SunGard Solution Terms (Germany)

These SunGard Solution Terms ("**SST**") may be incorporated into one or more orders referencing these SST (each, an "**Order**"). Each Order, together with these SST, shall form a separate agreement (this "**Agreement**"), by and between the Person identified on the Order ("**Customer**") and the SunGard company identified on the Order ("**SunGard**"), applicable to the proprietary solution identified on the Order (the "**Solution**"), as such Solution may be modified, revised and updated from time to time. Only the Customer and SunGard entities that execute the Order will be liable for the obligations under that Order. Each Order will specify its effective date ("**Order Effective Date**").

1.   Scope. Customer may use the Solution only in the ordinary course of Customer's internal business operations for the benefit of Customer and only in accordance with the terms on the Order, the Documentation and this Agreement, including the Scope of Use. Customer shall be liable for any breach of this Agreement by any persons given access to the Solution by Customer.

2.   Specified Configuration. Customer shall, at its expense, procure and maintain the computer hardware, systems software and other items required for use of, or access to, the Solution, including those described in the Order and Documentation (the "**Specified Configuration**") and for updating the Specified Configuration in accordance with SunGard's published updates. If not yet completed, Customer shall complete its procurement and installation of the Specified Configuration prior to the scheduled start of implementation. Customer shall devote all equipment, facilities, personnel and other resources reasonably necessary to begin using the Solution in production on a timely basis as contemplated by this Agreement and satisfy any Customer requirements necessary for SunGard to complete the professional services described in Section 6. SunGard is not responsible for any delays or additional fees and costs associated with Customer's failure to timely perform its obligations under this Section 2.

3.   Payments.

3.1.   Fees. Customer shall pay to SunGard the fees stated in the Order, in accordance with the payment terms stated on the Order. SunGard shall invoice all other fees as and when incurred. All invoices shall be sent to Customer's address for invoices stated on the Order. Except as otherwise specified on the Order, Customer's payments shall be due within thirty (30) days after the invoice date. A late payment fee at the rate of 12% per year (or, if lower, the maximum rate permitted by applicable law) shall accrue on any amounts thirty (30) days past due and unpaid by Customer to SunGard, except for Disputed Amounts. SunGard may not increase the fees and charges payable under this Agreement, unless otherwise stated in this Agreement or in the Order. Except as provided in Section 4.2(c), all fees and other amounts paid by Customer under this Agreement are non-refundable.

3.2.   Third-Party Fees. The fees payable by Customer to SunGard in accordance with this Section 3 do not include any applicable royalties, costs, expenses and/or fees that may be imposed by the Third-Party Providers for the Third-Party Data and Services provided in accordance with this Agreement. Customer shall be solely responsible for, and shall pay, all such third-party fees as and when directed by SunGard or the Third-Party Providers.

3.3.   Taxes. The fees and other amounts payable by Customer to SunGard under this Agreement do not include any taxes, duties, levies, fees or similar charges of any jurisdiction ("**Taxes**") that may be assessed or imposed in connection with the transactions contemplated by this Agreement, excluding only taxes based upon SunGard's net income. Customer shall directly pay any such Taxes assessed against it, and

Customer shall promptly reimburse SunGard for any such Taxes payable or collectable by SunGard.

3.4.   Certain Remedies for Non-payment. If Customer fails to pay to SunGard, within ten (10) days after SunGard makes written demand therefor, any past-due amount payable under this Agreement (including any applicable late payment fee) that is not a Disputed Amount, in addition to all other rights and remedies which SunGard may have, SunGard may, in its sole discretion and with further notice to Customer stating the suspension date, suspend performance of any or all of its obligations under this Agreement (other than Section 5). SunGard shall have no liability for Customer's use of the Solution until all such past-due amounts and any applicable reinstatement fees are paid in full.

4.   Warranties, Covenants and Limitations.

4.1.   Compliance with Laws. SunGard shall comply with all laws, enactments, orders and regulations applicable to it as the provider of services under this Agreement. Customer shall comply with all laws, enactments, orders and regulations applicable to it as the recipient and user of services under this Agreement.

4.2.   No Infringement.   SunGard shall indemnify and defend Customer against any third-party claim asserting that the Solution, as and when made available to Customer by SunGard and when properly used for the purpose and in the manner specifically authorized by this Agreement, infringes upon (i) any patent issued as of the date of this Agreement by a country that is a signatory to the Paris Convention, (ii) any copyright of any country that is a member of the Berne Convention as of the date of this Agreement, or (iii) any trade secret or other proprietary right of any Person (collectively, "**IP Rights**"). SunGard shall have no obligation under this Section 4.2 unless Customer promptly gives notice to SunGard within ten (10) days after the date Customer first receives notice of the applicable infringement claim (provided that later notice shall relieve SunGard of its liability and obligations under this Section 4.2 only to the extent that SunGard is prejudiced by such later notice) and allows SunGard to have sole control of the defense or settlement of the claim. Customer may monitor any such litigation or proceeding at its expense, using counsel of its choosing. The remedies provided in this Section 4.2 are the sole remedies for a claim of infringement or misappropriation hereunder. If any applicable infringement claim is initiated, or in SunGard's sole opinion is likely to be initiated, then SunGard may at its option and expense:

(a)   modify or replace all or the allegedly infringing part of the Solution so that it is no longer allegedly infringing, provided that the functionality does not change in any material adverse respect; or

(b)   procure for Customer the right to continue using the allegedly infringing part of the Solution; or

(c)   remove all or the allegedly infringing part of the Solution, and (i) if Customer has paid a one-time upfront initial license fee for the applicable Solution, refund to Customer the corresponding portion of

the license fee paid by Customer to SunGard for the applicable Solution, less a reasonable rental charge equal to one-sixtieth (1/60) of the initial license fee for each month of use following the Order Effective Date, or (ii) if Customer is paying for the use of the Solution on a recurring basis, refund to Customer the corresponding portion of the unused recurring fee(s) paid by Customer to SunGard for the applicable Solution, and in each such case this Agreement shall terminate with respect to the Solution or part thereof removed.

4.3.   Harmful Code. Using a recent version of a reputable virus-checking product (to the extent commercially available), SunGard will check the Solution, as well as any systems used to deliver the Solution, for any viruses, worms or similar harmful code ("**Harmful Code**") and will use commercially reasonable efforts to eliminate any such Harmful Code that SunGard discovers.

4.4.   Exclusion for Unauthorized Actions. SunGard is not liable under any provision of this Agreement for any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Solution by or on behalf of Customer, any unauthorized combination of the Solution with other software or services (other than as specified in the Specified Configuration), any use of any version of the Solution other than the Supported Release, a failure to subscribe to support services if then offered for the Solution, any Third-Party Data or Services, any Third-Party Software or Open Source Software (except as set forth in Sections 4.11 and 4.12), any wrongful act or omission by Customer, its Affiliates or its customers or any breach of this Agreement by Customer.

4.5.   Conditions of Use. To the extent that Third-Party Users are permitted to have access to the Solution: (i) Customer represents and warrants to SunGard, its Third-Party Providers, agents, successors and assigns and their respective employees (collectively, the "**Indemnified Group**") that agreements between it and Third-Party Users expressly provide, and covenants that all such agreements will provide, that none of the Indemnified Group have or will have any liability in any circumstances with respect to any services offered by Customer to the Third-Party Users ("**Customer Services**"), including with respect to the data and information provided to the Third-Party Users as part of the Customer Services; and (ii) Customer shall indemnify and defend the Indemnified Group from and against any of the following: any and all claims, liabilities and obligations (including reasonable lawyers' fees) by any third party, including Third-Party Users, against the Indemnified Group and arising out of Customer's or Third-Party Users use of the Solution, Third-Party Data or the Documentation with respect to the Customer Services.

4.6.   Force Majeure. Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than its payment obligations, which shall be suspended only for so long as the force majeure event renders Customer unable by any means to transmit payments when due hereunder) as a result of a cause beyond its control, including any force majeure (*"höhere Gewalt"),* terrorist act, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, theft or criminal misconduct by unrelated third parties, disruption or outage of communications (including the Internet or other networked environment), power or other utility, unavailability of supplies or any other cause, whether similar or dissimilar to any of the foregoing, which

could not have been prevented by the non-performing party with reasonable care.

4.7.   Disclaimer. Except as stated in Sections 4, 6.5 and 9.6**,** the Solution, Documentation and Services are provided "as is," and all other warranties, guarantees or any other statutory or contractual rights arising out of arising out of lack of quality, title, defects or non-performance are, to the fullest extent permitted by applicable law, excluded from this Agreement.

4.8.   Limitations Cap. Each party's total liability under this Agreement shall under no circumstances exceed the agreed Liability Cap.

4.9.   Consequential Damage Exclusion. Under no circumstances shall either party (or any of its affiliates providing or receiving the Solution, services or other software under this Agreement) be liable to the other or any other person for losses or damages which fall into any of the following categories: (a) lost revenues, (b) lost profits, (c) loss of business, (d) trading losses, or (e) any indirect or consequential damages of any kind. For purposes of clarification, the following shall be deemed "direct damages" as between Customer and SunGard for the purposes of this Agreement (i) any and all damages, including consequential and similar damages, awarded to a third party for which indemnification is provided by a party under Sections 4.2, 4.5, 6.7 or 8.4**;** (ii) Customer's out-of-pocket costs to notify affected persons and/or pay for credit monitoring services for such persons for a one-year period incurred as a result of SunGard's breach of Section 5**.**

4.10.   Exceptions. The limitations and exclusions set forth in Sections 4.8 and 4.9 shall not apply to: (a) breaches of the Scope of Use; (b) failure to pay fees when due; (c) **either party's intentional misconduct (***Vorsatz***) or gross negligence (***grobe Fahrlässigkeit***)**; (d) a party's liability for death or personal injury due to that party's negligence; or (e) a party's liability for damages to the extent that such limitation or exclusion is not permitted by applicable law. If a party negligently breaches any material contractual duty (*fahrlässige Verletzung wesentlicher Vertragspflichten*), then Sections 4.8 and 4.9 shall not limit or exclude such party's liability for such breach in relation to damages that are foreseeable (*vorhersehbar*) and typical for the type of contract (*vertragstypisch*). The limitations set forth in Section 4.8 do not apply to claims for which indemnification is provided by a party under Sections 4.2, 4.5, 6.7 or 8.4.

4.11.   Third-Party Software. SunGard shall use reasonable efforts to provide Customer the benefit of all indemnities and warranties granted to SunGard by the licensor(s) of the Third-Party Software, to the extent possible without additional cost to SunGard, as and if permitted by SunGard's agreement with the licensor of the Third-Party Software, and to the extent such warranties and indemnities pertain to Customer's use of the Third-Party Software hereunder. In the event of any defect in any Third-Party Software (in the form delivered by SunGard and when properly used for the purpose and in the manner specifically authorized by this Agreement), SunGard will use commercially reasonable efforts to replace or correct the Third-Party Software without charge. If SunGard complies with this provision, it shall face no further liability with respect to any defect in any Third-Party Software.

4.12.   Open Source Software Components. The Solution may be provided with or include Open Source Software, including that Open Source Software identified in the Documentation or on the support services website for the Solution. The Open Source Software is licensed

under the terms of the open source license that accompanies or is made available with such Open Source Software, including via a website designated by SunGard. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable license for such Open Source Software. Open Source Software shall not be deemed to be part of the Solution under this Agreement and SunGard shall have no liability relating to such Open Source Software; provided, however, that SunGard shall be responsible for fixing Errors caused by the Open Source Software to the same extent as SunGard's ongoing support obligations as set forth in Sections 8.6 and 9.4 of this Agreement.

4.13. Other Limitations. The warranties made by SunGard in this Agreement, and the obligations of SunGard under this Agreement, run only to Customer and not to its Affiliates, its customers or any other Persons. Under no circumstances shall any Affiliate or customer of Customer or any other Person be considered a third-party beneficiary of this Agreement or be entitled to protection under this Agreement or otherwise be entitled to any rights or remedies under this Agreement (including any right to be consulted in connection with any variation or rescission of the Agreement agreed between SunGard and Customer), even if such Affiliates, customers or other Persons are provided access to the Solution or data maintained in the Solution via the Internet or other networked environment ("*kein Vertrag zugunsten Dritter oder Vertrag mit Schutzwirkung für Dritte*"). Except to the extent specified in an Order, SunGard shall not be deemed Customer's official record keeper for regulatory or other purposes and shall have no obligation to retain any records or data on Customer's behalf after termination or expiration of this Agreement.

5. Confidentiality, Security, Ownership and Use Restrictions.

5.1. Confidentiality. The party receiving Confidential Information ("**Receiving Party**") of the other ("**Disclosing Party**") shall not, and shall cause its Authorized Recipients not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this Agreement. Receiving Party will use the same reasonable efforts to protect the Confidential Information of Disclosing Party as it uses to protect its own proprietary information and data. Prior to disclosing the Confidential Information to its Authorized Recipients, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the other party is given a reasonable opportunity to contest such disclosure or obtain a protective order.

5.2. Security.

(a) SunGard will implement commercially reasonable administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of Customer Data; (ii) protect against any anticipated threats or hazards to the security or integrity of Customer Data; and (iii) protect against unauthorized access to or use of Customer Data. SunGard will review and test such safeguards on no less than an annual basis.

(b) If Customer makes the Solution or data maintained by the Solution accessible through the Internet or other networked environment, Customer shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of the Solution, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.

(c) To the extent that Third-Party Users are permitted to have access to the Solution, Customer shall maintain agreements with such Third-Party Users that adequately protect the confidentiality and intellectual property rights of SunGard in the Solution and Documentation, and disclaim any liability or responsibility of SunGard with respect to such Third-Party Users.

5.3. Personal Data. If SunGard processes or otherwise has access to any personal data on Customer's behalf when performing SunGard's obligations under this Agreement (where "**personal data**" has the meaning set forth in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 (as amended from time to time), as transposed into German law by the German Federal Data Protection Act (*Bundesdatenschutzgesetz*) ("**BDSG**")), then: (i) Customer shall be the data controller (where "**data controller**" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and SunGard shall be a data processor (where "**data processor**" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own); (ii) Customer shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal data or personal information to SunGard so that SunGard may lawfully use, process and transfer the personal data and personal information in accordance with this Agreement on Customer's behalf, which may include SunGard processing and transferring the relevant personal data or personal information outside the country where Customer and the Authorized Users are located in order for SunGard to provide the Solution and perform its other obligations under this Agreement; (iii) SunGard shall process the personal data and personal information only in accordance with any lawful and reasonable instructions given by Customer from time to time as set out in and in accordance with the terms of this Agreement; and (iv) each party will take reasonable steps to ensure the reliability of any of its own employees who have access to the personal data; (v) SunGard will notify Customer without undue delay if SunGard has determined a substantial breach against applicable data protection laws, which has to be notified to the data subject according to Section 42a BDSG; (vi) at Customer's request, SunGard will reasonably assist Customer in order to allow Customer to control the processing of personal data as required by applicable laws and regulations, provided that Customer reimburses SunGard for all expenses and pays for any assistance provided at SunGard's standard professional services rate; and (vi) each party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of the personal data and personal information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to the personal data and personal information and the nature of the personal data and personal

information being protected. If necessary, the parties will cooperate to document these measures taken.

5.4. SG Solution Details. The SG Solution Details are trade secrets and proprietary property of SunGard or its licensors, having great commercial value to SunGard or its licensors. Title to all SG Solution Details and all related intellectual property and other ownership rights shall be and remain exclusively with SunGard or its licensors, even with respect to such items that were created by SunGard specifically for or on behalf of Customer. SunGard and its Affiliates may freely use Feedback without attribution or the need for SunGard, its Affiliates or any third party to pay Customer or any third party any royalties or other fees of any kind. This Agreement is not an agreement of sale, and no intellectual property or other ownership rights to any SG Solution Details are transferred to Customer by virtue of this Agreement. All copies of SG Solution Details in Customer's possession shall be deemed to be on loan to Customer during the term of this Agreement.

5.5. Use Restrictions. Except to the extent specifically authorized by this Agreement, Customer shall not, shall not attempt to, and shall not permit any other Person under its reasonable control to: (a) use any SG Solution Detail for any purpose, at any location or in any manner not specifically authorized by this Agreement; (b) make or retain any Copy of any SG Solution Detail; (c) create or recreate the source code for the Solution, or re-engineer, reverse engineer, decompile or disassemble the Solution except to the extent specifically permitted by applicable law; (d) modify, adapt, translate or create derivative works based upon the Solution or Documentation, or combine or merge any part of the Solution or Documentation with or into any other software or documentation except to the extent specifically permitted by applicable law; (e) refer to, disclose or otherwise use any SG Solution Detail as part of any effort either (i) to develop a program having any functional attributes, visual expressions or other features similar to those of the Solution or (ii) to compete with SunGard; (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any SG Solution Detail, or fail to preserve all copyright and other proprietary notices in any Copy of any SG Solution Detail made by Customer; (g) sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, sub-contractor, consultant or partner, any right to use any SG Solution Detail or allow such other Person to use or have access to any SG Solution Detail, whether on Customer's behalf or otherwise; or (h) use the Solution to conduct any type of application service provider, service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any Person, whether on a fee basis or otherwise.

5.6. Notice and Remedy of Breaches. Each party shall promptly give notice to the other of any actual or suspected breach by it of any of the provisions of this Section 5, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.

5.7. Enforcement. Each party acknowledges that any breach of any of the provisions of this Section 5 may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all Persons involved from continuing the breach.

6. Professional Services.

6.1. Professional Services. An Order may identify certain Professional Services. In addition, at Customer's reasonable request and subject to the availability of SunGard's personnel, SunGard shall provide to Customer other Professional Services requested by Customer in accordance with a fully executed Professional Services Order.

6.2. Professional Services Fees. Customer shall pay to SunGard the professional services fees stated on the Order. In each case where professional services fees are not specified on the Order, then the fees for such services shall be based upon SunGard's then standard professional services fee rates. SunGard's standard professional services fee rates in effect on the Order Effective Date are stated on the Order and are subject to increase in the ordinary course of business.

6.3. Expense Reimbursements. Customer shall reimburse SunGard for reasonable travel, living and other out-of-pocket expenses incurred by SunGard personnel in connection with all services, including, but not limited to, Professional Services and maintenance and support rendered by SunGard. Reimbursable expenses shall be incurred by SunGard personnel in accordance with SunGard's then current per diem travel policy, a copy of which will be furnished at Customer's request. SunGard shall invoice Customer for reimbursement of these expenses on a monthly basis, as incurred.

6.4. Cooperation and Access to Facilities, Data and Employees. To the extent reasonably necessary for SunGard to perform its obligations under this Agreement, Customer shall provide to SunGard access to Customer's location site, equipment, data and employees, and shall otherwise cooperate with SunGard in its performance hereunder, all as reasonably necessary for SunGard to perform its obligations under this Agreement.

6.5. Professional Services Warranty. SunGard warrants to Customer that Professional Services will be performed in a good and workmanlike manner by qualified personnel, subject to Section 6.4. SunGard shall have no liability under this Section 6.5 unless, within thirty (30) days after the actual date of the particular Professional Services, SunGard receives notice from Customer describing the breach of this warranty, together with adequate supporting documentation and data. Upon receipt of any such notice, SunGard's only obligation under this Section 6.5 is to remedy the breach and reperform the particular Professional Services affected as soon as reasonably practical at no additional charge.

6.6. Compliance with Customer Policies. While SunGard personnel are performing services at Customer's site, SunGard will ensure that such personnel comply with Customer's reasonable security procedures and site policies that are generally applicable to Customer's other suppliers providing similar services and that have been provided to SunGard in writing and in advance. Customer shall promptly reimburse SunGard for any out-of-pocket costs incurred in complying with such procedures and policies.

6.7. Contributed Material. In the process of SunGard's performing Professional Services, Customer may, from time to time, provide SunGard with designs, plans, or specifications, improvements, works or other material for inclusion in, or making modifications to, the Solution, the Documentation or any other deliverables ("**Contributed Material**"). Customer grants to SunGard a nonexclusive, irrevocable, perpetual, transferable right, without the payment of any royalties or other compensation of any kind and without the right of attribution, for SunGard, SunGard's Affiliates and SunGard's licensees to make, use, sell

and create derivative works of the Contributed Material. Customer shall indemnify and defend SunGard against any third-party claim asserting that Customer does not have the full legal right (including any moral rights) to grant to SunGard such rights to use the Contributed Material and/or that the Contributed Material in the form delivered to SunGard infringes upon any IP Rights.

7. Term and Termination.

7.1.   Order Term. The Order may state an initial term for the use of the Solution ("**Initial Term**") and may state renewal terms (each a "**Renewal Term**"). "**Order Term**" means the Initial Term together with any Renewal Terms.

7.2.   Termination. Either party may terminate this Agreement for cause and with immediate effect (*Kündigung aus wichtigem Grund*) in accordance with the provisions of Section 314 of the German Civil Code (*Bürgerliches Gesetzbuch*) by giving notice of termination to the other party if the other party breaches any of its material obligations (other than Customer's failure to pay Support Fees during a Renewal Support Term) under this Agreement and does not cure the breach within thirty (30) days after receiving notice describing the breach in reasonable detail.

7.3.   Effect of Termination. The provisions of Sections 3, 4, 5, 7.3 and 11 shall survive any termination of this Agreement, whether under this Section 7 or otherwise. Customer shall be liable for all payments due to SunGard for the period ending on the date of termination. Upon a termination of this Agreement, whether under this Section 7 or otherwise, or upon the expiration or termination of an Order Term, Customer shall: (i) discontinue all use of the affected Solution and Documentation, (ii) promptly return to SunGard all copies of the affected Solution and Documentation and any other affected SG Solution Details then in Customer's possession; and (iii) give notice to SunGard certifying that all copies of such items have been permanently deleted.

8. Terms Applicable To SaaS, ASP and Hosting.

The following provisions in this Section 8 apply solely to Hosting Services and to Orders for an ASP Solution or SaaS Solution.

8.1.   SaaS, ASP and Hosting. SunGard shall provide the Hosting Services and/or access to the ASP Solution or SaaS Solution, as described and for the term specified on the Order.

8.3.   Passwords and Solution Access. If SunGard provides Customer or its Authorized Users with unique access codes to access the Solution (each, a "**Password**"), Customer shall hold any such Passwords in strict confidence and shall not assign, share, misuse or abuse the Passwords or attempt to render ineffective the password protection of the Solution. If Customer suspects or learns that a Password is being used to gain unauthorized access to the Solution, Customer will immediately notify SunGard so that it can change, or assist Customer in changing, the applicable Password. To the extent the Solution is within SunGard's network, SunGard may suspend access to the Solution without advance notice if SunGard reasonably believes the Solution is being used or accessed in an unauthorized, illegal or disruptive manner, provided that SunGard will promptly notify Customer of any such event.

8.4.   Customer Data.

(a)   Customer shall supply, or cause to be supplied, all Customer Supplied Data. Customer shall transmit the Customer Supplied Data to SunGard by communications link or in another manner described on the Order.   As between SunGard and Customer, Customer shall be responsible for ensuring that the Customer Supplied Data is accurate and complete. Customer represents and warrants to SunGard that Customer has the full legal right for Customer and SunGard, its affiliates and agents to use the Customer Supplied Data for processing hereunder. Customer shall indemnify and defend SunGard, its affiliates and agents against any third-party claim alleging breach of the foregoing warranty.

(b)   Within thirty (30) days after termination of Hosting Services or of an Order for an ASP Solution or SaaS Solution, Customer shall give SunGard an instruction notice regarding the disposition of any tapes, data, files and other property belonging to Customer and then in SunGard's possession. To the extent practicable and at Customer's expense after receipt of such notice, SunGard shall use commercially reasonable efforts to comply with the notice, including converting the data on the Solution to machine-readable form. SunGard may retain such property until SunGard receives all payments due to SunGard under that Order. If Customer fails to give that notice within thirty (30) days after such termination, then SunGard may dispose of such property in a commercially reasonable manner.

(c)   In order to improve SunGard's product and service offerings for its customers, SunGard may maintain a database of information residing on the Solution. SunGard and its affiliates may use and distribute such data in an aggregated and de-identified format, including as a part of the development, distribution and licensing of any SunGard product or service offering.

8.5.   Regulatory Access. To the extent permitted by law, each party will notify the other promptly of any formal request by an authorized governmental agency or regulator to examine Customer Data or other records, if any, regarding Customer that are maintained in SunGard facilities under this Agreement. Customer will reimburse SunGard for the reasonable out-of-pocket costs SunGard incurs, and for time spent, in making such Customer Data or other records, if any, available for examination and audit by the governmental agency or regulatory authority that has jurisdiction over Customer's business.

8.6.   Support. SunGard shall provide to Customer the ongoing support services as described in the Order.

8.7.   Data Backup and Disaster Recovery. If the Solution maintains a database then, unless otherwise stated on the Order:

(a)   SunGard shall provide an electronic backup of the Customer Data accordance with the backup cycle defined in the Order (and if no backup cycle is defined, at reasonable intervals); and

(b)   SunGard shall maintain a disaster recovery plan which includes a procedure for the restoration of Customer's production environment at an alternate facility in the event of a disaster. SunGard's disaster recovery plan shall be tested at least once each calendar year.

8.8.   Interruption to Solution. From time to time, SunGard shall be entitled (at its discretion, without incurring liability for so doing) to interrupt the Solution to: (i) perform repairs and other maintenance and install enhancements on SunGard's equipment, software and/or other systems that are required for the provision of the Solution, or (ii) make adjustments to its infrastructure (including, for example, in relation to resources shared by its other customers) and thereby cause a disruption in the provision of the Solution. Except in the case of emergency repairs, maintenance or adjustments, SunGard will (a) give Customer reasonable

prior notice of the interruption; (b) limit such interruptions to outside of SunGard's normal business hours; and (c) use commercially reasonable efforts to minimize the impact of the interruption.

8.9.   Harmful Code. Using a recent version of a reputable virus-checking product (to the extent commercially available), Customer will check the Specified Configuration for Harmful Code and ensure no Harmful Code is introduced by its end users or from its systems into any systems used in the Solution and will use commercially reasonable efforts to eliminate any such Harmful Code that either Customer or SunGard discovers.

8.10.   Volume Increases. Customer shall give notice to SunGard whenever Customer intends to materially increase the volume of data to be processed on the Solution. Any such increase that results in an increase beyond the Scope of Use requires an additional executed Order and the payment of additional fees.

9.   Terms Applicable to Software Licenses.

The following provisions in this Section 9 apply solely to an Order that provides the right for Customer to install the Solution at the facility identified on the Order.

9.1.   Grant. Except as otherwise provided in an Order, SunGard grants to Customer a non-transferable, non-exclusive, term license to use the Solution in accordance with this Agreement and the Scope of Use. The Solution shall be installed in object code form only at Customer's location(s) listed on the Order ("**Designated Location(s)**"). Customer may, subject to Section 11.4, use or access the Solution at or from Customer locations worldwide.   Customer may change a Designated Location by giving prompt notice thereof to SunGard. Customer may copy and use the Solution installed at the Designated Location for inactive back-up and disaster recovery purposes. Customer may copy the Documentation to the extent reasonably necessary for use of the Solution under this Agreement.

9.2.   Initial Installation. SunGard shall deliver to Customer the initial Copies of the Solution stated on the Order by supplying such initial Copies (a) by physical shipment, such as on a disc or other media, or (b) by electronic delivery, such as by posting it on SunGard's network for downloading. Physical shipment is on F.O.B. terms, SunGard's shipping point and electronic delivery is deemed effective at the time SunGard provides Customer with access to download the Solution. The date of such delivery shall be referred to as the "**Delivery Date**." Customer shall install the Solution at the Designated Location(s) on or before the scheduled installation date stated on the Order ("**Scheduled Installation Date**"). If a Scheduled Installation Date is not specified on the Order, Customer shall install the Solution within thirty (30) days after the Delivery Date.

9.3.   Testing. If the Solution is specified in the Order as being subject to testing, then the following terms apply:

(a)   Within the period of thirty (30) days after the Delivery Date Customer shall intensively and diligently test the Solution to determine whether it performs in accordance with the Documentation in all material respects and shall by the end of that thirty (30) day period give written notice of defects to SunGard ("*Mängelrüge*") (in accordance with Section 11.1) of any failure of the Solution to perform in accordance with the Documentation in any material respect. Any notice of defects shall only be valid if it describes the material failure in reasonable detail and

explains why the failure is considered material by Customer. If Customer gives a proper notice of defects to SunGard, then:

i.   SunGard shall investigate the reported failure. Customer shall provide to SunGard reasonably detailed documentation and explanation, together with underlying data, to substantiate the failure and to assist SunGard in its efforts to diagnose and correct the failure.

ii.   If there was no material failure to perform or that the failure to perform was not attributable to a defect in the Solution or an act or omission of SunGard, then SunGard shall give notice to Customer explaining that determination in reasonable detail, and Customer shall lose any right with respect to any failure of the Solution to perform in accordance with the Documentation in any material respect as of the date of SunGard's notice.

iii. If there was a material failure to perform that was attributable to a defect in the Solution or an act or omission of SunGard, and if SunGard cannot correct the failure within thirty (30) days (or such longer period as may be reasonable under the circumstances) after receipt of Customer's notice of defects, then Customer shall promptly return to SunGard all copies of the Solution and Documentation and any other items delivered to Customer by SunGard, and as the Customer's sole and exclusive remedy, SunGard shall then refund to Customer the license fee paid by Customer. If, within such period, SunGard does correct the failure, then SunGard shall give notice to Customer certifying that the failure has been corrected, and another thirty (30) day testing period shall begin from the date of such notice in accordance with this Section 9.3.

(b)   Notwithstanding any of the provisions of Section 9.3(a), Customer shall lose any right with respect to any failure of the Solution to perform in accordance with the Documentation in any material respect on the first day that Customer uses the Solution in a live production environment or as Customer's system of record.

9.4.   Support. Beginning on the Order Effective Date and continuing for the duration of the initial support term set forth on the Order ("**Initial Support Term**"), SunGard shall provide the ongoing support services described in that Order; and Customer shall pay to SunGard support fees stated on such Order ("**Support Fees**"). Upon expiration of the Initial Support Term, the ongoing support services shall automatically renew and Customer shall be obligated to pay the Support Fees for additional annual support periods (each a "**Renewal Support Term**"), until the earlier of:

(a)   a party giving the other notice of its intent to terminate ongoing support services (in accordance with Section 11.1) at least sixty (60) days before the end of the Initial Support Term or Renewal Support Term, as applicable, provided that SunGard shall not provide such notice of support termination if such termination would be effective prior to whichever is the later of (i) the fifth (5th) anniversary of the Order Effective Date; or (ii) the date which falls at the end of the period equal to two (2) times the Initial Support Term; or

(b)   termination of this Agreement.

On an annual basis SunGard may increase the Support Fees payable, provided that the annual percentage increase in the Support Fees shall not exceed the limitation described on the Order.

9.5.   Support Termination. Upon the effective date of termination of ongoing support services by either party or at any time when Customer has failed to pay Support Fees ("**Support Termination Date**"): (i)

SunGard shall discontinue providing all ongoing support services, including SunGard's obligations under Section 9.4; (ii) any SunGard warranties under this Agreement shall cease to apply for the period after the Support Termination Date; and (iii) SunGard shall not be liable for Customer's use of the Solution after the Support Termination Date, except for SunGard's indemnification obligations for any third-party claims covered by Section 4.2 that arose prior to the Support Termination Date (but only to the extent such claim would not have been remedied by a Release made available by SunGard after the Support Termination Date).

9.6. Software Warranty. SunGard warrants to Customer that, for a period of ninety (90) days from the Scheduled Installation Date, the Solution (as delivered to Customer by SunGard and when properly used for the purpose and in the manner specifically authorized by this Agreement), will perform as described in the Documentation in all material respects. SunGard's sole obligation and liability under this warranty is to comply with the provisions of Section 9.4 of this Agreement.

9.7. Escrow of Source Code. If stated on the Order, then within a reasonable time after the first day that Customer uses the Solution in a live production environment SunGard shall arrange, for the benefit of Customer (and Customer shall execute any documents required to receive such benefit), an escrow of the Solution source code with an escrow agent nominated by SunGard ("**Escrow Agent**"), in accordance with SunGard's standard escrow agreement ("**Escrow Agreement**"). The source code for the Solution may be released from escrow, in accordance with the terms and conditions specified in the Escrow Agreement. Customer shall pay all fees due to the Escrow Agent as a result of such escrow. Customer acknowledges that the Escrow Agreement shall be deemed null and void and of no effect and that neither SunGard nor the Escrow Agent shall be under any further obligation with respect to such escrow arrangement if: (i) Customer fails to pay the escrow fees when due; or (ii) Customer terminates ongoing support services for the Solution.

9.8. Remote Access of Installed Software. Provided that SunGard performs such services in accordance with the confidentiality provisions of this Agreement, Customer shall permit SunGard, at SunGard's option, to remotely access the Solution installed at the Designated Location for the purpose of providing support services to Customer under Section 9.4 and otherwise implementing the purposes of this Agreement. In remotely accessing such Solution, SunGard will comply with Customer's reasonable security procedures and company policies that have been provided to SunGard in writing. Customer shall promptly reimburse SunGard for any out-of-pocket costs incurred in complying with such procedures and policies.

9.9. Backup. Customer acknowledges that it is the best judge of the value and importance of the data held on Customer's systems and that Customer shall be solely responsible for maintaining secure and complete back-up copies of all data that Customer processes using the Solution, which data will be backed-up on not less than a daily basis and which will be readily available on machines controlled by Customer to facilitate the prompt restoration of such data in the event of any loss of or damage to it. SunGard shall have no liability for any loss or damage caused by Customer's failure to maintain such backed-up copies.

9.10. Audit. At SunGard's expense and upon written request with reasonable notice, Customer will permit SunGard, its personnel or its outside auditors to enter the relevant Customer locations during normal business hours and audit the number of copies of the Solution and Documentation in Customer's possession and information pertaining to Customer's compliance with this Agreement. Such audits shall not occur more than once in any twelve (12) month period (unless SunGard believes, in good faith, that there has been a breach of this Agreement by Customer) and shall be performed in a manner not to disrupt Customer's business and operations and will respect the confidentiality of Customer, its suppliers and customers. Customer will, in a timely manner, reasonably cooperate with the auditors and provide the auditors all assistance as they may reasonably request in connection with the audit. Customer may require auditors acting on behalf of SunGard to execute reasonable confidentiality agreements and comply with Customer's reasonable security requirements, but this requirement will not apply to SunGard's internal auditors otherwise bound by the confidentiality conditions of this Agreement.

10. Third-Party Data and Services.

10.1. Ancillary Services. SunGard shall provide the Third-Party Data and Services originating with a Third-Party Provider, as described and for the term specified on the Order.

10.2. Third-Party Providers. Customer acknowledges and agrees that the Third-Party Data and Services provided under this Agreement contain information obtained, selected and consolidated by the Third-Party Providers under the authority of the Third-Party Providers, that Customer's use of the Third-Party Data and Services is authorized and regulated by the Third-Party Providers and further that the Third-Party Providers may require to be provided with information and data about Customer and the Third-Party Users in connection with their provision of Third-Party Data and Services. Customer also acknowledges that the Third-Party Providers may modify the Third-Party Data and Services, or discontinue availability of Third-Party Data and Services or modify the rules concerning the availability of and the applicable fees, costs and expenses for any of the Third-Party Data and Services, in which case neither SunGard nor the Third-Party Providers shall be held responsible for such modification and discontinuance. Any changes required by the Third-Party Providers shall be made a part of this Agreement by SunGard's notice of any such changes to Customer. For a thirty (30) day period after receiving such notice from SunGard, Customer may reject such changes and terminate the affected Third-Party Data and Service by notice to SunGard. If such notice is not received by SunGard within such thirty (30) day period, this Agreement shall be modified by such changes, and shall remain in full force and effect.

10.3. Third-Party Provider Notices.

(a) Customer acknowledges that SunGard is required to display certain notices and agreements and to report certain data related to Customer's use of the Third-Party Data and Services to the Third-Party Providers. To enable SunGard to meet its obligation in this regard, Customer shall inform SunGard, in writing, whenever its display of notices or utilization of any information derived from the Third-Party Data and Services changes.

(b) The notices and agreements required to be displayed as of the Order Effective Date are set forth on the Order. Customer shall display all such notices and agreements in the exact manner specified by SunGard or a Third-Party Provider in writing or as set forth in this Agreement. Customer acknowledges and agrees that the number and content of such notices, as well as other terms and conditions, may be changed from time to time by the Third-Party Providers. Upon written

notification of such changes by SunGard to Customer, the Order shall be deemed modified to include such changes and Customer will update such notices.

(c)   Customer shall comply with all applicable laws and obtain all necessary consents from any person, including its employees and the Third-Party Users and their respective employees, if any, regarding the collection, use and distribution to SunGard of any information or data regarding any Third-Party User and to the use by Customer and the Third-Party Users of the Third-Party Data and Services for the purposes set forth in this Agreement. The information and data may include personal and other information about Customer, its employees, the Third-Party Users and their employees, including their use of the Third-Party Data and Services. SunGard may use this information and data to carry out its obligations under this Agreement, including the provision of such information to the Third-Party Providers under this Agreement or for its own internal purposes.

11.   Other Provisions.

11.1.   Notices. All notices, consents and other communications under or regarding this Agreement shall be in writing (where "writing" does not include email) and in English (and shall otherwise be void, except that any pleadings or communication before a German court or any communications by or to SunGard's external legal advisers in Germany may be in German). Any notice may be given by facsimile, or email if notice in writing is provided promptly thereafter. Customer's address for notices is stated on the Order. SunGard's address for notices is stated on the Order. In the case of (i) any notice by Customer alleging a breach of this Agreement by SunGard or (ii) a termination of this Agreement, Customer shall also mail a written notice to SunGard Data Systems Inc., 680 East Swedesford Road, Wayne, Pennsylvania 19087, Attention: General Counsel and such notices shall identify the name date, specific parties and SunGard Order Number. Either party may change its address for notices by giving written notice of the new address to the other party.

11.2.   Defined Terms. As used in this Agreement, the terms below (and their plural forms) have the following meanings:

(a)   "**affiliate**" whether capitalized or not, means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified Person as of the date of this Agreement, for as long as such relationship remains in effect.

(b)   "**Authorized Recipient**" means: (i) with respect to Customer, Customer, any Authorized User and any employee of a Customer contractor, provided that the contractor is not a competitor of SunGard; and (ii) with respect to SunGard, SunGard, its foreign and domestic Affiliates and their respective contractors.

(c)   "**Authorized User**" means a Customer employee.

(d)   "**Confidential Information**" means all business or technical information disclosed by Disclosing Party to Receiving Party in connection with this Agreement. Confidential Information includes without limitation: (i) Customer Data and the details of Customer's computer operations; (ii) the SG Solution Details; and (iii) the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of the products licensed under an Order. Confidential Information does not include information that: (aa) prior to the receipt thereof under this Agreement, had been developed independently by Receiving Party, or was lawfully known to

Receiving Party, or had been lawfully received by Receiving Party from other sources, provided such other source did not receive it due to a breach of an agreement with Disclosing Party, and Receiving Party knew of such breach or ought to have reasonably known of such breach; or (bb) is publicly known at or after the time either party first learns of such information, or generic information or knowledge which either party would have learned in the course of its work in the trade, business or industry; or (cc) subsequent to the receipt thereof under this Agreement: (1) is published by Disclosing Party or is disclosed generally by Disclosing Party to others without a restriction on its use and disclosure; or (2) has been lawfully obtained by Receiving Party from other sources which Receiving Party reasonably believes lawfully came to possess it.

(e)   "**copy**" whether capitalized or not, means any paper, disk, tape, film, memory device or other material or object on or in which any words, object code, source code or other symbols are written, recorded or encoded, whether permanent or transitory.

(f)   "**Customer Data**" means data stored in, or processed by, the Solution; provided that aggregated data that is not personally identifiable data and not identifiable to Customer shall not be deemed Customer Data nor Customer's Confidential Information.

(g)   "**Customer Supplied Data**" means any information or data introduced into the Solution by or on behalf of Customer.

(h)   "**Disputed Amount**" means a good faith dispute by Customer of certain amounts invoiced under this Agreement. An amount will only constitute a Disputed Amount if (i) Customer has given notice of the dispute to SunGard promptly after receiving the invoice and (ii) the notice explains Customer's position in reasonable detail. A dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice are Disputed Amounts.

(i)   "**Documentation**" means the standard user documentation SunGard provides for the Solution, as such Documentation may be updated from time to time.

(j)   "**Error**" means a failure of a Supported Release to perform in all material respects in accordance with the Documentation.

(k)   "**Export Laws**" means any laws, administrative regulations and executive orders of the U.S., the Federal Republic of Germany and any other jurisdiction where any SG Solution Details will be located or from where any SG Solution Details will be accessed under this Agreement relating to the control of imports and exports of commodities and technical data, use or remote use of software and related property or services, embargo of goods or services or registration of this Agreement including the Export Administration Regulations of the U.S. Department of Commerce and the regulations and executive orders administered by the Office of Foreign Asset Control of the U.S. Department of the Treasury.

(l)   "**Feedback**" means any suggestions or recommendations for improvements or modifications to the Solution made by or on behalf of Customer.

(m)   "**including**" whether capitalized or not, means including but not limited to.

(n)   "**Liability Cap**" means the greater of Fifty Thousand U.S. Dollars (US$50,000) or the amount identified on the Order as the liability cap,

provided however that, if no amount is identified on the Order then the liability cap shall be Fifty Thousand U.S. Dollars (US$50,000).

(o)   "**Open Source Software**" means computer software made generally available at no charge by the copyright holder under a license which provides the right to modify and distribute the software to anyone for any purpose at no charge.

(p)   "**person**" whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature.

(q)   "**Professional Services**" means installation, implementation, training or consulting services including custom modification programming, support services relating to custom modifications, on-site support services, assistance with data transfers, system restarts and reinstallations provided by SunGard under this Agreement.

(r)   "**Release**" means a modification or update to the Solution, which SunGard, in its sole discretion, incorporates into the Solution without requiring its then existing client base to pay a separate fee (other than support fees).

(s)   "**Scope of Use**" means the Designated Computer(s), Designated Location(s), License Term, Platform, Business Purpose, Number of Trades, Number of Work Stations, Number of Developers, Number of Users, Volume Limit, Number of Production Databases, Number of Production Servers, and/or other restrictions or parameters as are stated in Section 5.5 or on the Order. Scope of Use shall not include the processing of any Acquired Business. Customer shall use the Solution in production to process Customer's business; provided that all increases in the Scope of Use require execution of an amendment amending the Scope of Use.

(t)   "**SG Solution Details**" means any of the following: the Solution and Documentation, the object code and the source code for the Solution, the visual expressions, screen formats, report formats and other design features of the Solution, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Solution or Documentation, all future modifications, updates, Releases, improvements and enhancements of the Solution or Documentation, all derivative works (as such term is used in the U.S. copyright laws) based upon any of the foregoing and all copies of the foregoing.

(u)   "**Supported Release**" means, unless otherwise stated in the Order, the latest Release of the Solution that is generally available to SunGard's client base.

(v)   "**Testing Peri**od" means thirty (30) days after the Delivery Date unless a different Testing Period is specified in the Order.

(w)   "**Third-Party Data and Services**" means market data services or other data, services or software.

(x)   "**Third-Party Provider"** means a securities exchange or other data, services or software provider.

(y)   "**Third-Party Software**" means the software specified as third-party software on the Order.

(z)   "**Third-Party User**" means any of Customer's customers, or their customers, to the extent such persons are provided access to the Solution or Third-Party Data hereunder.

11.3.   Parties in Interest.

(a)   This Agreement shall bind, benefit and be enforceable by and against SunGard and Customer and their respective permitted successors and assigns.

(b)   Customer shall not assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without SunGard's prior written consent, except such consent shall not be required in the case of an assignment of this Agreement (but not of any individual rights or obligations hereunder) to (i) a purchaser of or successor to substantially all of Customer's business (unless such purchaser or successor is a software, data processing or computer services vendor that is a competitor of SunGard, its parent company or any of its Affiliates) or (ii) an Affiliate of Customer, provided in the case of such an assignment, Customer guarantees the obligations of the assignee and the use of the Solution is not broadened beyond the Scope of Use. Any assignment by Customer in breach of this Section shall be void. Any express assignment of this Agreement, any change in control of Customer (or its Affiliate in the case of an assignment to that Affiliate under this Section 11.3(b) and any assignment by merger or otherwise by operation of law, shall constitute an assignment of this Agreement by Customer for purposes of this Section 11.3(b) ("**Customer Assignment**"). In the event of a Customer Assignment, or any acquisition of additional business by Customer, whether by asset acquisition, merger or otherwise by operation of law (collectively with the Customer Assignment, "**Customer Additional Business Acquisition**"), Customer shall give notice to SunGard notifying SunGard if Customer desires to use the Solution to process any additional business related to such Customer Additional Business Acquisition ("**Acquired Business**").

11.4.   Export Laws. Customer acknowledges that the SG Solution Details and the services provided by SunGard hereunder and this Agreement are subject to the Export Laws. Customer shall not violate the Export Laws or otherwise export, re-export or use, directly or indirectly (including via remote access), any part of the Solution, Confidential Information or services in a manner, or to or for any person or entity, for which a license or other authorization is required under the Export Laws without first obtaining such license or authorization.

11.5.   Relationship. The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint venturers or agents.

11.6.   Entire Understanding. This Agreement, which includes and incorporates the Order, and any other schedules, exhibits and addenda hereto states the entire understanding between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations, representations (whether negligently or innocently made), agreements and other written or oral communications between the parties with respect to the subject matter of this Agreement. In the event of a conflict between the provisions of the SST and an Order incorporating the SST, the terms of such Order shall prevail. Any written, printed or other materials which SunGard provides to Customer that are not included in the Documentation are provided on an "as is" basis, without warranty, and solely as an accommodation to Customer. In entering into this Agreement each party acknowledges and agrees that it has not relied on any express or implied representation, warranty, collateral contract or other assurance (whether negligently or innocently made), except those expressly set out in this Agreement. Each party waives all rights and remedies which, but for this Section 11.6, might otherwise be available to it in respect of

any such representation (whether negligently or innocently made), warranty, collateral contract or other assurance. Nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.

11.7.   Modification and Waiver. No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. This Agreement may not be modified or amended by electronic means without written agreement of the parties with respect to formats and protocols. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.

11.8.   Severability, Heading and Counterparts. A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement, and the provision that is held to be invalid or unenforceable shall be replaced by a valid and enforceable provision that would give the best legal and commercial effect to the intention of the parties.   Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

11.9.   Personnel. Customer acknowledges that: (a) SunGard expends substantial time and money, on an ongoing basis, to recruit and train its programmers, trainers, data processing, customer support and professional services team personnel ("**SunGard Personnel**"); (b) SunGard's business is highly competitive, is marketed throughout the United States, Europe and in many other locations worldwide, and requires long sales lead times often exceeding one (1) year; and (c) if Customer were to hire SunGard Personnel, then SunGard may suffer lost sales opportunities and would incur substantial time and money in hiring and training replacement(s) for those SunGard Personnel. Accordingly, if Customer, directly or through one or more subsidiaries or other controlled entities, hires any SunGard Personnel at any time when such SunGard Personnel is employed or engaged by SunGard or during the six (6) months after such employment or engagement ends, then Customer shall pay to SunGard as liquidated damages (and not a penalty) an amount equal to twelve (12) months of such SunGard Personnel's salary and other compensation (including bonus or commission payments) at the time of leaving his/her employment or engagement with SunGard. For purposes of this provision, "**hire**" means to employ as an employee or to engage as an independent contractor, whether on a full-time, part-time or temporary basis. This provision will remain in effect during the term of this Agreement and for a period of one (1) year after expiration or termination of this Agreement.

11.10.   Insurance. SunGard will be covered at all times during the Order Term by such insurance as it deems adequate in its reasonable judgment, which shall in any event consist of not less than the following types and minimum amounts of coverage with a reputable insurance company(ies):

(a)   commercial general liability insurance covering claims for personal injury and property damage, with limits of not less than US$1,000,000 per occurrence;

(b)   commercial crime coverage/fidelity bond insurance, with limits of not less than US$1,000,000 per occurrence;

(c)   workers compensation coverage as required by the statutes of the jurisdiction in which the services are being performed covering all Personnel employed by SunGard in the performance of their duties who are required to be covered by the statutes of the applicable jurisdiction; and

(d)   errors and omissions insurance with a reputable insurance company, with limits of not less than US$5,000,000 per occurrence and aggregate.

Upon the reasonable request of Customer, SunGard shall furnish Customer with a certificate of insurance as specified in this Agreement. Maintenance of insurance as specified in this Agreement shall in no way be interpreted as relieving or increasing SunGard's responsibilities or liabilities under this Agreement; and SunGard may carry, at its own expense, such additional insurance as it deems necessary, including self-insurance.

11.11. Certification. SunGard may issue (but not more than once per annum), and Customer will promptly complete and return to SunGard, requests certifying Customer's current and past compliance with the provisions of this Agreement, including the Scope of Use.

11.12. Language. The English language version of this Agreement and all related documents shall at all times govern and be regarded as the prevailing language of this Agreement and of all related documents, and the English language version shall be the version which shall prevail in the event of any dispute as to the interpretation of this Agreement and all related documents. The Parties expressly acknowledge that any German language translation of this Agreement or any related document is a convenience translation only and shall in no event be referred to in any dispute as to the interpretation of this Agreement or of any such related document.

11.13. Jurisdiction and Governing Law.   The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or its subject matter. This Agreement and any dispute or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by, and shall be construed and enforced in accordance with, the laws of the Federal Republic of Germany excluding choice of law. Each party irrevocably agrees that the courts located in Frankfurt am Main, Germany shall have exclusive jurisdiction to settle any dispute, controversy or claim arising, directly or indirectly, out of or in connection with this Agreement, or the breach, termination or validity thereof (including non-contractual disputes or claims).