

7. Indemnification.

- A. SUB hereby agrees to indemnify, hold harmless and defend TCS, TCS Germany and Customer (including its affiliates) and any member, director, officer, employee or agent thereof (each of the foregoing being hereinafter referred to individually as a "TCS Indemnified Party"), against all claims, liabilities, losses, expenses (including attorney's fees and legal expenses related to such defense), fines, penalties, taxes or damages (collectively "Liabilities") asserted by any third party including without limitation, the Customer, to the extent such Liabilities arise out of or result from: (1) SUB's intentional or negligent acts or omissions in the performance of Services, but only to the extent that such act or omission results in personal injury or damage to real property or tangible personal property; or (2) any claim that any of the SUB deliverables created or materials otherwise provided by SUB hereunder or the Services or Works infringes a copyright, patent, trade secret, trademark, or any other proprietary right or other right of a third party. TCS shall promptly notify SUB of any third-party claim and SUB shall, at SUB's option, conduct the defense in any such third-party action arising as described herein at SUB's sole expense and TCS shall cooperate with such defense. SUB indemnification shall not extend to any such Liability which arises because of use of SUB deliverables or Services in a manner inconsistent with or use restrictions to the extent they are set forth in the applicable SOW.
- B. TCS hereby agrees to indemnify, hold harmless and defend SUB and any member, director, officer, employee or agent thereof (each of the foregoing being hereinafter referred to individually as a "SUB Indemnified Party"), against all Liabilities (as such term is defined in clause A above) asserted by any third party, including without limitation, the Customer, to the extent such Liabilities arise out of or result from: (1) TCS' negligent acts or omissions in connection with TCS' obligations hereunder, but only to the extent that such act or omission results in personal injury or damage to real property or tangible personal property; or (2) any claim that any of the TCS data, information or deliverables provided to SUB hereunder in connection with SUB's Services infringes a copyright, patent, trade secret, trademark or any other proprietary right of a third party. SUB shall promptly notify TCS of any third-party claim and TCS shall, at TCS's option, conduct the defense in any such third-party action arising as described herein at TCS' sole expense and SUB shall cooperate with such defense.
8. **Confidential Information.** All information, documents, software, reports, data, records, forms, and other materials of a confidential nature ("Confidential Information") developed by one Party for the other Party or for the Customer or obtained by or disclosed to such other Party in the course of performing the Services shall be treated as confidential and shall not be used by the receiving Party for any purpose other than the purpose for which such Confidential Information was disclosed. SUB shall comply with all requirements under Prime Contract with respect to security procedures and protection of Customer data. All Confidential Information of a Party shall be returned to such Party, or destroyed, by the receiving Party when reasonably called upon to do so along with all tangible forms of such proprietary confidential and trade secret information and all copies thereof (and all other property obtained from or through the other Party or immediately upon termination of this Agreement, whichever occurs earlier. Notwithstanding the foregoing, Confidential Information does not include any information or material that: (i) is already known to the receiving Party at the time of disclosure; (ii) is or becomes publicly known through no wrongful act or failure of receiving Party; (iii) is independently developed by the receiving Party without benefit of the other Party's Confidential Information; or (iv) is received from a third party which is not under and does not thereby breach an obligation of confidentiality. Each Party agrees that during the term of this Agreement and thereafter it will take all steps reasonably necessary to hold the other Party's and Customer's proprietary, confidential and trade secret information in trust and confidence and shall not use or disclose to any person, firm or entity any such proprietary, confidential or trade secret information without such other Party's express, prior written permission; provided however, that notwithstanding the foregoing, SUB may disclose Confidential Information to the extent that it is required to be disclosed pursuant to a statutory or regulatory provision or court order.