



## GENERAL TERMS

**Customers Signing an Order Form.** Any Customer acquiring Offerings must sign an Order that lists the Offerings to be provided by Provider and the fees to be paid by Customer. Once an Order is signed by both parties, a contract is formed between them as of the date of the last signature consisting of the Order, these *General Terms*, and the following Provider supplemental terms and conditions as applicable (collectively referred to as the “**Agreement**”):

- if the Order includes Software Products, the *Software Terms*;
- if the Order includes Support Services, the *Support Terms*;
- if the Order includes Professional Services, the *PS Terms*;
- if the Order includes Hardware Product, the *Hardware Terms*; and
- if the Order includes Cloud Services, the *Cloud Services Terms*.

**1. DEFINITIONS.** Capitalized terms that are not defined in context shall have the following meanings:

- “**Affiliate**” means an entity controlling, controlled by, or under common control with a party, for so long as such control relationship exists.
- “**Cloud Services**” means the hosting of Software Product by Provider where the Software Product is installed and executed on servers housed, operated and managed by Provider or its designee. The choice of hosting facility for Cloud Services shall be in the sole discretion of Provider Software.
- “**Confidential Information**” means information of a party marked confidential or with a similar proprietary legend or that, due to the nature of the information and/or the circumstances under which it was disclosed, should reasonably be assumed to be confidential information of the Discloser. Offerings, Documentation, Provider pricing and other financial information, the results of any performance or benchmark tests of the Software Products, these Terms and Conditions, information regarding Provider personnel, Customer Data, and any product plans of Provider provided to Customer prior to general announcement are all Confidential Information of Provider, whether disclosed before or after the execution of the Agreement. Confidential Information includes copies, summaries and other derivatives of Confidential Information
- “**Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Offerings.
- “**Customer**” means the legal entity (other than any Provider Affiliate or Provider Business Partner) that signs an Order.
- “**Customer Data**” means (i) all data and information provided or submitted by, or caused to be provided or submitted by or on behalf of, Customer or its Affiliates in connection with the Services; (ii) all data and information regarding the business of Customer or its Affiliates provided or submitted by, or caused to be provided or submitted by, Provider and/or its Affiliates in connection with its performance of Services; and (iii) all Output resulting from the foregoing.
- “**Customer Systems**” means Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or third party services.
- “**Deliverable**” or “**Deliverables**” means the work product or work of authorship resulting from the performance of Professional Services or any item that Provider designates as a Deliverable in an Order. Hardware Products, Software Products, Documentation and Services are not Deliverables.
- “**Documentation**” means user manuals and online help materials related to a Product or Cloud Service that are contained in or accompany the Provider Software Product or Cloud Services or that are otherwise made available to Customer by Provider.
- “**Hardware Product**” means a computer, server, bar code reader, printer, or a handheld, mobile, wireless, or other device or item of equipment that is manufactured by a third party, listed on an Order and provided to Customer by Provider, and all related Documentation and accessories and parts for such device.
- “**License Count Restrictions**” means the quantity-based limitation on the license granted for a Software Products specified in an Order. License Count Restrictions include, but are not limited to:
  - “**Named Users**” means the number of user sign-ons and/or login IDs. The number of Customer’s Named Users shall not exceed the maximum number of Named Users specified.
  - “**Devices**” means the maximum number of devices with which users can simultaneously use the Software Product, including without limitation, bar code fixed terminals, bar code portable terminals, virtual terminals, PDAs, or PC workstations. This number does not include devices utilizing the Software Product by a Named User. The total number of devices licensed to use the Software Products shall not exceed the maximum number of Devices specified.
  - “**Concurrent Users**” means the maximum number of users that can simultaneously access or use the Software Product at one time.
  - “**Designated Sites**” means the locations(s) specified in an Order. Unless otherwise specifically stated in an Order, Customer may use and execute the Software Products only at the Designated Sites.
  - “**Test and Development (Sandbox) License**” means the license provided to Customer to use the Software Products in a

non-production environment to support testing of application fixes and enhancements prior to introducing the same into Customer's production environment.

- "**Disaster Recovery License**" means each Designated Site license allows Customer to use the Software Product on a single set of production servers situated at the Designated Site ("**Production Environment**").
- l. "**Offerings**" means Software Products, Cloud Services, Support Services, Professional Services and Hardware Products.
- m. "**Order**" means an order, quote, work request, statement of work, registration form or other document that is signed by duly authorized representatives of Customer and Provider that identifies (i) the Offering to be provided to Customer by Provider, (ii) fees to be paid by Customer, method of payment and payment terms, and (iii) any additional rights and obligations of the parties.
- n. "**Output**" means the by-product resulting from the use of the Offerings to the extent it contains or is expressly derived from Customer Data, but excluding the Offerings, Documentation, Preexisting Materials, any general know-how and derivative works or other improvements.
- o. "**Permitted Users**" means any employee of Customer or its Controlled Affiliates, independent contractors augmenting Customer or its Controlled Affiliates workforce, or any customers of Customer or its Controlled Affiliates for which Customer is providing third party logistics services under a signed and active services contract.
- p. "**Preexisting Materials**" means any intellectual property or other proprietary information or material owned or created by, or otherwise licensed to Provider or its Affiliates prior to the date of the Agreement, or which is created or prepared other than as required in order for Provider to provide Services pursuant to the Agreement. Hardware Products, Software Products, Support Services and Cloud Services are all Preexisting Materials.
- q. "**Professional Services**" means consulting, integration, customization, training or other technical services performed for Customer by Provider under an Order.
- r. "**Provider**" means the legal entity that signs an Order with Customer.
- s. "**Provider Affiliate**" means any legal entity, directly or indirectly, controlled by or under common control with Körber Logistics Systems GmbH. The Provider legal entity signing an Order, and not any Affiliate of such entity, is solely responsible for performance under the Agreement and claims arising out of it.
- t. "**Provider Business Partner**" means a company authorized by Provider to sell, support, deliver or implement a Hardware Product, Software Product, Support Service or Cloud Service.
- u. "**Provider Software Product**" means a software program, software provided as a service, or a resource (such as an information database), that is generally available from Provider, updates or modifications to any of the foregoing provided to Customer by Provider, associated Documentation, and all copies of the foregoing. Provider Software Products may be delivered to Customer by Provider or a Provider Business Partner or may be made accessible to Customer via remote access through the Internet. Support Services, Professional Services, Hardware Products, Third-Party Software Products and Deliverables are not considered Provider Software Products.
- v. "**Services**" means Cloud Services, Support Services and Professional Services.
- w. "**Software Products**" means Provider Software Products and Third-Party Software Products.
- x. "**Support Services**" means the help desk, defect correction, maintenance and related services offered by Provider and procured by Customer to support Customer's use of Software Products or Cloud Services.
- y. "**Third-Party Software Product**" means a software program produced and branded by one or more third party provider(s) for which Customer procures a license from Provider as specified in an Order.
- z. "**Support Term**" means the period of time Provider is to provide Support Services pursuant to the applicable Order and these Master Terms and Conditions.\

## 2. SCOPE OF THE AGREEMENT.

- a. **Scope.** Neither party is obligated to sign any Order. Any Offerings provided prior to the execution of an Order are subject to the Agreement.
- b. **Use of Software Products and Services by Customer's Affiliates.** Customer's Affiliates controlled, directly or indirectly, by Customer ("Controlled Affiliates") may use Hardware Products, Software Products, and Services on the same terms as Customer. A Customer Affiliate not controlled by Customer may use such items only if an authorized representative of the Customer Affiliate confirms in writing that the Customer Affiliate has agreed to be bound by the Agreement and that Provider may enforce the Agreement directly against both Customer and the Customer Affiliate. Customer Affiliates using Software Products and Services under the Agreement must not be direct competitors of Provider or a Provider Affiliate. Customer guarantees its Controlled Affiliates' compliance with the Agreement. Upon Provider's request, Customer shall promptly confirm in writing whether or not a legal entity is an Affiliate or Controlled Affiliate of Customer.
- c. **Purchases from Provider Business Partners.** Software Products acquired from a Provider Business Partner are subject to the Agreement, but Customer may be responsible to the Business Partner for the payment of fees, in which case the payment terms in the following section of the Agreement do not apply to Customer. Provider Business Partners are independent legal entities and separate from Provider Affiliates. Provider Affiliates are not responsible for the actions or statements of Provider Business Partners or obligations they have to Customer

### 3. PAYMENT AND DELIVERY.

- a. **Fees.** Fees and other charges for Offerings are specified in the Order. Unless a shorter period is specified in the proposed Order, fees specified in an Order are valid for thirty days from the date the Order is proposed to Customer and thereafter are subject to change at any time prior to Provider and Customer entering into the Order. Provider may otherwise revoke any offer to enter into an Order at any time prior to its execution for any reason.
- b. **Taxes.** Customer shall pay all sales, use, excise, value added and similar taxes and duties levied by any taxing authority on the Agreement or the procurement of any Offerings (“Taxes”), other than taxes imposed on Provider’s net income, property or personnel. Unless Customer provides Provider with appropriate resale or exemption documentation for the delivery location and Provider agrees that Customer may resell the Offerings being acquired, fees and charges specified in an Order are stated exclusive of Taxes and Customer shall be responsible for all Taxes.
- c. **Withholding Tax.** If Customer is required by law to withhold and remit any Tax relating to the Agreement or the procurement of any Offering, Customer shall withhold and remit the Tax payment to the applicable tax jurisdiction and furnish to Provider a tax certificate or other acceptable evidence of payment of such Tax as required by the relevant taxing authority.
- d. **Financing.** Customer purchases that will be financed by a third-party must be approved in advance by Provider to determine appropriate Tax treatment.
- e. **Delivery.** Provider will deliver certain Software Products by arranging for them to be made available for electronic download by Customer or for use over the Internet or other electronic delivery system. Provider will deliver certain Hardware Products, and may, in its sole discretion, elect to deliver certain Software Products via shipment to the address specified in the Order. For Hardware Products or Software Products shipped to a physical address, Customer shall pay related transportation and handling charges as specified in a Provider invoice, unless the Order provides otherwise.
- f. **Payment.** Customer agrees to pay, without offset, all amounts stated on a Provider invoice in accordance with the terms of the Order. Unless expressly stated otherwise in the Agreement or in an Order, Customer shall pay such amounts within thirty (30) days after the invoice date. Late payments shall accrue interest on the sum due, from the date due, at the rate of one and one-half percent (1½%) per month or the highest rate permitted by law, whichever is less. Provider may without liability suspend the further delivery of any or all the Offerings during any period in which Customer is not in compliance with its payment obligations to Provider or is otherwise in breach of the Agreement. Provider may suspend any license or Services, including Cloud Services, until Customer has paid all outstanding applicable fees. Licenses, or access to the Cloud Services, may be canceled by Provider if the fees are not paid in accordance with the terms of the Agreement. Provider will not suspend or terminate any Cloud Services until payment of the applicable fees is more than ninety days past due and without reasonable notice and a period of at least ten days for Customer to cure the non-payment. Provider’s rights relating to late payment charges and the suspension of the Offerings shall be in addition to any other right that Provider may have if Customer fails to make any payment due to Provider under, or is otherwise in breach of, the Agreement. No endorsement or statement on or accompanying any check or payment shall be deemed an accord and satisfaction and Provider may accept the check or payment without prejudice to Provider’s right to recover the balance due or pursue any other remedy permitted under the Agreement. Notwithstanding other provisions of the Agreement, and without prejudice to any termination right Provider may otherwise have pursuant to the Agreement, Customer shall be responsible for any costs Provider incurs in enforcing collection of any amounts due under the Agreement, including reasonable attorneys’ fees, court or arbitration costs, or collection agency fees.
- g. **Payment Disputes.** Customer shall notify Provider in writing within thirty (30) days after receiving an invoice of any good faith dispute concerning the invoice. The notice shall include reasonable details relating to the dispute, including the specific amount disputed by Customer. Customer’s dispute of an amount due will not relieve Customer of its obligation to pay any undisputed amounts. The failure of Customer to dispute invoiced amounts in accordance with this section shall constitute a waiver by Customer of any objection to such amounts.

### 4. WARRANTIES.

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

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

## 5. INDEMNITIES.

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

## 6. INTELLECTUAL PROPERTY RIGHTS.

- a. **Provider Software Products, Services, and Deliverables.** Provider Software Products and Deliverables are licensed for Customer's use as indicated in the *Software Terms*. These items are not sold to Customer and no title transfers to Customer. Provider retains exclusive ownership of all Provider Software Products, Services, and Deliverables and all intellectual property rights, title and interest in them, and in any ideas, concepts, know how, documentation, or techniques developed or learned by Provider in connection with its performance of Services. Services and Deliverables are not considered "works made for hire" under copyright law. All rights not expressly granted to Customer are reserved by Provider and there are no implied licenses.
- b. **Third-Party Software Products.** Third-Party Software Products are licensed for Customer's use as indicated in the *Software Terms*. Third-Party Software Products are owned by a third-party provider. Third-party providers are intended beneficiaries of the LIMITATIONS OF LIABILITY AND REMEDIES section of these *General Terms* and independently may protect their rights in Third-Party Software Products in the event of any infringement.
- c. **Customer Data.** Provider shall use Customer Data provided to it by Customer solely to perform its obligations under the Agreement. No other right, title or interest of any kind is granted to Provider pursuant to the Agreement in or to Customer Data

that Provider may have access to while providing Services or that is processed by Provider Software Products.

- d. **Suggestions.** If Customer suggests any new features, functionality or improvements for the Offerings they shall become the sole and exclusive property of Provider and Provider shall not be subject to any confidentiality restrictions or royalty obligations.
- e. **Anonymous Data.** Provider may (i) collect, develop, create, extract, compile, synthesize, analyze and commercialize statistical, benchmark, and other information related to the performance, operation and use of the Offerings, and (ii) use data from the Offerings in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (subsections (i) and (ii) are collectively referred to as "Service Analyses"). Provider may make Service Analyses publicly available; however, Service Analyses will not incorporate Customer Data or Confidential Information in a form that could serve to identify Customer or any individual. Service Analyses do not constitute personal data. Provider retains all intellectual property rights in Service Analyses.
- f. **Trademarks.** Customer shall not register or use any mark or internet domain name that contains any trademark, service mark or logo owned by Provider or its Affiliates, or that is confusingly similar to such marks or logos.
- g. **Use of Products and Services in High-Risk Applications.** The Offerings are not designed or intended for use in the planning, construction, maintenance, or operation of a nuclear, weapons, air-traffic control, petroleum processing, military, medical, or other high-risk facility or operation. Customer is solely liable if any items purchased by Customer are used for these applications and shall indemnify and hold Provider harmless from all loss, damage, expense, or liability in connection with any such use.

## 7. CONFIDENTIAL INFORMATION.

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

## 8. LIMITATIONS OF LIABILITY AND REMEDIES.

- a. **Limitation of Liability.** Each party's total aggregate liability is limited to the amount paid by Customer for the Offering that is the subject of a claim. For items for which Customer pays on a recurring basis, such as monthly or yearly, the maximum liability equals twelve months of fees paid to Provider.
- b. **Disclaimer of Indirect Damages.** NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES INCLUDING DOWNTIME COSTS; LOST BUSINESS, REVENUES, PROFITS OR MANAGEMENT TIME; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OF GOODWILL; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION.
- c. **Legal Theory.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THESE LIMITATIONS APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION,

BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE AND REGARDLESS OF WHETHER DAMAGES WERE FORESEEABLE.

- d. Exceptions to Limitations and Exclusions.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, THIS LIMITATIONS OF LIABILITY AND REMEDIES SECTION SHALL NOT BE APPLIED TO LIMIT (i) CUSTOMER'S OR ITS AFFILIATES' PAYMENT OBLIGATIONS; (ii) CLAIMS BY A PARTY FOR INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS OR FOR BREACH OF A CONFIDENTIALITY OBLIGATION AGAINST THE OTHER PARTY OR ITS AFFILIATES; (iii) CLAIMS FOR PERSONAL INJURY (INCLUDING DEATH) OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT A PARTY IS LIABLE FOR SUCH ITEMS UNDER APPLICABLE LAW; (iv) A PARTY'S EXPRESS INDEMNITY OBLIGATIONS UNDER THE AGREEMENT; (v) LIABILITY BASED ON WILLFUL MISCONDUCT OR FRAUDULENT MISREPRESENTATION, BUT ONLY TO THE EXTENT SUCH LIABILITY MAY NOT BE EXCLUDED, LIMITED OR WAIVED AS A MATTER OF APPLICABLE LAW; OR (vi) ANY OTHER LIABILITY TO THE EXTENT THE LIABILITY MAY NOT BE EXCLUDED, LIMITED OR WAIVED AS A MATTER OF APPLICABLE LAW.
- e. Application to Third Parties.** PROVIDER AND ITS AFFILIATES, AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND BUSINESS PARTNERS, AND CUSTOMER AND ITS AFFILIATES ARE INTENDED BENEFICIARIES OF THE LIMITATIONS AND EXCLUSIONS IN THIS LIMITATIONS OF LIABILITY AND REMEDIES SECTION. EXCEPT FOR THE FOREGOING AND SUCH OTHER PARTIES EXPRESSLY INDEMNIFIED UNDER THE AGREEMENT, THERE ARE NO OTHER THIRD-PARTY BENEFICIARIES UNDER THE AGREEMENT. PROVIDER AND ITS AFFILIATES AND ITS AND THEIR SUPPLIERS, SUBCONTRACTORS AND BUSINESS PARTNERS SHALL HAVE NO LIABILITY FOR CLAIMS MADE BY CUSTOMER'S AND ITS AFFILIATES' CUSTOMERS, SERVICE PROVIDERS, AND OTHER THIRD PARTIES.
- f. Limitations Period.** Neither party will bring a legal action against the other more than two years after the cause of action arose unless applicable law prohibits this contractual limitation.

## 9. TERMINATION.

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

## 10. DISPUTES.

- a. Good Faith Negotiations.** In the event of any dispute, claim, question, or disagreement arising from or relating to the

Agreement, or an alleged breach of the Agreement (a “Dispute”), the parties agree to use their best efforts to settle the Dispute through good faith negotiations (“Good Faith Negotiations”). Failure by either party to engage in Good Faith Negotiations to resolve a Dispute shall be considered a material breach of the Agreement.

- b. **Mandatory Arbitration.** If the parties are unable to resolve a Dispute through Good Faith Negotiations within a period of sixty days, then, upon written notice by either party to the other, the Dispute shall be finally settled by arbitration.
- c. **Arbitration Rules.**
  - (i) **Customer Located in the United States.** If Customer is located in the United States, the arbitration shall be administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, which are available at the AAA web site at [www.adr.org](http://www.adr.org). The Agreement shall be considered to be made pursuant to a transaction involving interstate commerce and shall be governed by the U.S. Federal Arbitration Act.
  - (ii) **Customer Located in Canada.** If Customer is located in Canada, the arbitration will be conducted in accordance with the provisions of the Arbitration Act, 1991 (Ontario) or its successor legislation.
  - (iii) **Outside the United States and Canada.** If Customer is located outside of the United States and Canada, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce (“ICC”), which are available at the ICC web site at <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/>. Either party shall have the right to have recourse to and shall be bound by the pre-arbitral referee procedure of the ICC in accordance with its Rules for a Pre-Arbitral Referee Procedure.
- d. **Preliminary Relief.** Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under the Agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitral tribunal’s determination of the merits of the controversy.
- e. **Final and Binding.** The arbitral award shall be final and binding and the parties renounce any form of appeal or revision, provided that either party may within two weeks after the date of the award request the arbitrator to give a written clarification of the award or to correct any computational or typographical errors. Any such clarification or correction shall be provided by the arbitrator to the parties within thirty days after the date of the request and shall become part of the award. The execution of the arbitral award shall be suspended until the arbitrator provides any requested clarification or correction.
- f. **Waiver of Right to Jury Trial.** Each party waives their right, if any, to a jury trial with respect to any Dispute and agrees that no Dispute may be brought as a class action or as a private attorney general. Neither party may act as a class representative or participate as a member of a class of claimants with respect to any Dispute.
- g. **Arbitrator.** The parties will attempt to select a single arbitrator by mutual agreement. If they are unable to do so, the parties may request the appointment of a single neutral arbitrator as provided in the governing rules. The arbitrator shall be a retired judge or a practicing attorney actively engaged in the practice of law for at least ten years with significant experience in legal issues related to computer software technology and related services. In a dispute governed by the ICC rules, the arbitrator shall not be of a nationality of either of the parties, unless both parties agree otherwise.
- h. **Language of Proceedings.** All arbitration proceedings shall be conducted in the English language.
- i. **Venue.**
  - (i) **Customer Located in the United States.** If Customer is located in the United States, then any arbitration proceeding shall be conducted in Minneapolis, Minnesota, USA.
  - (ii) **Customer Located in Canada.** If Customer is located in Canada, then any arbitration proceeding shall be conducted in Toronto, Ontario, Canada.
  - (iii) **Customer Located in a Country in Europe, Middle East, Africa, or Asia.** If Customer is located in a country in Europe, the Middle East, Africa or Asia, then any arbitration proceeding shall be conducted in London, England.
  - (iv) **Customer Located in Australia.** If Customer is located in Australia, then any arbitration proceeding shall be conducted in Sydney, New South Wales, Australia.
  - (v) **Customer Located in any other Country.** If Customer is located in any other country, then any arbitration proceeding shall be conducted in Minneapolis, Minnesota, USA.
- j. **Evidence and Limitations.** No written or oral statements of position or offers of settlement made in the course of the Dispute resolution process shall (i) be offered into evidence for any purpose; or (ii) constitute an admission or waiver of rights by either party. The arbitrator shall have no authority to award punitive damages or other damages not measured by the prevailing party’s actual damages or to exceed the contractual limitations on damages and remedies set forth in the Agreement.
- k. **Fees.** Except as expressly provided otherwise in the Agreement, each party shall bear its own costs and expenses and an equal share of the arbitrator’s and administrative fees of arbitration.
- l. **Confidentiality.** Except as may be required by law, neither a party nor the arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.
- m. **If Customer is a U.S. Government Agency.** If Customer is a U.S. government agency, the Agreement is subject to the Contract Disputes Act of 1978, as amended, in lieu of the arbitration provisions of this Disputes section.

## 11. GENERAL.

- a. **Force Majeure.** Neither party shall be liable for performance delays or nonperformance due to causes beyond its reasonable

control. This provision shall not apply to Customer's payment obligations.

**b. Governing Law and Jurisdiction.**

- (i) Customer Located in the United States.** If Customer is located in the United States, the Agreement shall be governed by and interpreted pursuant to the laws of the State of Minnesota, U.S.A., without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in Hennepin County, Minnesota with respect to any Dispute.
  - (ii) Customer Located in Canada.** If Customer is located in Canada, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of the Province of Ontario, Canada without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the provincial and federal courts located in Ontario, Canada with respect to any Dispute.
  - (iii) Customer Located in Countries in Europe, the Middle East, Africa, or Asia.** If Customer is located in a country in Europe, the Middle East, Africa or Asia, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of England without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the courts of England with respect to any Dispute. In addition, if the Agreement is controlled by the laws of England, no person who is not a party to the Agreement shall be entitled to enforce or take the benefit of any of its terms under the Contracts (Rights of Third Parties) Act 1999.
  - (iv) Customer Located in Australia.** If Customer is located in Australia, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of the State of New South Wales, Australia, without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in New South Wales with respect to any Dispute.
  - (v) Customer Located in any other Country.** If Customer is located in any other country, unless expressly prohibited by local law without the possibility of contractual waiver, the Agreement shall be governed by and interpreted pursuant to the laws of the State of Minnesota, USA, without regard to its conflict of laws principles that might require the application of law from another jurisdiction. Subject to the provisions of the Agreement mandating arbitration, each party irrevocably submits to the exclusive jurisdiction of the state and federal courts located in Hennepin County, Minnesota with respect to any Dispute.
  - (vi) Inapplicability of U.N. Convention.** In no event shall either the United Nations Convention on Contracts for the International Sale of Goods or any version of the Uniform Computer Information Transactions Act adopted by any state in the United States apply to, or govern, the Agreement.
- c. Language.** To the extent permitted by law, any language translation of the Agreement is for convenience only and no such translation will be binding against the parties except as required by applicable law without the possibility of contractual waiver. If Customer is located in France or Quebec, Canada, the following clause applies: The parties hereby confirm that they have requested that the Agreement be drafted in English. Les parties contractantes confirment qu'elles ont exigé que le présent contrat et tous les documents associés soient rédigés en anglais.
- d. Publicity.** Either party may, in its discretion, disclose the existence of the Agreement (but not the terms or conditions of the Agreement) and that Customer is a customer of Provider and/or a Provider Affiliate.
- e. Assignment.** Except as expressly provided otherwise in the Agreement, Customer may not assign, delegate or otherwise transfer all or any part of the Agreement without prior written consent from Provider. A change of control of Customer shall be deemed an assignment for purposes of the Agreement, but Provider shall not unreasonably withhold its consent to a deemed assignment arising as a result of a change of control of Customer. Any attempted assignment, delegation, or transfer without consent is void. Provider shall have the right to assign the Agreement to any successor to its business or assets to which the Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. For sake of clarity, it shall not be considered a change of control if the Agreement is assigned to one of Customer's Affiliates as part of a corporate reorganization exclusively among some or all of the entities that may have existed in Customer's corporate structure as of the Effective Date of the Agreement and Customer agrees to provide notice of such transfer to Provider within 30 days of such event.
- f. Code of Conduct, Anti-Bribery.** Provider is part of the Körber group of companies, and as such has a strict responsibility to follow the Körber Code of Conduct which includes observing high standards of ethical conduct and respect for human rights. A copy of the Körber Code of Conduct may be found at <https://www.koerber.com/en/compliance-and-code-of-conduct/>. No portion of any payment made by Provider to Customer or Customer to Provider shall be used as a bribe, kickback, rebate or political influence, or in violation of applicable foreign exchange control regulations, tax laws or regulations or other laws or regulation of any applicable jurisdiction, and any such use shall be a material breach of the Agreement. No gift or gratuity, or any promise of such, has been or will be given, offered, or made to or for the benefit of any employee or agent of either Party, as a result of, or in any way in connection with the Agreement or the Parties to the Agreement or an Order.
- g. Export and Import and Prohibited Persons and Uses.** If Customer exports, re-exports, or imports Offerings, technology, or technical data acquired under the Agreement, then Customer assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. Customer represents and warrants to Provider that it is not a person to whom Provider is prohibited from providing Offerings under U.S. law or regulation and that Customer shall not



use any Offerings for any purpose prohibited by U.S. law or regulation. Provider may suspend performance if Customer is in violation of any applicable law or regulation.

- h. Notices.** All notices that are required under the Agreement shall be in writing, delivered by a method providing for proof of delivery to the address stated on an Order unless notified otherwise, and shall be considered effective upon the date of delivery.
- i. Entire Agreement.** The Agreement is the entire understanding between Provider and Customer regarding Customer's acquisition of the Offerings specified in the Order, as applicable. The Agreement supersedes and replaces any previous communications, representations, or agreements, or Customer's additional or inconsistent terms, whether oral or written. In the event any provision of the Agreement is held invalid or unenforceable, the remainder of the Agreement shall remain enforceable and unaffected thereby.
- j. Enforceability of Limitations.** THE TERMS OF THE AGREEMENT THAT LIMIT, DISCLAIM, OR EXCLUDE WARRANTIES, REMEDIES, OR DAMAGES ARE INTENDED BY THE PARTIES TO BE INDEPENDENT AND REMAIN IN EFFECT DESPITE THE FAILURE OR UNENFORCEABILITY OF ANY OTHER PROVISION OF THE AGREEMENT. THE PARTIES HAVE RELIED ON THE LIMITATIONS AND EXCLUSIONS SET FORTH IN THE AGREEMENT IN DETERMINING WHETHER TO ENTER INTO IT.
- k. Waiver.** Neither party's failure to exercise or delay in exercising any of its rights under the Agreement shall constitute or be deemed a waiver or forfeiture of those rights.
- l. Amendment.** For a change to the Agreement to be valid, authorized representatives of each party must sign a written amendment. Changes in any other form are void, including any handwritten interlineations to any portion of the Agreement unless contemporaneously initialed by both parties. Any conflicting or additional terms and conditions on or accompanying any purchase order or other communication from Customer are void. Provider's failure to object to provisions contained in any purchase order or other communication from Customer will not be construed as a waiver of this section, and such terms and conditions shall have no effect on the Agreement.
- m. Electronic Copies.** A version of the Agreement or an Order signed and transmitted by .pdf or electronic copy shall have the same binding effect as an original signature. Each party hereby agrees that its electronic signature, if used, is the legal equivalent of its manual signature.
- n. Interpretation.** Headings are for convenience only and do not affect the meaning or interpretation of the Agreement. The Agreement shall not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used it shall be construed in each case to mean "including, but not limited to."
- o. Order of Precedence.** In the event of a conflict, the terms of an Order shall prevail over the Agreement, except that no indemnities shall bind Provider or its Affiliates to the extent such are set forth in the Order or elsewhere, and the LIMITATIONS OF LIABILITY AND REMEDIES section of these *General Terms* may not be modified in an Order or elsewhere in the Agreement.
- p. Relationship of the Parties.** Each party is an independent contractor in the performance of the Agreement. Neither party is nor will claim to be a legal representative, partner, franchisee, agent or employee of the other, unless explicitly provided otherwise in the Agreement. Personnel of each party and their Affiliates shall not be deemed employees or agents of the other party.
- q. Provider Subcontractors.** Provider retains the right to subcontract the performance of any Service, or any part of a Service, to its Affiliates or subcontractors selected by Provider, so long as Provider remains liable to Customer for the performance of the Service as specified in the Agreement. Upon Customer's request, Provider will notify Customer of the utilization of any subcontractors in the performance of Services.