (vendorhelp@myfloridamarketplace.com), or through the online system. Your request shall include the Invoice number, PO number, dollar amount billed, and any other information to support your dispute.
11. **MODIFICATIONS TO SERVICE** The State reserves the right at any time to modify the Service with or without notice. You agree that the State or its agents (including the Service Provider) shall not be liable to you or to any third party for any modification or suspension of the Service.
12. **TERM AND TERMINATION** Once you have accepted the TOU, an agreement has been created between you and the State for use of the Service. You are bound by the terms of these TOUs until such time as you terminate your agreement with the State by submitting a written request via email, fax or through our on-line system and receive confirmation from the State. You agree that the State, in its sole discretion, may terminate your password, account (or any part thereof) or use of the Service, and remove and discard any content within the Service, for any reason, including, without limitation, for lack of use or if the State believes that you have violated or acted inconsistently with the TOU. You agree that any termination of your access to the Service under any provision of this TOU may be effected with 10 days' written notice,

using the contact information currently available, and acknowledge and agree that the State may deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that the State or its agents shall not be liable to you or any third-party for any termination of your access to the Service.

13. **OUTAGE POLICY** The State's highest priority is to ensure that the Service is available. However, we may experience website outages where the Service cannot be accessed. The State will use reasonable efforts to make the Service available, except for downtime for scheduled and unscheduled maintenance, and will promptly investigate any technical problems that you report to us.
14. **INDEMNITY** You, the Vendor, at no additional cost to the State, agree to indemnify, defend, and hold the State, its officers, employees, and Third-party Agents involved, directly or indirectly, in the delivery and operation of the Service, harmless from any and all liabilities and expenses, including, without limitation, attorney's fees, expenses, costs, judgments, settlements, contract losses, or other costs arising out of or relating to (i) Vendor's misuse or modification of the MyFloridaMarketPlace Service or the State sites; (ii) the Vendor's distribution, marketing or use for the benefit of parties other than Vendor of the Service or the State sites; (iii) Product Information, direction, specification or materials provided by Vendor; (iv) Vendor's transactions with Buyers; and (v) Vendor's breach of any of its representations, warranties, promises or obligations under this agreement. The foregoing indemnity is conditioned upon prompt written notice by the State of any claim, action or demand for which indemnity is claimed.
15. **DISCLAIMER OF WARRANTIES** You expressly understand and agree that:
  - a. Your use of the Service is at your sole risk. The Service is provided on an "as is" and "as available" basis. The State expressly disclaims all warranties of any kind.
  - b. The State makes no warranty that (i) the Service will meet your requirements; or (ii) the Service will be uninterrupted, timely, or error-free.
  - c. Any material downloaded or otherwise obtained through the use of the Service is done at your own discretion and risk and you shall be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.
  - d. No advice or information, whether oral or written, obtained by you from the Service shall create any warranty.
16. **LIMITATION OF LIABILITY** You expressly understand and agree that the State, including its officers, employees, and Third-party Agents involved, directly or indirectly, in the delivery and operation of the Service, shall not be liable for any direct, indirect, incidental, special, consequential or punitive damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if the State has been advised of the possibility of such damages), resulting from: (i) the use or the inability to use the Service; (ii) unauthorized access to or alteration of your transmissions or data; (iii) statements or conduct of any third party on the Service; or (iv) any other matter relating to the Service.
17. **APPLICABLE LAW** The laws of the State of Florida, without regard to principles of conflict of laws, shall govern the TOU and any dispute between you and the State or its Third-party Agents that might arise under or relate to the TOU. Any such dispute involving the State shall be resolved pursuant to Chapter 120 of the Florida Statutes, which provide an administrative remedy that you are required to pursue before seeking any other type of relief. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to these Terms of Use or your use of the Services shall be the appropriate state court in Leon County, Florida.

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**Accenture Service Provider Vendor Registration; Quotation Services Agreement ("Agreement")**

This Agreement contains the terms and conditions under which we, Accenture LLP (the "Service Provider"), provide access to Vendor Registration and the Quotation Services (together, the "Services") through MyFloridaMarketPlace. The Services are provided to you ("Vendor"), subject to the following terms and conditions. By registering on or using the Services, you agree to be legally bound by this Agreement, as well as posted guidelines or rules applicable to such Services. If you do not agree to be bound by this Agreement, do not register with or use the Services. Service Provider reserves the right to amend this Agreement, with notice to you.

**1. Description of the Services.**

- a. **Vendor Registration** includes the registration form and process for MyFloridaMarketPlace, including the Vendor Implementation and enablement features associated with MyFloridaMarketPlace, as well as updates to your registration, along with Service Provider's registration and enablement services for Vendors.
- b. **Optional Quotation Services.** At your option, as indicated by you during the registration process, Service Provider will provide you with the "eQuote" services (the "Service Provider Quotation Services") that would allow the State to solicit electronic price quotations from you for the products and services that you choose to sell to the State ("Products") through the Service Provider Quotation Services. The State may, at its discretion, participate in the Service Provider Quotation Services, but the State neither endorses nor promotes the Service Provider Quotation Services, and registration for this additional service is at your discretion.

**2. Account Information and Integrity.** You agree to provide and make available, correct and update in a timely matter, all information and data as prompted or otherwise requested through the Services ("Information"). You are responsible for checking the Information provided to the Services, as well as verifying the accuracy of your Information and data that is featured on the Services.

**3. Involvement with Third Parties.** The Services may allow access to other websites, software, services or items provided or posted by third parties (together, "Items"). These Items are not under the control of Service Provider and Service Provider is not responsible for completeness, accuracy or authenticity of any such Items.

**4. Confidentiality of your Information.** Nothing in this Agreement transfers to Service Provider any ownership of any of your Information. Service Provider shall endeavor to treat your Information confidentially, according to our privacy policies.

**5. Title to the Services.** You acknowledge that Service Provider owns all right, title and interest in and to the entire contents of the Services (other than your Information), including the underlying methodology, software and copyrightable structure of the Services. As between you and Service Provider, Service Provider is the exclusive owner or licensee of any and all copyrights, trademarks, servicemarks and any other intellectual property right relating the Services (other than your Information). Service Provider grants you a non-exclusive, non-transferable license to access and use the Services in accordance with this Agreement. Service Provider also grants you a non-exclusive, non-transferable license to print and download content on the Services solely for your non-commercial use, provided that you maintain the copyright notice and any other notices that appear on any such copies.

**6. Warranties.**

- a. Each party warrants that (a) it is authorized, empowered, and able to enter into and fully perform its obligations under this Agreement; and (b) its performance of this Agreement, and the other party's exercise of such other party's rights under this Agreement, will not conflict with or result in a breach or violation of any of the terms or provisions or contribute a default under any agreement to which it is a party.
- b. You warrant that you have all intellectual property and other rights necessary to the Information that you provide to Service Provider and to otherwise use the Services. You further warrant that your Information and participation will not (a)

be false, inaccurate or misleading or fraudulent; (b) will not be libelous, obscene, defamatory, harassing or otherwise unlawful; (c) use any robot, spider, crawler, other automatic device or manual process to monitor or copy our web pages or their content without our written authorization; (d) reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms of any facet of the Service Provider Services; (e) link directly or indirectly or include descriptions of goods or services that are prohibited under this Agreement or you do not have a right to link to or include; or (f) list any product (or consummate any transaction that was initiated using our service) that, by paying the Transaction Fee could cause Service Provider to violate any applicable law, statute, ordinance or regulation. You are solely responsible for ensuring that your participation through the Services complies with all laws, statutes, ordinances, regulations by which you are bound.

- c. **Disclaimer of Warranties.** You use of the Services is at your own risk. THE SERVICES ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, SERVICE PROVIDER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, INFORMATIONAL CONTENT, INTERFERENCE WITH ENJOYMENT, AND FITNESS FOR A PARTICULAR PURPOSE. SERVICE PROVIDER ASSUMES NO RESPONSIBILITY FOR ERRORS OR OMISSIONS IN THE SERVICES. IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM INTERRUPTION OF USE, LOSS OR CORRUPTION OF DATA, OR LOST PROFITS, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SERVICES. IT IS SOLELY YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS AND USEFULNESS OF ALL INFORMATION, ORDERS, STATEMENTS, ADVICE, AND OTHER ITEMS PROVIDED THROUGH THE SERVICES. SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. No advice or information, whether oral or written, obtained by you from Service Provider shall create any warranty not expressly stated in this Agreement.

## **7. Indemnification.**

- a. **Indemnification by Service Provider.** Service Provider agrees to indemnify, defend, and hold Vendor harmless from any and all liabilities and expenses, including, without limitation, reasonable attorney's fees, expenses, costs, judgments, settlements, contract losses, or other costs arising out of or relating to claims that those facets of the Service Provider Services originally developed by Service Provider, not including software, materials or Services within or associated with the Service Provider Services or Service Provider Sites that is proprietary to, licensed by or performed by any third party ("Service Provider Developed Deliverables") infringes a United States patent in existence as of the date of the applicable delivery order, or a copyright or a trade secret of any third party. Service Provider will defend such claim at its expense and will pay any costs or damages that may finally be awarded against Vendor. Service Provider shall not indemnify Vendor, however, if the claim of infringement is caused by (a) Vendor's misuse or modification of the Service Provider Developed Deliverables; (b) Vendor's failure to use corrections or enhancements made available by Service Provider; (c) Vendor's distribution, marketing or use for the benefit of parties other than Vendor of the Service Provider Developed Deliverables; or (d) Information, direction, specification or materials provided by Vendor. If the Service Provider Developed Deliverables is, or in Service Provider's opinion is likely to be held to be infringing, Service Provider shall at its expenses and option either (i) procure the right for Vendor to continue using it; (ii) replace or modify it with a non-infringing equivalent that has no material adverse effect on the performance required by Vendor; or (iii) terminate this



Agreement. The foregoing remedies constitute Vendor's sole and exclusive remedies and Service Provider's entire liability with respect to intellectual property rights infringement. The foregoing indemnity is conditioned upon: prompt written notice by Vendor of any claim, action or demand for which indemnity is claimed; complete control of the defense and settlement thereof by Service Provider; and such reasonable cooperation by the Vendor in the defense as Service Provider may request.

- b. **Indemnification by Vendor.** Vendor, at no additional cost to Service Provider, agrees to indemnify, defend, and hold Service Provider, its members, directors, affiliates, predecessors, principals, agents, servants, employees, and its suppliers, vendors, business partners and contractors involved, directly or indirectly, in the delivery and operation of the Service Provider Services, harmless from any and all liabilities and expenses, including, without limitation, reasonable attorney's fees, expenses, costs, judgments, settlements, contract losses, or other costs arising out of or relating to (1) Vendor's misuse or modification of the Services; (2) the Vendor's distribution, marketing or use for the benefit of parties other than Vendor of the Services; (3) Information, direction, specification or materials provided by Vendor; (4) Vendor's transactions through the Services; and (5) Vendor's breach of any of its representations, warranties, promises or obligations under this Agreement. The foregoing indemnity is conditioned upon: prompt written notice by Service Provider of any claim, action or demand for which indemnity is claimed.

#### **8. Termination.**

- a. **Vendor.** You may terminate this Agreement at any time, for any reason, without prior notice to Service Provider. If you are dissatisfied with the Services for any reason, your sole and exclusive remedy is to discontinue using the Services.
- b. **Service Provider.** Service Provider may terminate this Agreement without prior notice: (a) immediately if you breach this Agreement, (b) if Service Provider is unable to verify or authenticate any information you provide to Service Provider, or (c) if your account has not been active for ninety (90) days, or (d) if you no longer qualify as an eligible vendor on the Services.
- c. **Effect of Termination.** Sections 4-7 and 9 shall survive any termination of this Agreement.

9. **Miscellaneous.** Any notice, report, approval or consent required or permitted hereunder shall be in writing. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. You may not assign or transfer this Agreement without the prior written consent of Service Provider. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California, excluding its conflict of laws provisions, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in San Francisco, and each party hereby consents to personal jurisdiction in such counties. This Agreement is the complete and exclusive statement, and an absolute integration of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement between the parties. You acknowledge that any breach by you of the provisions of the Agreement will cause irreparable damage to Service Provider and that a remedy at law will be inadequate. Therefore, in addition to any and all other legal or equitable remedies, Service Provider will be entitled to injunctive relief for any breach of this Agreement.

**Ariba Supplier Network Terms of Use****1. General.**

These Terms Of Use of the Ariba Supplier Network (the "Agreement") describe the terms and conditions applicable to your access of and use of the Ariba Supplier Network (the "Network"), which was formerly called the Ariba Commerce Services Network. Your access or use of the Network ("Network Use") is strictly subject to your compliance with this Agreement. By registering on and using the Network, you agree to be legally bound by this Agreement. If you do not agree to be bound by this Agreement, do not register with or use the Network. This Agreement may be modified at any time upon posting of the modified agreement and any such modifications shall be effective immediately (Ariba will notify you if we modify this Agreement).

**2. Membership Eligibility.**

The Network and related services are available only to registered members of the Network. No consumer shall act as a member on the Network. Ariba retains the exclusive right to declare whether a vendor is a registered member on the Network, or whether any vendor may use the Network, and to immediately restrict access of any vendor (including a registered vendor). Following your registration, other members of the Network may find you by accessing a searchable list of vendors on the Network. As to non-members of the Network, Ariba will treat the fact that you are a registered vendor on the Network confidentially, except that Ariba may include your name on the list of registered vendors (unless you ask Ariba to remove your name from this list).

**3. Confidentiality of Your Data.**

- a. "Data" means any and all data or other information you or your trading partners provide to Ariba during the registration, cataloging, displaying, ordering process, or through any e-mail or other communication sent by you or your trading partners to the Network. Nothing in this Agreement transfers to Ariba any ownership of any of your Data. Since you are the one to create and send such Data to the Network, you are solely responsible for the contents of your Data.
- b. Confidentiality. Ariba understands the sensitive nature of your Data. Ariba commits to treat your data confidentially, as described in our privacy policy. To read our privacy policy, click the link at the bottom of any page on the Ariba Supplier Network.

**4. Infringement Indemnity.**

- a. Subject to Section 4.b, 4.c, and 4.d, Ariba agrees, at its own expense, to defend You (or at Ariba's option, settle) from any claim or action instituted by a third party against You that the Network used in accordance with the Documentation infringe any United States patent, copyright, trade secret, or other proprietary right of a third party ("IP Claim"), provided that You: (a) promptly notify Ariba in writing of any such IP Claim; (b) permit Ariba to control and direct the investigation, preparation, defense and settlement of the IP Claim; and (c) assist and fully cooperate in the defense of same. Ariba agrees to pay any final award of damages assessed against you resulting from such IP Claim, including any awarded costs and attorneys' fees, or any settlement amount agreed to by Ariba in writing. Ariba will not be responsible for any settlement it does not approve in writing prior to such settlement.
- b. Following notice of an IP Claim or any facts which may give rise to such IP Claim, Ariba may, in its sole discretion and at its option, (a) procure for You the right to continue to use the Network, (b) replace the Network, (c) modify the Network to make them non-infringing, or (d) terminate your Network Use.
- c. In no event will Ariba have any obligations under this Section 4 or any liability for any claim or action if the IP Claim is caused by, or results from: (a) Your combination or use of the Network with non-Ariba software or services, products or data, if such IP Claim would have been avoided by the non-combined or independent use of the Network, (b) modification of the Network by anyone other than Ariba if such IP Claim would have been avoided by use of the unmodified Network, (c) Your continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement, (d) Your use of the Network in a manner not strictly in accordance with this Agreement, or (e) Ariba's modification of the Network in

compliance with Your specifications.. You will defend, or at its option settle, and indemnify Ariba for any claims referred to in this subsection in the same manner as provided above.

- d. **THE FOREGOING STATES ARIBA'S ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.**

**5. Involvement with Third Parties.**

- a. **Links to Third Party Sites.** The Network may allow access to other websites. These linked sites are not under the control of Ariba, and Ariba is not responsible for the contents of any linked site. Ariba provides links only as a convenience, and such inclusion of any link does not imply endorsement by Ariba of the site or any part of its contents.
- b. **Items of Third Parties.** You acknowledge that, except for Items clearly identified as being those of Ariba, Ariba does not operate, control or endorse any Items posted by others on the Network. Except for Ariba Items, all other Items offered on the Network are offered by third parties that are not affiliated with Ariba, and Ariba is not responsible for the completeness, accuracy, and/or authenticity of any such Items of a third party. "Items" means all products, services, or information posted on the Network.

**6. System Integrity, Data Integrity, Data Storage.**

- a. **System Integrity.** Concerning your Network Use, you agree not to knowingly: (i) use any device, software or technique to interfere with or attempt to interfere with the proper working of the Network; (ii) post or transmit to the Network any unlawful, fraudulent, harassing, libelous, or obscene Data (meaning any information, data, or other things submitted by you to the Network) of any kind; (iii) post or send to the Network anything that contains a virus, bug, cancelbolt, worm, Trojan Horse or other harmful item; (iv) publish, perform, distribute, prepare derivative works, copy, or reverse engineer the Network; (v) post or transmit into or on the Network any Data violation of another party's copyright or intellectual property rights; (vi) take any action which imposes an unreasonable or disproportionately large load on the Network; (vii) redeliver the Network using "framing", hyperlinks, or other technology without Ariba's express written permission; or, (viii) use any device or technology to provide repeated automated attempts to access password-protected portions of the Network for which you do not have a valid password issued to you by Ariba. You may not allow any third parties to use your password for any reason whatsoever, and you agree to take all appropriate steps to maintain its confidential nature. You also understand that Ariba cannot and does not guarantee or warrant that files or software of any kind, or from any source, available for downloading through the Network, will be free of infection or viruses, worms, Trojan Horses or other code or defects that manifest contaminating or destructive properties.
- b. **Data Integrity.** You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for accuracy of data input and output, and for maintaining a means external to the Network for the reconstruction of lost data.
- c. **Storage of Data.** You are solely responsible for saving all of your Data. While your Data will be stored for a limited period of time on the Network, you agree to not rely on the Network as an archival or back-up system (either for your own future access to Data or for government reporting or auditing of your Data). Ariba will post on the Network its policy describing the length of time (the "Retention Period") that Data will be available on the Network. At the conclusion of the Retention Period for each item of Data, such Data item will be purged and unavailable, without notice being sent to you. Therefore, you should take proactive measures to store your Data within your own computers, in order to preserve the accessibility of such Data beyond the Retention Period.

**7. Actions to Prevent Risk.**

In order to minimize the legal risk (if any) we may face applicable to your Network Use, Ariba reserves the right to take any reasonable action (subject to section 3) with respect to such Network Use we deem necessary or appropriate if we believe that there is a risk that it may create liability for Ariba. You represent and warrant that all

Data you send to the Network: (a) shall not infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) shall not violate any law, statute, ordinance or regulation; and, (c) shall not be defamatory, trade libelous, unlawfully threatening or unlawfully harassing or obscene.

8. **Title to the Network.** You acknowledge that the entire contents of the Network (other than your Data and others' data) are the intellectual property of Ariba and are copyrighted and protected by the United States and international copyright laws. You acknowledge that, as between Ariba and you, Ariba is the exclusive owner or licensee of any and all copyrights, trademarks, servicemarks, and any other intellectual property right relating to the Network (other than your Data and others' data). Ariba grants you a non-exclusive, non-transferable license to print and download content on the Network solely for your non-commercial use provided you maintain the copyright notice and any other notices that appear on any such copies. Any other copying, redistribution, publication or retransmission is strictly prohibited without the express written permission of Ariba. This section does not apply to your ownership of Data, and does not impose any use restrictions on you as to your use of your Data.
9. **DISCLAIMER OF WARRANTIES.** YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR NETWORK USE AND ANY SERVICES CONTAINED HEREIN. THE NETWORK AND ANY REFERENCED OR RELATED COMPANY, SERVICES OR PRODUCTS, ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ARIBA ASSUMES NO RESPONSIBILITY FOR ERRORS OR OMISSIONS IN THE NETWORK OR ANY OTHER WEBSITE THAT MAY BE LINKED TO VIA THE NETWORK. IN NO EVENT SHALL ARIBA BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM INTERRUPTION OF USE, LOSS OR CORRUPTION OF DATA, OR LOST PROFITS, WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, ARISING OUT OF OR IN CONNECTION WITH YOUR NETWORK USE. IT IS SOLELY YOUR RESPONSIBILITY TO EVALUATE THE ACCURACY, COMPLETENESS AND USEFULNESS OF ALL ORDERS, STATEMENTS, ADVICE, AND OTHER ITEMS PROVIDED THROUGH THE NETWORK. ARIBA DOES NOT WARRANT THAT THE NETWORK WILL BE UNINTERRUPTED OR ERROR FREE. To the extent your jurisdiction does not allow one or more of the foregoing disclaimers, even for a contract governed by California law, such disallowed disclaimer may not apply to you.
10. **Termination.**
- a. **By You.** You may terminate this Agreement (along with your Network Use) at any time, for any reason, without prior notice. If you are dissatisfied with the Network or with any term, condition, rule, policy, guideline or practice of Ariba in operating the Network, your sole and exclusive remedy is to discontinue using the Network.
  - b. **By Ariba.** Ariba may terminate your Registration without prior notice: (a) immediately if you breach this Agreement, (b) if Ariba is unable to verify or authenticate any information you provide to Ariba, or (c) if your account has not been active for ninety (90) days, or (d) if you no longer qualify as an eligible vendor on the Network.
  - c. **Effect of Termination.** Sections 3 (Confidentiality of Your Data), 4 (Infringement Indemnity), 5 (Involvement with Third Parties), 6 (System Integrity), 7 (Actions to Prevent Risk), 8 (Title to the Network), 9 (Disclaimer of Warranties), 10.c. (Effect of Termination), 13 (Indemnification), and 15 (Miscellaneous) shall survive any termination of this Agreement.
11. **General Compliance with Laws.** You and Ariba agree to comply with all applicable laws, statutes, ordinances and regulations regarding your Network Use and your purchase of products or services through the Network. You acknowledge that, subject to our Privacy Policy, Ariba has the right, but no obligation, to monitor the Network and take any reasonable actions necessary to operate the Network, or to protect Ariba, or to comply with legal

obligations or governmental requests (including a government requirement to disclose your Data). Ariba reserves the right to refuse to post or process any Data on the Network, in whole or in part, for any reason.

**12. Relationship of Parties.**

Each party shall be and act as an independent contractor of the other and shall not bind nor attempt to bind the other to any contract. No agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended nor created by this Agreement.

**13. Indemnification.**

You agree to defend, indemnify and hold harmless Ariba from and against any and all claims, losses, liabilities and damages of any kind (including reasonable attorneys' fees) incurred by Ariba as a result of your breach sections 6, 7, or 8 of this Agreement (except to the extent caused by Ariba's gross negligence or intentional misconduct).

**14. Government Use & Export Regulations.**

The software and documentation available on the Network are "commercial items," as that term is defined in 48 C.F.R. 2.101 (October 1995), consisting of "commercial computer software" and related documentation, as such terms are used in 48 C.F.R. 12.212 (September 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. government end users acquire the software and documentation with only those rights set forth herein.

- 15. Miscellaneous.** Any notice, report, approval or consent required or permitted hereunder shall be in writing and in the English language. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise. You may not assign or transfer this Agreement without the prior written consent of Ariba. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the federal US laws applicable therein, excluding its conflict of laws provisions, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in San Francisco, Santa Clara or San Mateo County, California (the "Selected Venue(s)"), and each party hereby consents to personal jurisdiction in such counties. Both you and Ariba hereby irrevocably and unconditionally undertake to take any and all steps which may be necessary in order to: (i) confer jurisdiction on the Selected Venue; and (ii) facilitate the enforcement, by a court where a party is domiciled, of any judgment given by a court in the Selected Venue. If suit is brought under this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees, court costs, and expert witness fees. This Agreement is the complete and exclusive statement, and an absolute integration of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. You acknowledge that any breach by you of the provisions of the Agreement will cause irreparable damage to Ariba and that a remedy at law will be inadequate. Therefore, in addition to any and all other legal or equitable remedies, Ariba will be entitled to injunctive relief for any breach of this Agreement. All article or section headings, or exhibit names, are for reference and convenience only and shall not be considered in the interpretation of the Agreement.

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