TERMS OF PURCHASE

This Terms of Purchase (the "TOP") is made and entered into by and between Ariba and Customer, as defined below.

This TOP sets forth terms and conditions under which Customer may use certain Ariba Products and purchase certain Ariba Services. Attached and subsequent Order Forms which reference this TOP shall be governed by this TOP.

1. DEFINITIONS

1.1 "**Ariba Products**" means any Software or Site, as identified in the applicable Order Form.

1.2 "**Ariba Services**" refers to any Consulting Services or Enablement Services.

1.3 "**Consulting Services**" means any consulting services provided to Customer hereunder, typically involving a scope of work, as may be identified in an applicable Order Form.

1.4 "**Documentation**" for Ariba Products means the authorized user and installation guides and manuals that are delivered or made available by Ariba to its customers for use with the Ariba Products (The Documentation for Ariba Products is accessible to the Customers at https://connect.ariba.com.), and as for the Enablement Services, the solution package descriptions made available on Ariba's documentation portal.

1.5 "**Enablement Services**" means a set of pre-defined services offered by Ariba in association with Site and purchased by Customer in an Order Form as part of an OnDemand Solution Package (e.g. services packaged with "Ariba Sourcing, Professional Package") as identified in the Documentation.

1.6 "**Fees**" means the fees stated in any Order Form.

1.7 "**Intellectual Property Right**" means any patent, patent application, copyright, moral right, trade name, trademark, service mark, trade secret, and any applications or right to apply for registration therefor, internet domain names, logos, designs, slogans, and general intangibles of like nature, computer software programs or applications, tangible or intangible proprietary information, know-how, proprietary processes, formulae, algorithms, or any other intellectual property right, whether registered or unregistered, and whether first created before or after the Order Form Effective Date.

1.8 "**License Term**" means the period of time under which the license for an applicable Ariba Product shall be effective, as set forth in the applicable Order Form and commencing upon the applicable Order Form Effective Date.

1.9 "**Technology Features**" means the most current version of remote-access electronic services in respect of the OnDemand Solution Package as identified in the related Documentation, as generally made available by Ariba at a website designated by Ariba.

1.10 **"Site"** means the set of web pages through which Ariba provides access to Techno... y Features.

1.11 **"Software"** means the Ariba software program(s) provided to Customer (via downloa.. or CDROM) in object code format as identified in an applicable Order Form and related Documentation.

1.12 **"OnDemand Solution Package"** means a combination of Site and Enablement Services.

1.13 **"Agreement"** means, for any Order Form referencing the TOP, collectively the Order Form, TOP, and applicable policies, i.e., the policies as referenced in Section 14 of the TOP and the Support Services Policies as referenced in Section 1.18 of this TOP.

1.14 **"Subscription Term"** means the period of time during which Customer may access the Site or otherwise receive the benefit of an OnDemand Solution Package, as set forth in the applicable Order Form and commencing upon the applicable Order Form Effective Date and any Renewal Term(s).

1.15 **"Customer Data"** has the meaning given to that term in section 15.1. 1.16 **"Order Form"** means a separate document by which Customer orders Ariba Products and/or Ariba Services, such as an order form or statement of work.

1.17 **"Order Form Effective Date"** means the date identified on an applicable Order Form upon which such Order Form becomes effective.

1.18 **"Technical Support Services"** or **"TSS"** means support for the Software ordered under a single Order Form provided by Ariba under Ariba's then current TSS terms and conditions for such Ariba Products (**"Support Services Policies"**). Such Support Services Policies can be found at the following uniform resource locator (URL): https://connect.ariba.com/TechSupport_Policy.asp. It is clarified that in case of perpetual license to Software, the fee for Technical Support Services is charged separately on a yearly basis and is in addition to the total license fee for the perpetual Software license, while in the case of a term license to Software, the fee for Technical Support Services for the entire license term is bundled in the total license fee.

1.19 **"Ariba"** shall mean, for purposes of this TOP and any billing thereunder, the Ariba entity identified in an applicable Order Form.

1.20 **"Usage Limit"** means the usage limit(s) applicable to Customer's use of the Ariba Products as specified in the applicable Order Form (e.g., number of Employees that are Users, as well as numbers of project owners, projects, geographic areas, transaction volumes, or otherwise).

1.21 **"Customer"** means the party identified in an applicable Order Form as receiving the applicable Ariba Products and/or Ariba Services.

1.22 **"Written Notice"** is a written notice in accordance with section 16.6 (Notices).

1.23 **"User"** means an Employee of Customer who is authorized to use the applicable Ariba Product in accordance with this Agreement, unless otherwise agreed to under the applicable Order Form.

1.24 **"Including"**, when used in this TOP, means including but not limited to.

1.25 **"Confidential Information"** has the meaning given to that term in section 10.1.

1.26 **"Marks"** has the meaning given to that term in section 15.1.

1.27 **"Employee"** means a full or part-time employee of Customer

2. USE OF ARIBA PRODUCTS

If Customer subscribes to an OnDemand Solution Package, section 2.1 of this TOP applies. If Customer purchases a license section 2.2 applies.

2.1 Site Use. For each OnDemand Solution Package that Customer purchases from Ariba, Ariba grants Customer a non-exclusive, non-transferable right to allow the Users to access the associated Site solely for support of Customer's internal business operations including for the exercise by the Customer of its procurement and sourcing processes, functions and activities during the Subscription Term and subject to the terms and conditions of the Agreement (including Usage Limits stated in the Order Form). User accounts cannot be shared or used by more than one individual User. All rights not expressly granted to Customer are reserved by Ariba.

2.1.1 Storage and Access to Customer Data. Ariba will provide up to five gigabytes of space to manage Customer Data within the Site. This will be ample space for most customers. If the amount of disk storage required for Customer Data exceeds these limits, Customer may be charged an additional storage fee. However, before charging Customer any additional storage fees, Ariba will advise Customer in writing of the additional storage fee which applies to usage in excess of the space limitation and give Customer an opportunity to delete files to bring Customer's usage back under the space limitation. Ariba reserves the right to establish or modify its policies, including those policies related to storage and retrieval of Customer Data. Customer may obtain Customer Data from the Site during, or at the termination or expiration of, a Subscription Term in accordance with Ariba's Data Policy (see section 14 to review the Data Policy). Ariba may apply updates and patches to the Technology Features at any time at the discretion of Ariba.

2.1.2 Authorized Administrator. Customer authorizes the person designated in the Order Form as the "Customer's Authorized Administrator" to receive official notices of updates and changes to the Site, manage the User access as authorized under the Order Form, and respond to other questions that may arise regarding Customer's usage of the Site. Customer shall notify Ariba of any change to the person assigned to this role.

2.1.3 Connection to Site. Customer shall be solely responsible for connection of Customer's computers to a telecommunications service that provides Internet access in a secure manner. Access to the Site shall be available after the parties have completed the deployment process for the applicable Site.

2.1.4 User IDs and Passwords. For the Site, Ariba will assign distinct user IDs and password to each User. Customer may assign only one (1) person for each User allocation. If Customer wishes to change the initial person assigned as a User, or to assign another person to an unused User allocation, Customer shall notify Ariba and

Ariba shall assign a new user ID and password to such person (and, if applicable, deactivate the user ID and password assigned to the person previously assigned to such User).

2.1.5 Subscription to an Enterprise level OnDemand Solution Package. If an Order Form specifies that Customer will receive an "Enterprise" level OnDemand Solution Package, configuration and use of one standard production-use instance is included; additional instances for test or development may be ordered for additional fees.

2.2 **Software License.** For each Software license that Customer purchases from Ariba, Ariba subject to the Order Form, grants Customer a non-sublicensable, nonexclusive, non-transferable right to allow the Users to use the applicable Software solely for support of Customer's internal business operations including for the exercise by the Customer of its procurement and sourcing processes, functions and activities during the License Term and subject to the terms and conditions of the Agreement (including Usage Limits stated in the Order Form). All rights not expressly granted to Customer are reserved by Ariba.

2.2.1 Except for a single back-up copy for disaster recovery purposes made by Customer from the initially delivered Software, Customer may possess only one (1) copy of any Software licensed and paid for by Customer under this TOP and applicable Order Form. The Customer may maintain a 'Production', 'Development' and 'Test' instance of the Software, as may be reasonably required to implement and use the licensed Software. Nothing in this TOP grants Customer any right, title, license or interest in or relating to the source code of the Ariba Products. Any third party software embedded, included or otherwise provided by Ariba for use with the Software may be only used with such Software. The Software is designed for use with the equipment and accessories specified in the Documentation. Customer is solely responsible for obtaining such equipment, and for ensuring a proper environment and proper utilities for the computer system with which the Ariba Products will be used. The rights to use the Ariba Products are also subject to the following: (i) Customer's payment of all applicable Fees; and (ii) No representative of Customer's affiliate and/or subsidiary may access the applicable Ariba Products unless authorized in writing by Ariba. However, Ariba may not terminate Customer's rights to use the Ariba Products for any breach of the foregoing, unless and until the process in section 6.1(a) has been followed in respect of the breach. The rights to use Ariba Products are also subject to section 2.3.

2.3 **General.** As between the parties, Ariba retains all right, title, and interest to all Intellectual Property Rights in all Ariba Products and Ariba Confidential Information, and any copies thereof. Customer shall comply with the terms and use restrictions stated in the Order Form. Customer agrees to maintain the copyright, trademark, logos, and other notices that appear on the Ariba Products on all associated media, screens, and copies thereof. Customer shall not, and shall not allow any third party and User to: (i) reverse engineer, decompile, translate, disassemble or attempt to discover any source code or or algorithms of any Ariba Products (except to the extent such restriction is prohibited by applicable local law in order to obtain interoperability), (ii) transfer, lease, lend and/or sell the license and/or right to use any Ariba Products, (iii) use provide, or allow others to use or provide, the Ariba Products for the benefit of any third party other than in accordance

with this TOP and the applicable Order Form, (iv) knowingly use Ariba Products, or knowingly allow the transfer, transmission, export, or re-export of any Ariba Products, or portion thereof, in violation of the Export Administration Regulations, the International Traffic in Arms Regulations, or any other applicable export control laws or regulations , (v) reset or disable the Ariba Site. No representative of Customer's affiliate and/or subsidiary may access the applicable Site unless authorized in the Order Form or in writing by Ariba.

2.4 **Hosted Products**. If Customer purchases Ariba hosting services for a Software license, or access to an Enterprise level OnDemand Solution Package, any customization of the hosted system beyond standard configuration and implementation steps ("Customizations") must be approved in advance in writing by both parties. Ariba is not responsible for the impact on Customizations resulting from application of updates and patches to the hosted system. Management of Customizations by Ariba during upgrade and update processes may be available for additional fees.

3. ARIBA SERVICES

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

3.2 Customer agrees to provide Ariba with full, free and timely access to Customer's computer equipment and software, as is reasonable under the circumstances, at all reasonable times for the purpose of fulfilling its obligations under this TOP.

3.3 If Customer purchases Consulting Services, Customer shall designate a project advisor who shall be principally responsible for Customer's obligations set forth above and the direction and management of Customer's employees in connection with the direction and provision of Consulting Services. Ariba will similarly designate a Project Advisor who shall be principally responsible for Ariba's provision of the Consulting Services.

3.4 Except as otherwise specified in an Order Form, anything resulting from, or arising in the course of, performance by Ariba of the Ariba Services shall be deemed "Work Product." Customer shall own all data and applications developed solely by it in connection with the Ariba Services. However, as between the parties, Ariba will own all rights, title, interest and intellectual property rights with respect to the Work Product and all derivatives, enhancements and modifications of Ariba's Products, all of which are hereby retained by it or assigned to it by Customer.

3.5 Ariba will, in performing the Ariba Services: (i) not knowingly act in breach of any applicable laws, statutory rules or statutory regulations (ii) act in a manner consistent with Customer's overall operational requirements to the extent agreed upon under an applicable Order Form, and (iii) co-operate with Customer's employees, agents, contractors, third party suppliers and service providers to the extent such co-operation is necessary for the performance of the Ariba Services.

4. FEES AND PAYMENT

4.1. Customer agrees to pay to Ariba the Fees in the amounts and at the times set forth in the applicable Order Form. Except as otherwise provided in this TOP or an Order Form, all Fees shall be nonrefundable. If Customer requires a purchase order to pay vendors, Customer will provide Ariba with approved purchase order information and complete and accurate billing and contact information upon execution of the Order Form. If a purchase order is required, Customer shall ensure that its purchase order be sufficient to cover all fees in the Order Form and all variable fees that become due under the Order Form. Terms of a purchase order will not modify this TOP or any Order Form, and the content of such purchase order shall not be binding upon either party except to reaffirm Customer's payment obligation under the applicable Order Form. Except as otherwise provided in the applicable Order Form, all Fees shall be due on the Order Form Effective Date and payable by Customer in Australian dollars (unless other currency is expressly stated in the Order Form) net thirty (30) days from the date of invoice. Customer agrees to pay all fees and expenses payable hereunder from Customer's location specified in the applicable Order Form. Customer shall pay all fees and expenses via electronic funds transfer to Ariba's designated account.

4.2. Ariba Services are invoiced and Customer agrees to pay in accordance with the terms set forth in the applicable Order Form. Except as otherwise provided in an applicable Order Form, or if Customer is allowed to e-Charge the Fees pursuant to section 4.1.1, all charges for Consulting Services will be invoiced monthly as accrued and shall be due thirty (30) days from the date of invoice. Where agreed to under an applicable Order Form, Customer agrees to reimburse Ariba for out of pocket expenses.

4.3. All amounts payable under this TOP are exclusive of any Australian goods and services tax (GST) or Australian withholding tax payable in respect of the transactions entered into under this TOP. Customer shall compensate Ariba for any such GST payable by Ariba and shall pay any such Australian withholding tax. Ariba will be responsible for all other applicable taxes, levies, imposts, duties, fees, assessments or other analogous charges, as well as any taxes based on Ariba's net income, net worth, capital, or employees. Ariba agrees to provide such tax invoices and other documentation that may be necessary or desirable for the purpose of Customer complying with its obligations to pay GST and withholding tax payable under Australian law. As required by applicable Australian law, Customer shall provide Ariba with original or certified copies of all receipts or other evidence of Australian GST or withholding tax payments made with respect to amounts payable under this TOP. Customer and Ariba shall cooperate in obtaining any reduced, concessionary or otherwise favorable tax rate or treatment available with respect to amounts payable under this TOP. If Ariba is able to obtain any reduced, concessionary or otherwise favorable tax rate or treatment from US tax authorities in respect of amounts payable under this TOP by virtue of withholding tax having been paid to the Australian Taxation Office by Customer, Ariba shall credit Customer with an amount equal to the benefit received from the US authorities.

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

5. DELIVERY

5.1 Software. If Customer purchases a Software license, Customer may choose to have the Software delivered electronically or by common carrier, and shall so indicate on the applicable Order Form. All deliveries will be deemed to occur at Customer's Ship To address per the Order Form unless written notification is provided by Customer of a different download location. Unless otherwise specified in an applicable Order Form, all subsequent increases or modifications to Customer's order hereunder shall be deemed to be delivered under the same terms as the original license. In the event of physical delivery, title to the media only, and not to the Software or Documentation, shall pass on delivery. Customer's right to use each additional authorized copy of the Software, as permitted under this TOP, shall be deemed to arise at the location where the original was first installed.

5.2 OnDemand Solution Package. If Customer subscribes to an OnDemand Solution Package, the Site is a hosted internet based service which Customer may only access remotely via the Site. If applicable, Documentation for the Site will be provided electronically and Ariba shall not be obligated to deliver or ship to Customer any software or applications (unless the Order Form states otherwise).

6. TERMINATION

6.1 A party ("**Terminating Party**") may provide a Written Notice of default to the other party ("**Terminated Party**") to either: (i) terminate this TOP, in whole or in part, including any Order Form or Order Forms: (a) if the Terminated Party materially breaches this TOP, and the Terminated Party does not cure such material breach within thirty (30) calendar days after receipt of Written Notice of such breach; or (b) immediately following the failure to resolve the suspension of business, insolvency, administration, receivership, institution of bankruptcy, liquidation proceedings by or against the Terminated Party, appointment of a trustee or receiver for the Terminated Party's property or business, or any assignment, reorganization or arrangement by the Terminated Party for the benefit of its creditors; or (c) immediately upon breach by the Terminated Party of section 2.3(i) to 2.3(v), or section 10 (Confidentiality); or (ii) terminate any individual Order Form if the Terminated Party fails to perform any provision of such Order Form and does not cure the breach within thirty (30) calendar days after receipt of Written Notice thereof.

6.2 Upon expiration or termination of this TOP or termination of an applicable Order Form, all of Customer's licenses and access rights to use the Ariba Products, and all other rights, services and licenses granted by Ariba to Customer as set forth in this TOP, or within the terminated Order Form as the case may be, shall cease immediately

(except for those rights, licenses and obligations that are expressly stated to survive termination of this TOP, or as specified in an Order Form).

6.3 Pursuant to any such termination, within ten (10) days from the date of receipt of written request from Ariba, Customer shall provide Ariba with a signed written statement by Customer certifying that Customer has not retained any copies of: (i) the applicable Ariba Products and any accompanying Documentation, and (ii) any Ariba Confidential Information.

6.4   Unless otherwise agreed to in an Order Form, termination of this TOP or any license or access right shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all Fees payable by Customer to Ariba in accordance with this TOP or any Order Form, or Ariba's obligation to pay any amount properly due from Ariba to Customer, under and in accordance with this TOP or any Order Form.

6.5 For an OnDemand Solution Package, during any Renewal Term, Ariba can terminate the subscription without penalty if Ariba no longer generally offers that particular Ariba Product and if Ariba provides at least sixty (60) days advance Written Notice. If Ariba terminates the subscription in accordance with this section 6.5, Ariba shall provide a pro rata refund to Customer of any pre-paid and unused Fees for such Renewal Term.

7. INDEMNITIES

7.1 Subject to this section 7, Ariba agrees, at its own expense, to defend and indemnify Customer from and against (or at Ariba's option, settle) any action, claim, demand or proceedings instituted by a third party and asserted against Customer that the Ariba Products when used in accordance with the Documentation or Ariba Services infringes any patent, copyright, trade secret, moral right (being a moral right recognized by the Copyright Act, 1968 (Cth)), trademark or other proprietary right of a third party ("IP Claim").

7.1A   Customer agrees to: (a) promptly notify Ariba in writing of Customer's receipt 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, such assistance and co-operation to be at Ariba's cost. Customer further agrees that Ariba's obligation to indemnify Customer under section 7.1 will be reduced to the extent that Customer's failure to fulfill its obligations in section 7.1A(a), (b) and (c) above adversely affects Ariba's ability to defend or settle the IP Claim.

7.1B.   Without limiting the scope of the indemnity in section 7.1, Ariba agrees to pay any damages assessed and awarded against Customer resulting from an 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.

7.1.1 (i)   Without limiting the scope of the indemnity in section 7.1, following notice of an IP Claim or any facts which may give rise to such IP Claim, Ariba may, in its sole discretion and at its option:

(a) procure for Customer the right to continue to use the Ariba Products, or

(b) replace the Ariba Products with products that are non-infringing and functionally similar to the infringing Ariba Products (subject to clause 7.1.1(iii)); or

(c) modify the Ariba Products to make it non-infringing (including through the provision of an non-infringing updated version of Ariba Software), provided that the modified non-infringing product must be functionally similar (subject to clause 7.1.1(iii)).

7.1.1 (ii)   Without limiting the scope of the indemnity in section 7.1, if:

(A) after using reasonable endeavours, Ariba determines (acting reasonably) that it is not commercially reasonable to perform any one of the alternatives, specified in section 7.1.1(i); or

(B) where Ariba has not offered Customer any of the alternatives specified in section 7.1.1(i) and as a result of an IP Claim, Customer is prevented by law from using the Ariba Products;

(C) Ariba is required to terminate the licence as a result of section 7.1.1(iv)(V)(ii); or

(D) Ariba, without offering Customer any of the alternatives specified in clause 7.1.1(i), advises Customer to cease use of the infringing Ariba Product,,

then Ariba must terminate the license for the infringing Ariba Products. In the case of any such termination Ariba shall pay Customer a pro rata refund of any pre-paid and unused Fees paid by Customer for such infringing Ariba Products (in the case of a perpetual Software license, the amount will be the Fees paid for the license less depreciation for use assuming straight line depreciation over five (5) years) and for clarification, Customer will have no obligation to pay any further or future Fees to Ariba applicable to the period after the date of termination in respect of any infringing Ariba Product. In addition to the pro – rata refund of any pre-paid and unused Fees paid by Customer for such infringing Ariba Products, Customer may also claim against Ariba Customer's direct, provable damages or losses arising from Customer's inability to use the infringing Ariba Product, up to a maximum of one and a half times the Fees paid by the Customer for the infringing Ariba Product. Customer will use reasonable efforts to mitigate its losses.

7.1.1 (iii)   If Ariba acts in accordance with section 7.1.1(i)(b) or 7.1.1(i)(c) above and Customer, acting reasonably, does not consider that the modified or replacement Ariba Products are functionally similar, then Customer will notify Ariba in writing (**"Notification"**) and the matter will be dealt with as a dispute (**"Dispute"**) under section 7.1.1(iv).

7.1.1 (iv) In relation to the Dispute:

(I) If the parties cannot resolve the Dispute within 14 days after the Notification is given, either party may refer the Dispute to expert determination.

(II) Once the Dispute is referred to expert determination, the expert will be a person nominated, at the request of the parties, by the Australian Information Industry Association.

(III) Each expert determination conducted under this section 7.1.1(iv) will be conducted in accordance with the relevant rules and procedures of the Australian Commercial Disputes Centre. The parties agree that a determination made by an expert will be binding on both parties.

(IV) Each party must continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

(V) In the event that the expert:

(i) determines the Dispute in Ariba's favour, the Customer will bear the costs of expert determination under this section 7.1.1(iv), and the Customer must accept the modified or replacement product; or

(ii) determines the Dispute in Customer's favour, Ariba will bear the costs of expert determination under this section 7.1.1(iv), and terminate the license for the infringing Ariba Products in accordance with section 7.1.1(ii)(C).

(VI) A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of the Dispute unless it has complied with this section 7.1.1 (iv).

7.1.2 In no event will Ariba have any obligations under this section 7 or any liability for any claim or action to the extent that the IP Claim is caused by, or results from:

(a) Customer's combination or use of the Ariba Products with non-Ariba software or services, software or data, if such IP Claim would have been avoided by the non-combined or independent use of the Ariba Products,

(b) modification of the Ariba Products by Customer or Customer's contractors or agents if such IP Claim would have been avoided but for the modification,

(c) Customer continuing to use infringing Ariba Products after provision by Ariba to Customer of an acceptable alternative in accordance with section 7.1.1(i); and

(d) Customer's use of the Ariba Product in breach of this TOP or Order Form,

(e) Ariba's modification of the Ariba Product in compliance with Customer's specifications.

7.1.3   THE FOREGOING STATES ARIBA'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR AN IP CLAIM OR ALLEGATIONS THEREOF.

7.2 Customer shall defend and indemnify Ariba against any action, claim, demand or proceedings instituted by a third party and asserted against Ariba that Customer Data or the Marks, or any use thereof authorized under the Order Form, infringes rights of a third party ("Claim"). Ariba agrees to: (a) promptly notify Customer in writing of any such Claim; (b) permit Customer to control and direct the investigation, preparation, defense and settlement of the Claim; and (c) assist and fully cooperate in the defense of same, such assistance and co-operation to be at Customer's cost. Customer agrees to pay any damages assessed against Ariba resulting from such Claim, including any awarded costs and attorneys' fees, or any settlement amount agreed to by Customer in writing. Customer will not be responsible for any settlement Customer does not approve in writing prior to such settlement. Ariba further agrees that: (I) Customer's obligation to indemnify Ariba under section 7.2 will be reduced to the extent that Ariba's failure to fulfill its obligations in section 7.2(a), (b) and (c) above adversely affects Customer's ability to defend or settle the Claim; and (II) in no event will Customer have any obligations under this section 7.2 or any liability for any claim or action to the extent that the Claim is caused by, or results from any act or omission of Ariba or its contractors or agents. THE FOREGOING STATES CUSTOMER'S ENTIRE LIABILITY AND ARIBA'S SOLE AND EXCLUSIVE REMEDY FOR A CLAIM REFERRED TO IN THIS SECTION 7.2 OR ALLEGATIONS THEREOF.

8. LIMITED WARRANTIES AND DISCLAIMERS

8.1   Ariba Software Limited Warranty. Ariba warrants that for a period of one (1) year from the Order Form Effective Date for each Order Form, the Software licensed under the applicable Order Form will substantially conform to the Documentation for the applicable Software that existed on the Order Form Effective Date for such Order Form. This limited warranty only covers problems identified in a Written Notice delivered to Ariba during the warranty period. Customer's sole and exclusive remedy, and Ariba's entire liability for breach of this limited warranty, shall be correction of the warranted

nonconformity in the Software or, if after using reasonable endeavours such correction of the warranted nonconformity is commercially impractical, Ariba will promptly notify Customer and will terminate the license with respect to the non-conforming Software and in such circumstances Ariba will refund the license Fees (as identified in an applicable Order Form) paid by Customer for use of such non-conforming Software. This limited warranty shall not be valid to the extent the warranty nonconformity was caused by Customer's abuse, misuse, accident, alteration, or unauthorized modification or installation of the Software.

8.2　　　Site Limited Warranty.　Ariba warrants that, during the applicable Subscription Term, the Site will substantially conform to the then current Documentation for the applicable Site. This limited warranty only covers problems identified in a Written Notice delivered to Ariba during the warranty period. Customer's sole and exclusive remedy, and Ariba's entire liability for breach of this limited warranty, shall be correction of the warranted nonconformity in the Site or, if after using reasonable endeavours such correction of the warranted nonconformity is commercially impractical, Ariba will promptly notify Customer and will terminate access to the non-conforming Site and in such circumstances Ariba will refund the subscription Fees for such Site (as identified in an applicable Order Form) paid by Customer for the remainder of the Subscription Term. This limited warranty shall not be valid to the extent the warranty nonconformity was caused by Customer's abuse, misuse, accident, alteration, or unauthorized modification or installation of the Site.

8.3 Ariba Services Limited Warranty.　Ariba warrants that any Ariba Services will be performed in a workmanlike and professional manner consistent with generally accepted industry practices. For any breach of this services warranty, Customer's exclusive remedy, and Ariba's entire liability shall be the re-performance such deficient Ariba Services; and if Ariba fails to re-perform such Ariba Services as warranted, Customer shall be entitled to recover the Ariba Services Fees paid to Ariba for such deficient Ariba Services. Customer must identify in a Written Notice to Ariba any deficiencies in such Ariba Services within ninety (90) days of completion of such deficient Ariba Services in order to receive the above warranty remedies.

8.4　　　TO THE EXTENT PERMITTED BY LAW AND SUBJECT TO SECTION 8.5, CUSTOMER AGREES THAT EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION 8, THE ARIBA PRODUCTS AND ARIBA SERVICES ARE PROVIDED "AS IS", WITHOUT ANY WARRANTY WHATSOEVER. ARIBA HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY WARRANTIES, AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE FOREGOING STATES ARIBA'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY. ARIBA DOES NOT WARRANT THAT THE ARIBA PRODUCTS OR ARIBA SERVICES, OR ANY PORTION THEREOF, ARE ERROR OR BUG FREE, OR THAT CUSTOMER'S USE OF THE ARIBA PRODUCTS OR ARIBA SERVICES WILL BE UNINTERRUPTED. CUSTOMER ACKNOWLEDGES THAT ARIBA DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES,

INCLUDING THE INTERNET, AND THAT THE SITE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ARIBA IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

8.5 Notwithstanding Section 8.4, if goods or services are provided by Ariba under an Order Form for a price or value of less than $40,000 in total under that Order Form and as a result legislation implies in this Agreement for the benefit of Customer any condition or warranty ("non-excludable term"), and that legislation avoids or prohibits provisions in a contract excluding, restricting or modifying the application of or exercise of or liability under such non-excludable term then the non-excludable term is deemed to be included in the Agreement. If Ariba is liable to the Customer for breach of a non-excludable term, then to the extent permitted by law, Customer agrees and acknowledges that the liability of Ariba is limited, at the option of Ariba, to one or more of the following:

> (A) if the breach relates to goods:
>
> > (i) the replacement of the goods or the supply of equivalent goods;
> >
> > (ii) the repair of such goods;
> >
> > (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
> >
> > (iv) the payment of the cost of having the goods repaired; and
>
> (B) if the breach relates to services:
>
> > (i) the supplying of the services again; or
> > (ii) the payment of the cost of having the services supplied again.

9. LIMITATION OF LIABILITY

9.1   IN NO EVENT SHALL EITHER PARTY BE LIABLE: (A) UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING DAMAGES RESULTING FROM INTERRUPTION OF USE, COST OF COVER, LOSS OR CORRUPTION OF DATA, LOST PROFITS OF A PARTY OR OF A PARTY'S AFFILIATE, LOSSES RESULTING FROM SYSTEM SHUTDOWN, FAILURE TO ACCURATELY TRANSFER, READ OR TRANSMIT INFORMATION, FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION, STOLEN OR MISUSED PASSWORDS, SYSTEM INCOMPATIBILITY OR PROVIDING INCORRECT COMPATIBILITY INFORMATION, OR BREACHES IN SYSTEM SECURITY, WHETHER OR NOT CUSTOMER OR ARIBA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS; AND (B) FOR A TOTAL AND AGGREGATE LIABILITY AMOUNT UNDER THIS TOP IN EXCESS OF (I) IN THE CASE OF ARIBA, ONE AND A HALF TIMES THE AMOUNT OF FEES PAID BY CUSTOMER WITHIN ONE (1) YEAR PRIOR TO THE DATE OF SUCH CLAIM FOR THE APPLICABLE ORDER FORM GIVING RISE TO SUCH LIABILITY AND (II) IN CUSTOMER'S CASE, AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER (AND ANY ACCRUED BUT UNPAID FEES) WITHIN ONE (1) YEAR PRIOR TO THE DATE OF SUCH CLAIM FOR THE APPLICABLE ORDER FORM GIVING RISE TO SUCH LIABILITY.

9.2   The limitations set forth in sections 9.1 (A) and (B) shall not apply to limit liability in any way for: (i) death or personal injury (including sickness), (ii) destruction or damage to tangible property (as herein after defined) (iii) violations of the other party's Intellectual Property Rights or rights in respect of Confidential Information, (iv) the sole and exclusive remedies set forth under Section 7 of this Agreement; or (v) Customer's breach of Section 2 (Use of Ariba Products). For the purposes of this section 9.2, the term "tangible property" shall not include software, documentation, data or data files. .

10.   CONFIDENTIALITY

10.1   A party (the "**Discloser**") may disclose to the other party (the "**Recipient**") information that the Discloser considers to be confidential and at the time of disclosure is identified as confidential and/or proprietary ("**Confidential Information**"). Notwithstanding anything to the contrary herein, Confidential Information shall be deemed to include the Ariba Products in any embodiment, the terms and conditions of this TOP (including pricing), Customer's internal business information (including concerning its procurement function), and either party's technical and business information relating to inventions or software, research and development, future product specifications, implementation methodologies, engineering processes, costs, profit or margin information, and marketing and future business plans. The parties agree, unless

required by law, not to use or make each other's Confidential Information available to any third party for any purpose other than as set forth in the Agreement, without the prior written consent of the other party, provided that: Ariba may disclose Customer's Confidential Information to its third party providers solely to the extent necessary to provide products or services under the Agreement, provided that Ariba has a non-disclosure agreement in place with such third party provider that protects such Confidential Information against disclosure in a manner no less protective than the Agreement. Ariba shall remain liable for any unauthorized use or disclosure of Customer's Confidential Information by its third party providers as if the use or disclosure was by Ariba itself.

10.2 Recipient shall protect the Confidential Information of Discloser by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication by its employees or agents. Both parties acknowledge that any breach of its obligations with respect to Confidential Information may cause the other irreparable injury for which there are inadequate remedies at law and that Discloser shall be entitled to seek equitable relief in addition to all other remedies available to it. Customer shall not disclose the results of any performance tests of the Ariba Products to any third party without Ariba's prior written approval.

10.3 A party's Confidential Information shall not include information that: (i) is or becomes publicly available through no act or omission of Recipient; (ii) was in the Recipient's lawful possession prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Discloser; (iii) is lawfully disclosed to the Recipient by a third party without restriction on Recipient's disclosure, and where Recipient was not aware that the information was the confidential information of Discloser; (iv) is independently developed by the Recipient without violation of this TOP; or, (v) which is disclosed by Recipient as needed to comply with a court order, subpoena, or other government demand (provided that Recipient first notifies Discloser and gives Discloser the opportunity to challenge such court order, subpoena, or government demand). Notwithstanding anything to the contrary herein, Ariba may use all Customer Data: (a) in compliance with the Ariba Data Policy (available at the link referenced in section 14 of this TOP) applicable to such Ariba Product or Ariba Services; and, (b) as permitted under the terms of an Order Form. If Customer provides any feedback or makes recommendations for Ariba Products, Ariba is free to use such feedback or recommendations in any manner, and Customer waives any interest in any Ariba Product modifications related to such feedback or recommendations.

10.4 Notwithstanding anything to the contrary in this TOP, Ariba shall not be prohibited or enjoined at any time by Customer from utilizing any "skills or knowledge of a general nature" acquired during the course of performing the services specified under an Order Form, so long as such skills or knowledge of a general nature does not include Confidential Information of Customer. For the purposes of this TOP, "skills or knowledge of a general nature" shall include, without limitation, information publicly known or that could reasonably have been acquired in the conduct of similar work performed for another customer.

10.5 Customer acknowledges and agrees that data which identifies an individual provided to Ariba in the use of the Ariba Products may be transferred outside of the country by Ariba and/or Ariba affiliates to Ariba processing centers or other countries where Customer and its Users are located to facilitate purposes permitted by the Agreement. Customer shall take such steps as necessary to inform and receive consent for such processing as may be required under applicable data protection regulations. Ariba's obligations regarding data management, privacy and security shall be governed by the terms of the then-current Ariba Data Policy and Security Policy (available at the link referenced in section 14 of this TOP), Ariba reserves the right to modify its data and security policies in its reasonable discretion from time to time. In exercising its rights pursuant to this section, each party shall comply with all applicable privacy laws and regulations including the Privacy Act 1988 (Cth), the National Privacy Principles under that Act and the Privacy and Personal Information Protection Act 1998 (NSW).

11. TRADEMARKS

Neither party grants the other party any rights to use its trademarks, service marks, or other proprietary symbols or designations ("Trademarks") without the written consent of the other party, except as otherwise described herein. Neither party will combine the other's Trademarks so as to effectively create a unitary composite mark, nor shall it use any product name or trademark in a manner that is confusingly similar to the other party's Trademark.

12. AUDIT

If Customer licenses Software from Ariba, Customer agrees to allow a mutually acceptable independent certified public accountant, at no cost to Customer, to audit and analyze the Customer's compliance with the terms of this TOP and any Order Form regarding use of any Software. Customer shall permit any such audit within thirty (30) days of Ariba's written request and it shall be performed during normal business hours at times mutually agreed upon by Customer and Ariba. Audits shall be made no more frequently than twice every twelve (12) months, and shall not unreasonably interfere with Customer's business activities.

13. FORCE MAJEURE

Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by riot, fire, flood, earthquake, natural disaster, terrorist attack, electronic virus, electronic attack or infiltration, internet disturbance, government act or other similar cause beyond such party's (the "Affected Party") reasonable control (collectively, a "Force Majeure Event"), provided that the

Affected Party gives prompt Written Notice of such condition, uses reasonable efforts to resume its full performance as soon as possible, and provided further that the other party (the "Non-Affected Party") may terminate the affected Order Form if such condition continues for a period of one hundred twenty days (120) days. During the Force Majeure Event, the Non-Affected Party may similarly suspend its performance obligations, until such time as the Affected Party resumes its performance obligations.

14. MODIFICATION OF TERMS.

Neither party may without mutual written consent modify the terms of the TOP or the terms of the Order Form. As to the Site, Ariba reserves the right to modify its operating policies relating to the Site at any time, effective upon posting of an updated version of such policy. Customer is responsible for regularly reviewing the policies. The policies applicable to Customer's use of Ariba Products may be viewed at www.ariba.com/legal/ODTOC12142006.cfm. Ariba will provide written notification to Customer in case of any material changes to the Ariba policies.

15. CUSTOMER'S CONTENT & CUSTOMER LIST
15.1 Customer grants to Ariba (and applicable Third Party Providers) during any Subscription Term, the non-exclusive, worldwide right to use and display: (a) any data, information or other materials, provided to Ariba by Customer in the course of Ariba's provision of Ariba Products and/or Ariba Services ("Customer Data") solely to the extent necessary for Ariba to provide the products and services to Customer and subject to section 10 (Confidentiality), and (b) any trademarks that Customer provides to Ariba solely for the purpose of including them in Customer's user interface for the Site ("Marks"). Customer will comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with use of the Site, international communications, and the exportation of technical data. Customer shall have the sole responsibility for the accuracy, legality, and integrity of Customer Data and data transactions. . 15.2 Customer acknowledges that Ariba has the right, but no obligation, to monitor the Site and any Customer Data submitted to the Site, and to comply with legal obligations or governmental requests (including a government requirement to disclose Customer Data), and to take such actions (including removing content or denying routing of certain transactions) if Ariba reasonably believes that such actions are needed to prevent unlawful activity relating to the Site.

16. MISCELLANEOUS

16.1 Customer may assign its rights or novate its rights and obligations under this Agreement to any other state owned corporation or government agency as part of a formal implementation of change in the machinery of government without obtaining the consent of the Ariba provided that:

(a)   such assignment or novation is compulsorily required by legislative action taken by the incumbent Government of New South Wales;

(b)   sixty (60) days prior notice of the assignment or novation is given to Ariba;

(c)   the party taking the assignment or novation agrees in writing to be bound by the rights and obligations of the Customer under this Agreement or any Order Form and is not a competitor of Ariba.

If any assignment or novation is purported to be made other than in accordance with the foregoing, Ariba may in its sole discretion give notice to terminate the Agreement and/or this Agreement immediately. Ariba may assign this Agreement without the consent of the Customer, in the case of a merger or acquisition of all or substantially all of its business or equity securities by Ariba. Subject to the foregoing, a party may only assign this Agreement or any part of it if it first obtains the written consent of the other party.

16.2   The parties hereto are and shall remain independent contractors, and nothing herein shall be deemed to cause this TOP to create an agency, partnership, or joint venture between the parties hereto. Nothing in this TOP shall be interpreted or construed as creating or establishing the relationship of employer and employee between Customer and either Ariba or any employee or agent of Ariba. Ariba reserves the right to use third party providers in the provision of the OnDemand Solution Packages.

16.3   The failure of either party to act in the event of a breach of this TOP by the other shall not be deemed a waiver of such breach or a waiver of future breaches, unless such waiver is provided to the other party in writing and signed by the party against whom enforcement is sought.

16.4   The Ariba Products and/or Ariba Services may include the export of Customer Data, which may require a license for export from the government (for example, the U.S.) that requires advance disclosure of the ultimate consignee and all parties to the sale, and prohibits diversion, transshipment, or reexportation out of such country contrary to law and regulations. Customer must not knowingly provide to Ariba any data that is controlled for export purposes by export regulations of the applicable country (U.S. or otherwise). Customer agrees to furnish all documentation required by the government in connection with obtaining any required export license, and agrees that unauthorized diversion, transshipment or reexportation of the Ariba Products in violation of the export license or any applicable law shall not be permitted. This section shall survive the termination of this TOP.

16.5   In the event of termination of this TOP, the following terms will survive such termination and remain binding upon and for the benefit of the parties, their successors and permitted assignees: 4 (Fees and Payment), 6 (Termination), 7 (Indemnities), 9 (Limitation of Liability), 10 (Confidentiality), 11 (Trademarks), 12 (Audit) and 17 (Miscellaneous).

16.6 Notices. All notices under this TOP ("Written Notice") must: (a) be in writing and in the English language; (b) be delivered by certified or registered mail, postage prepaid,

return receipt requested or by an overnight courier services with delivery receipt; (c) in the case of a notice to Ariba, be sent to the attention of the "Chief Financial Officer" of Ariba at the address set forth on the applicable Order Form, with a copy to Ariba's General Counsel; and (d) in the case of a notice to Customer, be sent to the address set forth in the address block in an applicable Order Form or to any other address Customer specifies in writing, with a copy to Customer's General Counsel.

16.7 This TOP shall be deemed to have been made in, and shall be construed pursuant to the laws of, New South Wales, Australia. The parties hereby specifically exclude from the application to this TOP the United Nations Convention on Contracts for the International Sale of Goods. Any legal action or proceedings relating to this TOP shall be instituted in New South Wales, Australia (the "**Selected Venue**"), and each party hereby submits to the jurisdiction of the courts of the Selected Venue. In any action to enforce the provisions of this TOP the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including fees of retained expert witnesses, in connection with the resolution of such dispute. Each party hereby irrevocably and unconditionally undertakes to take any and all steps which may be necessary in order to: (i) confer jurisdiction on the Selected Venue; and (ii) facilitate the enforcement, by a court where a party is domiciled, of any judgment given by a court in the Selected Venue.

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

16.9 If any provision of this TOP 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 TOP shall otherwise remain in full force and effect and remain enforceable between the parties.

16.10 The section headings appearing in this TOP are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect such section.

16.11 For each Order Form, the Agreement constitutes a complete, absolute integration and the entire agreement between the parties hereto relating to the subject matter of such Order Form, and supersedes all prior representations, proposals, discussions and communications, whether oral or in writing, and all contemporaneous oral communications. Notwithstanding the content of any purchase order, sale order, sale confirmation or any other document or web site relating to the subject matter of the Agreement, the Agreement shall take precedence over any such document, and any conflicting, inconsistent or additional terms contained therein shall be null and void. In the event of a conflict between the terms and conditions of the TOP and any individual Order Form, the Order Form shall govern to the extent of the inconsistency.

16.12 Third Party Websites. A Site may allow access to websites provided by third parties. These linked third party websites are not under the control of Ariba, and Ariba is not responsible for the contents of any linked third party website. Ariba provides links to third party websites only as a convenience, and such inclusion of any link does not imply endorsement by Ariba of the linked third party website or any part of its contents. Such

linked third party websites may subject Customer to terms and conditions between Customer and the third party website owner, and/or fees for use of such websites.

16.13 This TOP may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The dates contained in the signature blocks of this TOP or any documents executed pursuant to this TOP only indicate the date(s) upon which such document was signed, and shall have no effect on any other term of this TOP, including, but not limited to the 'Terms of Purchase Effective Date' stated below. The parties may treat faxed documents as originals, however, this shall not preclude either party from requiring the exchange of original signatures.

Terms of Purchase Effective Date:

Ariba

B

N

T

Date Signed: ....AM 1 APRIL 2008, SYDNEY AUSTRALIA TIME

March 31, 2008.
USA PST Time.

Customer:

By

Na

Tit
Ad

Te
Fa

Date Signed: *11:50*AM 1 APRIL 2008, SYDNEY AUSTRALIA TIME

* * * * *

2. Except as modified above all other provisions of Section 7 and Section 9 of the Terms of purchase and all other terms and conditions of the Terms of Purchase shall remain unchanged and in full force and effect.

Ari [REDACTED]

By:

Na

Titl

Date: ....AM, 1 APRIL 2008, SYDNEY AUSTRALIA TIME

Cus [REDACTED]

By:

Nam

Title:

Date: ....AM, 1 APRIL 2008, SYDNEY AUSTRALIA TIME

March 31, 2008
USA PST Time.

NSW | Transport RailCorp

Contract Amendment Form

OPP#40078 PD# 19387

Contract Number:	C08066	Contract Manager:	GIPA Act s 14 - Table 3(a)
Contract Title:	Ariba Software Licence Subscription		
Supplier Name:	Ariba Inc		
Variation No.:	1	Version No.: 1	Effective Date of the Variation: 01/07/2012

(1)   This Variation to Contract confirms our agreement to make the following Variation to the Contract.

GIPA Act s 14 - Table 4(b)

(2)   Contract Awarded Value (excl GST)

GIPA Act s 14 - Table 4(b)

(3)   Contract Expiration Date.

Original Contract Expiration Date	1 Apr 2013
Contract Expiration Date after previous variations	1 Apr 2013
Contract Expiration Date after this variation	30 Jun 2013

(4)   Contract Clauses, Terms or Conditions.

All contract clauses, terms and conditions remain unchanged

Please acknowledge your agreement to the above Variation by signing below and return the signed form to RailCorp marked for the attention of :

For RailCorp	For Supplier
	Notification to exercise the option for renewal of Ariba licence subscription for further 1 year was forwarded to Ariba Inc on 20 June 2012 (please see embedded document) H:\MIMS.Dev\ Contracts Admin\ERP
Signature GIPA Act s 14 - Table 3(a)	Signature GIPA Act s 14 - Table 3(a)
Name	Name
Title	Title
Date 9	8	2012	Date 8/15/12

Contract Title	Ariba Software Licence Subscription		
Contract Number	C08066	Supplier Name	Ariba Inc
Contract Manager	GIPA Act s 14 - Table 3(a)	Effective Date of the Variation	01/07/2013
Variation No.	2		

(1) This Variation to Contract confirms our agreement to make the following variations to the Contract:

GIPA Act s 14 - Table 4(b)

(2) **Contract Status**
(use either A or B and delete the section not applicable)

[A] Use if the contract type is Discrete or Maintenance Agreement

	Initial	Current (after all previous variations)	Final (after this variation)
Expiration Date	30/06/2012	30/06/2013	30/06/2015
Awarded Value (ex-GST)	GIPA Act s 14 - Table 4(b)		

(3) **Contract Clauses, Terms or Conditions.**

All contract clauses, terms and conditions as per original Ariba Order Form #1 and as amended by Ariba Supplemental Order #6

Please acknowledge your agreement to the above Variation by signing below and return the signed form to RailCorp marked for the attention of the Contract Manager:

For Supplier (authorised delegate)		For RailCorp (SPSS delegate)	
Signature	GIPA Act s 14 - Table 3(a)	Signature	GIPA Act s 14 - Table 3(a)
Name		Name	
Title		Title	
Date	7/12/13	Date	11/7/2013

Sydney Trains

Contract Title	Ariba Software Licence Subscription		
Contract Number	C08066	Supplier Name	Ariba Inc
Contract Manager	GIPA Act s 14 Table 4(b)	Effective Date of the Variation	01/07/2015
Variation No.	3		

(1)   **This Variation to Contract confirms our agreement to make the following variations to**

GIPA Act s 14 - Table 4(b)

(2)   **Contract Status**
(use either A or B and delete the section not applicable)

[A] Use if the contract type is Discrete or Maintenance Agreement

	Initial	Current (after all previous variations)	Final (after this variation)
Expiration Date	GIPA Act s 14 Table 4(b)	30/06/2015	30/06/2016
Awarded Value (ex-GST)			

[B] Use if the contract type is Supply Agreement or Panel or Utilities

	Initial	Current (after all previous variations)	Final (after this variation)
Expiration Date			

(3)   **Contract Clauses, Terms or Conditions.**

All other terms and conditions of the Contract shall remain unchanged.

Please acknowledge your agreement to the above Variation by signing below and return the signed form to Sydney Trains marked for the attention of the Contract Manager.

For Su GIPA Act s 14 Table 4(b)	For Sydn
Signature	ure
Name	
Title	
Date	

SAP crm 0301939665 | Quote 022646775 | Cms 3060603541

ARIBA Supplemental Order Form#6
(Amendment#6 to Order Form dated April 1, 2008)

△△△ A R I B A⁰

An SAP Company

Ariba Internal Use Only:	Data Share Contract ID # of Master Agreement: _____	CRM# 301378242; CMID# CW1918255; PSFT ID#1017387	
Supplemental Order Form#6 Effective Date: July 1, 2013		Order Form Effective Date: April 1, 2008	
Customer	Sydney Trains		
	Sold to:	Bill to:	Ship To:
Attention:			
Address:	Level 15 1 Bligh St Sydney NSW 2000	Level 15 1 Bligh St Sydney NSW 2000	Level 15 1 Bligh St Sydney NSW 2000
Phone:			
Email:			

Ariba

☒ Ariba, Inc. 910 Hermosa Court, Sunnyvale, CA 94085 USA

GIPA Act s 14 - Table 3(a)

III. General Terms

Amendment#6 to Order Form dated April 1, 2008. In consideration of the mutual promises and covenants hereinafter set forth, the parties acknowledge and agree that the Order Form dated 1 April, 2008 (the "Order Form") made and entered into by and between the parties hereto, as previously amended on April 1, 2009 ("Ariba Supplemental Order Form# 1"), amended on August 1, 2009 ("Ariba Supplemental Order Form# 2"), amended on October 1, 2011 ("Ariba Supplemental Order Form# 3"), amended on October 1, 2012 ("Ariba Supplemental Order Form# 4") and amended on January 1, 2013 ("Ariba Supplemental Order Form# 5") ("hereinafter collectively referred to herein as the "Agreement"). is hereby amended as follows; but that such Agreement shall otherwise continue in full force and effect:

1.   The parties acknowledge and agree that the NSW Government has indicated that it will restructure RailCorp ("RailCorp"). The restructure of RailCorp may result in RailCorp's assets, rights and liabilities being transferred to other entities constituted under the Transport Administration Act 1988 NSW.

Ariba agrees:

i. that this Agreement, and any assets, rights or liabilities RailCorp holds in connection with this Agreement is novated, assigned or otherwise transferred from RailCorp to Sydney Trains ("Customer") constituted under the Transport Administration Act 1988 NSW.

ii. to undertake all actions reasonably requested by RailCorp to effect such a novation, assignment or other transfer; and

iii. that it is not entitled to make, and RailCorp and any novatee, assignee or transferee will not be liable upon, any claim arising from or in connection with any novation, assignment or transfer contemplated by this clause.

2. The parties hereto agree that for a period of twenty four (24) consecutive months from the Supplemental Order Form#6 Effective Date (i.e from July 1, 2013 to June 30, 2015) ("Renewed Term"), Customer shall have access to the following Ariba Software/Solutions on the same terms and conditions as set forth in the Order Form:

   1) Ariba Buyer
   2) Ariba eForms
   3) Ariba Category Procurement
   4) Ariba Generic Integration Pack
   5) Ariba Sourcing
   6) Ariba Category Management
   7) Configurable Analysis for Sourcing and Contract Management (formerly known as "Ariba Analysis")
   8) Ariba Supplier Performance Management
   9) Ariba Contract Management (formerly known as "Ariba Contract Workbench")
   10) Ariba Contract Compliance
   11) Ariba Invoice
   12) Ariba Settlement
   13) GIPA Act s 14 Table 4(b)
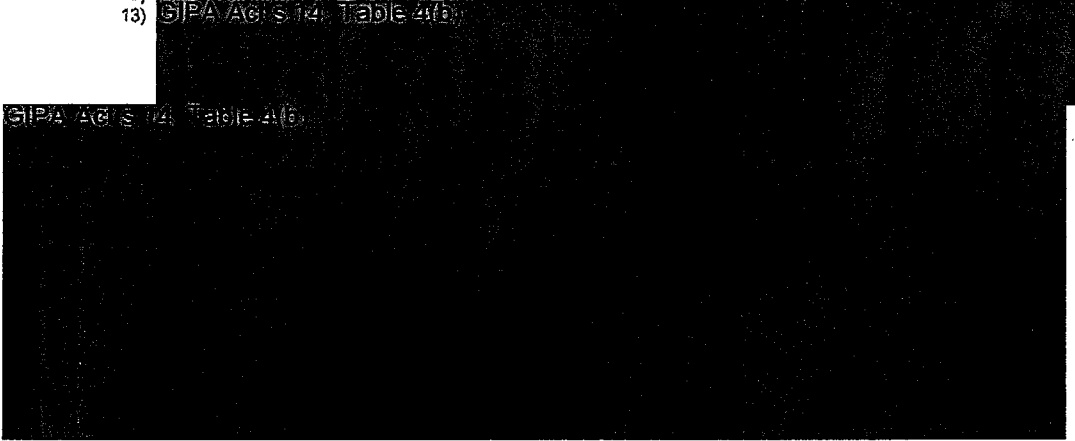
5. Section VIII.4 A ("Employee Restriction") is deleted in its entirety and replaced with the following Sections 4A & 4B:

4A - Employee Restriction.   As used in this Order Form, the term "Employees" means all employees of Customer and its Affiliates as reflected in the Annual Reports of Customer and its Affiliates. "Annual Report" means the annual financial report filed with the applicable government or regulatory body or, if no such annual report exists, then an annual audited financial report prepared by an independent certified public accounting firm. Customer confirms that the current total number of Employees is less than or equal to the number of Maximum Employees set forth in the Order Form. In the event the number of Employees exceeds the number of Maximum Employees, Customer shall only be allowed to continue use of the applicable Ariba Products pursuant to the Expansion section of the Order Form. For the purpose of this Agreement, "Affiliate" means the following entities constituted under the Transport Administration Act 1988 NSW;
(a) NSW Trains
(b) Transport Cleaning Services
(c) RailCorp Residual
(d) Transport Shared Services
(e) Transport Projects Division

4B - Affiliate Use. An Affiliate of Customer may use the applicable Ariba Products licensed to Customer under an Order Form provided that: (a) such Affiliate agrees in writing to be bound by and accepts all of the obligations imposed upon Customer under this Agreement; (b) such Affiliate uses the Ariba Products licensed under such Order Form strictly in accordance with the license granted to Customer; (c) Customer shall ensure such Affiliate's performance under such Order Form, and shall be responsible for the acts and omissions of such Affiliate in relation to this Agreement and the use of the Ariba Products under the applicable Order Form; (d) all of Customer's obligations under the Agreement and such Order Form shall remain in force and undiminished; (e) Customer has all support obligations for each such Affiliate and such Affiliate's use shall not materially increase Ariba's provision of Technical Support Services, pursuant to Ariba's then current Technical Support Services policies; (f) the Ariba Product must be installed and hosted by Customer behind Customer's firewall and Affiliate may only access the program remotely only; and, (g) Ariba has no shipment obligation with respect to the Affiliate use.
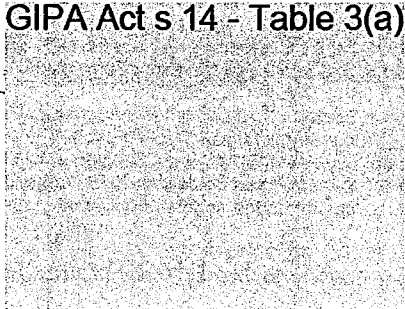
GIPA Act s 14 - Table 4(b)

7. Except as modified above all terms and conditions of the Agreement shall remain in full force and effect.

8. All capitalized words not defined herein shall have the meaning set forth in the Agreement.
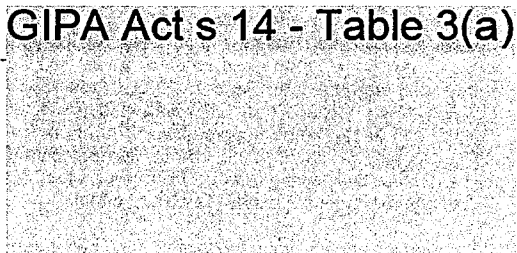
Ariba GIPA Act s 14 - Table 3(a)

By:_____

Name:

Title,

Date:

Customer: Sydney Trains

By:_____ GIPA Act s 14 - Table 3(a)

Name:

Title:

Date:

Amendment No. 8
To
Order Form dated April 1, 2008

This Amendment No. 8 to Order Form ("Amendment No. 8") is entered into as of July 1, 2016 ("Amendment No. 8 Effective Date"), by and between Ariba, Inc. with offices at 910 Hermosa Court, Sunnyvale, CA 94085 USA ("Ariba") and Sydney Trains with offices at 18 Lee Street / CHIPPENDALE NSW 2008 ("Customer"). In consideration of the mutual promises and covenants hereinafter set forth, the parties acknowledge and agree that the Order Form dated 1 April, 2008 (the "Order Form") made and entered into by Rail Corporation New South Wales ("Railcorp") and Ariba Inc. ("Ariba"), as previously amended on April 1, 2009 ("Ariba Supplemental Order Form# 1"), amended on August 1, 2009 ("Ariba Supplemental Order Form# 2"), amended on October 1, 2011 ("Ariba Supplemental Order Form# 3"), amended on October 1, 2012 ("Ariba Supplemental Order Form# 4"). amended on January 1, 2013 ("Ariba Supplemental Order Form# 5"), amended on July 1, 2013 ("Ariba Supplemental Order Form# 6") and amended on July 1, 2015 ("Amendment No.7") ("hereinafter collectively referred to herein as the "Agreement"), is hereby amended as follows, but that such Agreement shall otherwise continue in full force and effect.

The parties confirm that the Agreement had been novated from RailCorp to Sydney Trains ("Customer") via Ariba Supplemental Order Form# 6.

1. The parties hereto agree that for a period of six (6) consecutive months from Amendment No. 8 Effective Date (i.e from July 1, 2016 to December 31, 2016) ("New Term"), Customer shall have access to the following Ariba Software/Solutions on the same terms and conditions as set forth in the Order Form:

    1) Ariba Buyer
    2) Ariba eForms
    3) Ariba Category Procurement
    4) Ariba Generic Integration Pack
    5) Ariba Sourcing
    6) Ariba Category Management
    7) Configurable Analysis for Sourcing and Contract Management (formerly known as "Ariba Analysis")
    8) Ariba Supplier Performance Management
    9) Ariba Contract Management (formerly known as "Ariba Contract Workbench")
    10) Ariba Contract Compliance
    11) Ariba Invoice
    12) Ariba Settlement
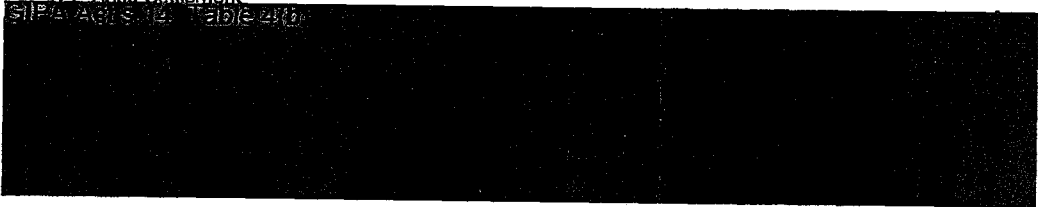
2. **Termination for Convenience** - Without prejudice to any of its other rights of termination under this Agreement, the Customer shall have a one-time right to terminate this Amendment for convenience and without cause at any time during the New Term or Renewal Term, as applicable ("Right of Termination for Convenience"), by giving to Ariba not less than thirty (30) days' written notice prior to the effective termination date ("Notice Date"). For the avoidance of doubt, the Right of Termination for Convenience described in this paragraph shall expire if Ariba does not receive Customer's written termination notice by the Notice Date.

3.

302112682 / QUOTE 0220526480 / CASE 3060498819

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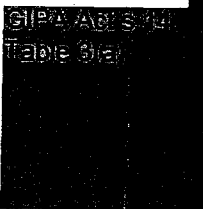
GIPA Act s 14 - Table 4(b)

5. Except as modified above all terms and conditions of the Agreement shall remain in full force and effect.

6. All capitalized words not defined herein shall have the meaning set forth in the Agreement.

1105 2016

Amendment No. 9
To
Order Form dated April 1, 2008

This Amendment No. 9 to Order Form ("Amendment No.9") is entered into as of July 1, 2016 ("Amendment No. 9 Effective Date"), by and between Ariba, Inc. with offices at 910 Hermosa Court, Sunnyvale, CA 94085 USA ("Ariba") and Sydney Trains with offices at 18 Lee Street / CHIPPENDALE NSW 2008 ("Customer"). In consideration of the mutual promises and covenants hereinafter set forth, the parties acknowledge and agree that the Order Form dated 1 April, 2008 (the "Order Form") made and entered into by Rail Corporation New South Wales ("Railcorp") and Ariba Inc. ("Ariba"), as previously amended on April 1, 2009 ("Ariba Supplemental Order Form# 1"), amended on August 1, 2009 ("Ariba Supplemental Order Form# 2"), amended on October 1, 2011 ("Ariba Supplemental Order Form# 3"), amended on October 1, 2012 ("Ariba Supplemental Order Form# 4"), amended on January 1, 2013 ("Ariba Supplemental Order Form# 5"), amended on July 1, 2013 ("Ariba Supplemental Order Form# 6"), amended on July 1, 2015 ("Amendment No.7), and amended on July 1, 2016 ("Amendment No.8) ("hereinafter collectively referred to herein as the "Agreement"), is hereby amended as follows, but that such Agreement shall otherwise continue in full force and effect.

1. The following text (Point#13 of Section 1) is deleted in its entirety from Section 1 of the Order Form:

It is clarified that Customer shall not receive access to Ariba Invoice Automation & PO Automation under Amendment No. 8.

2. Except as modified above all terms and conditions of the Agreement shall remain in full force and effect.

3. All capitalized words not defined herein shall have the meani
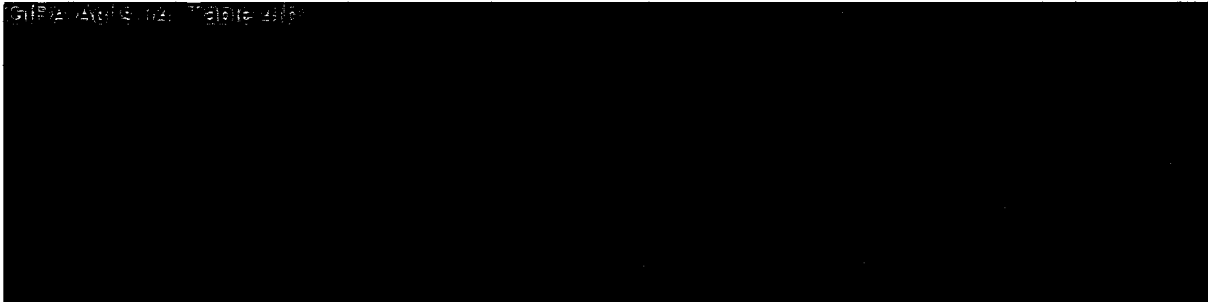
Ariba

Cus

By:

Nam

Title

Dat

Amendment No. 10
To
Order Form dated April 1, 2008

This Amendment No. 10 to Order Form ("Amendment No. 10") is entered into as of January 1, 2018 ("Amendment No. 10 Effective Date"), by and between Ariba, Inc. with offices at 3420 Hillview Avenue Building 3, Palo Alto, CA 94304 ("Ariba") and Sydney Trains with offices at 18 Lee Street / CHIPPENDALE NSW 2008 ("Customer"). In consideration of the mutual promises and covenants hereinafter set forth, the parties acknowledge and agree that the Order Form dated April 1, 2008 (the "Order Form") made and entered into by Rail Corporation New South Wales ("Railcorp") and Ariba Inc. ("Ariba"), as previously amended on April 1, 2009 ("Ariba Supplemental Order Form# 1"), amended on August 1, 2009 ("Ariba Supplemental Order Form# 2"), amended on October 1, 2011 ("Ariba Supplemental Order Form# 3"), amended on October 1, 2012 ("Ariba Supplemental Order Form# 4"), amended on January 1, 2013 ("Ariba Supplemental Order Form# 5"), amended on July 1, 2013 ("Ariba Supplemental Order Form# 6"), amended on July 1, 2015 ("Amendment No.7), amended on July 1, 2016 ("Amendment No.8) and amended on July 1, 2016 ("Amendment No.9) ("hereinafter collectively referred to herein as the "Agreement"), is hereby amended as follows, but that such Agreement shall otherwise continue in full force and effect.

The parties confirm that the Agreement had been novated from RailCorp to Customer via Ariba Supplemental Order Form# 6.

1. The parties hereto agree that for a period of six (6) consecutive months from Amendment No. 10 Effective Date (i.e from January 1, 2018 to June 30, 2018) ("New Term"), Customer shall have access to the following Ariba Software/Solutions on the same terms and conditions as set forth in the Order Form:

    1. Ariba Buyer
    2. Ariba eForms
    3. Ariba Category Procurement
    4. Ariba Generic Integration Pack
    5. Ariba Sourcing
    6. Ariba Category Management
    7. Configurable Analysis for Sourcing and Contract Management (formerly known as "Ariba Analysis")
    8. Ariba Supplier Performance Management
    9. Ariba Contract Management (formerly known as "Ariba Contract Workbench")
    10. Ariba Contract Compliance
    11. Ariba Invoice
    12. Ariba Settlement

4. Except as modified above all terms and conditions of the Agreement shall remain in full force and effect.

5. All capitalized words not defined herein shall have the meaning set forth in the Agreement.

Ariba	Cus
By:_____	By:_
Name:	Nan
Title:	Title
Date:	Date

Amendment No. 11
To the Original Order Form of 1 April 1 2008

This amendment to Order Form ("**Amendment No. 11**") is entered into as of ("**Amendment Effective Date**"), by and between Ariba, Inc. with offices at 3420 Hillview Avenue Building 3, Palo Alto, CA 94304 ("**Ariba**") and Sydney Trains with offices at 18 Lee Street / CHIPPENDALE NSW 2008 ("**Customer**"). In consideration of the mutual promises and covenants hereinafter set forth, the parties acknowledge and agree that the Order Form dated April 1, 2008 (the "**Order Form**") made and entered into by Rail Corporation New South Wales ("**Railcorp**") and Ariba Inc. ("**Ariba**"), as previously amended on April 1, 2009 ("**Ariba Supplemental Order Form# 1**"), amended on August 1, 2009 ("**Ariba Supplemental Order Form# 2**"), amended on October 1, 2011 ("**Ariba Supplemental Order Form# 3**"), amended on October 1, 2012 ("**Ariba Supplemental Order Form# 4**"). amended on January 1, 2013 ("**Ariba Supplemental Order Form# 5**"), amended on July 1, 2013 ("**Ariba Supplemental Order Form# 6**"), amended on July 1, 2015 ("**Amendment No.7**"), amended on July 1, 2016 ("**Amendment No.8**) and amended on July 1, 2016 ("**Amendment No.9**) and amended on 1 January 2019 ("**Amendment No.10**) ("hereinafter collectively referred to herein as the "Agreement"), is hereby amended as follows, but that such Agreement shall otherwise continue in full force and effect.

1.   The parties hereto agree that for a period of twenty-four (24) consecutive months from this Amendment Effective Date (that is, from 1 July 2018 to 30 June 2020) ("**Final Term**"), Customer shall continue to have access to, and use of, the following SAP Ariba Solutions' on the same terms and conditions as set forth in the Order Form:

Ariba Solutions (term licensed).	Usage Metric	Usage Metric Limitation **	Annual Fee	Total Fee * in AUD
ARIBA BUYER				
ARIBA EFORMS				
CATEGORY PROCUREMENT				
ARIBA INTEGRATION PACKS				
ARIBA SOURCING				
ARIBA CATEGORY MGMT				
ARIBA ANALYSIS				
ARIBA SPM				
CONTRACT MANAGEMENT				
ARIBA CONTRACT COMPLIANCE				
ARIBA INVOICE				
ARIBA SETTLEMENT				

5. **Renewal.** There is no further renewal of the above Ariba Solutions, as all will be at end of life at the end of the Final Term.

6. Except as modified above all terms and conditions of the Agreement shall remain in full force and effect.

7. All capitalized words not defined herein shall have the meaning set forth in the Agreement.

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By

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Da

Cus

By:

Nam

Title

Date