



## APPLICATION SERVICE AND SOFTWARE AGREEMENT FOR ADMINISTRATIVE USERS

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a. Access. If You are accessing Oracle’s Application Service, upon Your acceptance of the terms and conditions of this Agreement, You will be permitted to access the features and functions of Oracle’s proprietary software application (the “Application Service”). Subject to the terms and conditions in this Agreement, You are granted a non-exclusive, non-transferable, right to access and make use of the online features of the Application Service solely during the Access Term (as defined below).

b. License. You may also access the features and functions of any Oracle proprietary software that We may specifically identify within the Application Service as available for download and use (the “Software”). Upon Your acceptance of the terms and conditions of this Agreement, You will be permitted to download, install and use one (1) copy of the Software in object code form only on one (1) computer at any one time. Subject to the terms and conditions in this Agreement, You are granted a non-exclusive, non-transferable, non-sublicenseable right and license solely during the Access Term to (i) use the Software and (ii) make copies of the Our standard user manuals and/or related documentation which are generally made available (the “Documentation”), solely for Your internal use. You agree not to modify, adapt, translate, publicly display, publish, create derivative works or distribute Documentation.

c. Administrative Use. Pursuant to a contract executed separately by and between Oracle and Your employer (the “Company”), You have been named as a Company Administrative User throughout the term of such contract (the “Access Term”), as set forth in such contract (the “Company Order”). Upon Your acceptance of the terms and conditions of this Agreement, You will be required to manage the Company’s use of the Application Service, including the granting of access to the Application Service for certain Company employees, officers, agents, contractors or other personnel (each, a “Named User”). You may register Named Users by accessing the Application Service or by other such means as We may provide. You will ensure that the total number (not the concurrent number) of Named Users does not exceed the permitted number set forth in the Company Order. You will ensure that only a single person uses a Named User account. You may transfer a Named User account from one person to another person only when the first person is no longer an employee of Company or of Company’s department that uses the Licensed Applications, provided that Company may not exceed the number of Named Users for which Company has paid the applicable fees. Upon any Named User losing his or her status as a Named User, You shall ensure that such person no longer can install or use the Application Service and that such person deletes or destroys his or her copy of the Software, if any.

2. RESTRICTIONS. You may not use, copy, modify, download or transfer the Software or Application Service (collectively, the “Licensed Applications”) or any component of the foregoing, in whole or in part, except as expressly provided in this Agreement. You may not reverse engineer, disassemble, decompile, or translate any software components of the Licensed

Applications, attempt to derive the source code of any software components of the Licensed Applications, create any derivative work from any software components of the Licensed Applications, or authorize or assist any third party to do any of the foregoing. You may not rent, lease, loan, resell for profit, or distribute the Licensed Applications, or any part thereof. You may not remove or alter any proprietary notice or legend regarding Oracle’s proprietary rights in the Licensed Applications. You may not use the Licensed Applications except in accordance with Oracle Latista MLA V020518

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48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Applications and any documentation provided with the Application Service with only those rights set forth in this Agreement.

3. YOUR RESPONSIBILITIES. You are responsible for all activity occurring under Your user accounts and the Named User accounts. You shall be responsible for the security of all passwords and other access protocols required in order to access the Licensed Applications for both You and all Named Users, and You agree to notify Oracle immediately of any unauthorized use of any password or account or any other known or suspected breach of security. You, not Oracle, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Company Data (defined below), and Oracle shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Company Data. Prior to storing any Company Data using the Licensed Applications, You shall, at Your own expense, obtain all third party consents and/or permissions that may be necessary and appropriate with respect to such Company Data. Oracle reserves the right to withhold, remove and/or discard Company Data without notice for any breach by You of this Agreement. Oracle reserves the right to establish or modify its general practices relating to storage of Company Data. For purposes of this Agreement, "Company Data" shall mean any data, media, graphics, sounds, video or other content provided, created or used by You in connection with the Licensed Applications.

4. CONFIDENTIALITY. "Confidential Information" means any material or information relating to a party's research, development, products, product plans, services, clients, client lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such party treats as proprietary or confidential. Without limiting the foregoing, the Licensed Application and any databases (including any data models, structures, non-Licensee specific data and aggregated statistical data contained therein) of Oracle shall constitute Confidential Information of Oracle. You acknowledge that during the performance of this Agreement, You will have access to certain of Oracle's Confidential Information or Confidential Information of third parties that We are required to maintain as confidential. You agree that all items of Confidential Information are proprietary to Oracle or such third party, as applicable, and shall remain the sole property of Oracle or such third party. You agree as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) to not reproduce the Confidential Information and hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) to not create any derivative work from Confidential Information disclosed to You by Oracle; (iv) to restrict access to the Confidential Information to such of Your personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all of Our Confidential Information in Your possession upon termination or expiration of this Agreement. Notwithstanding the foregoing, the above provisions shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by Us without restriction. Notwithstanding the foregoing, You may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that You shall first have given written notice to Us and made a reasonable effort to obtain a protective order; or (y) to establish Your rights under this Agreement, including to make such court filings as You may be required to do.

5. OWNERSHIP. The Licensed Applications and all components thereof, including but not limited to all software components, are the property of Oracle, and Oracle retains all right, title and interest to the foregoing, including any intellectual property rights regarding trademarks, service marks and trade secrets, as well as any rights in copyrighted and/or patented materials provided to You as part of the Licensed Applications. Except for the limited rights granted to You in this Agreement, You obtain no rights to the Licensed Applications, and Oracle reserves all rights not expressly granted to You. You retain all right, title and interest in and to the Company Data, and Oracle acknowledges that it neither owns nor acquires any additional rights in and to the Company Data not expressly granted by this Agreement. Oracle further acknowledges that You retain the right to use the Company Data for any purpose in Your sole discretion. Subject to the foregoing, You hereby grant to Oracle a non-exclusive, non-transferable right and license to use the Company Data during the term of this Agreement for the limited purposes of performing Oracle's obligations hereunder.

6. FEES. In consideration for the licenses granted to You and the performance of Oracle's obligations under this Agreement, You shall pay to Oracle, without offset or deduction, certain fees, in such amounts as may be determined by reference to the purchase orders approved by Oracle. All fees shall be due and payable within thirty

(30) calendar days after an invoice is issued by Oracle with respect thereto. All amounts payable under this Agreement shall exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges. You will be responsible for payment of all such taxes (other than taxes based on Oracle's income), fees, duties and charges, and any related penalties and interest, arising from the payment of any fees hereunder, the grant of license rights hereunder, or the delivery of services. You will make all payments required hereunder to Oracle free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on any payments hereunder to Oracle will be Your sole responsibility, and You will, upon Oracle's request, provide Oracle with official receipts issued by the appropriate taxing authority, or such other evidence as Oracle may reasonably request, to establish that such taxes have been paid.

7. REPRESENTATIONS. Each party represents and warrants that it has legal power and authority to enter into this Agreement. You represent and warrant that You have not falsely identified yourself nor provided any false information to gain access to the Licensed Applications.

8. DISCLAIMER. TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, THE LICENSED APPLICATIONS ARE PROVIDED "AS IS" WITHOUT ANY CONDITION OR WARRANTY WHATSOEVER. THE ENTIRE RISK ASSOCIATED WITH THE USE OF THE LICENSED APPLICATIONS RESIDES WITH YOU. ORACLE EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND/OR QUIET ENJOYMENT, SYSTEM INTEGRATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND DATA ACCURACY. ORACLE AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (I) THE USE OF THE LICENSED APPLICATIONS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (II) THE LICENSED APPLICATIONS WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (III) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE LICENSED APPLICATIONS WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (V) ERRORS OR DEFECTS WILL BE CORRECTED, OR (VI) THE LICENSED APPLICATIONS OR THE SERVER(S) THAT MAKE THE APPLICATION SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

9. LIMITATION OF LIABILITY. YOU ACKNOWLEDGE THAT THE LICENSED APPLICATIONS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. ORACLE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. IN NO EVENT SHALL ORACLE OR ANY OF ITS AGENTS OR REPRESENTATIVES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL OR LOST PROFITS OR LOST OPPORTUNITIES IN ANY WAY RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OF OR INABILITY TO ACCESS THE LICENSED APPLICATIONS OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY HARDWARE, THIRD-PARTY SOFTWARE AND/OR SERVICES, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF ORACLE HAS BEEN NOTIFIED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES OCCURRING, AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE. IN NO EVENT WILL ORACLE'S LIABILITY FOR ANY DAMAGES TO YOU OR ANY THIRD PARTY EVER EXCEED THE LESSER OF (I) ONE THOUSAND DOLLARS (U.S. \$1,000.00) OR (II) THE TOTAL AMOUNT OF ALL FEES THEN-PAID UNDER THE COMPANY ORDER DURING THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT, ACT OR OMISSION GIVING RISE TO SUCH LIABILITY, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, PRODUCTS LIABILITY OR OTHERWISE.

10. INDEMNITY. You agree to indemnify, defend and hold harmless Oracle, its corporate affiliates, and their respective officers, directors, employees and agents, from and against any and all claims, damages, liabilities and expenses (including, but not limited to, attorney's fees) arising from a claim made by a third party in connection with: (i) Your use of and/or access to the Licensed Applications or the use of and/or access to the Licensed Applications by anyone to whom You may have given consent (except such consent that may be given solely in

Your role as Company Administrative User); (ii) Your breach of any of Your obligations or any restrictions set forth in this Agreement; (iii) Your violation of any third party right, including, without limitation, any intellectual property right (including copyrights, trademarks, service marks and other similar rights), trade secrets, privacy rights or rights of publicity; (iv) any claim that any Company Data provided by You constitutes defamation, libel, slander, obscenity, fraud, or any other tort, or that the same constitutes Your breach of contractual duties to any third party; or (v) Oracle's enforcement of this Agreement against You. This indemnification obligation will survive this Agreement and Your use of the Licensed Applications.

11. NO DUTY TO CORRECT ERRORS. Without limiting the provisions of Section 1, You acknowledge and agree that Oracle has no obligation under this Agreement to correct any defects or errors in the Licensed Applications furnished to You under this Agreement, regardless of whether You inform Oracle of such defects or errors or Oracle otherwise is, or becomes aware of, such defects or errors, except as set forth in the Company Order. To the extent Oracle provides You with any updates or upgrades to the Licensed Applications such updates and upgrades shall be deemed to constitute part of the Licensed Applications and shall be subject to all terms and provisions set forth in this Agreement, including, without limitation, terms and provisions related to use restrictions, ownership and distribution of the Licensed Applications.

12. PERFORMANCE AND USAGE DATA. In order to provide You the Application Service, We may collect certain information about service performance, Your computer and Your use of the Application Service. We may automatically upload this information from your computer. This data will not personally identify You.

13. PUBLICITY. ORACLE may include Your and Your company's name in a general list of its customers which may be posted on ORACLE's website. Nothing in the Agreement shall grant ORACLE any right, title, or interest in any Your or Your company's mark or logo.

14. TERMINATION. The Agreement shall remain in effect as of the date You accept this Agreement, as of the date You first access the Application Service or as of the date you first download the Software, whichever first occurs. This Agreement will terminate immediately, without notice to You: (i) at the end of the Access Term; (ii) if You breach any term or condition herein; (iii) at the time Your employment at the Company terminates; or (iv) if your Company removes Your designation as a Company Administrative User, whichever of (i), (ii), (iii) or (iv) first occurs. Prior to such date, You may discontinue Your participation in and access to either Licensed Application at any time. Notwithstanding the foregoing, Company shall remain liable for all access fees charged hereunder. Upon termination, all rights granted to You under this Agreement will immediately cease, You may not thereafter install or use such Licensed Application, and You must delete or destroy all copies of the Software, if any, in Your possession. Oracle may delete any information or content, including without limitation any Company Data, You have provided to Oracle through use of the Licensed Applications. You agree that Oracle shall not be liable to You or any third party for termination of Your access to the Licensed Applications and/or deletion of any of Your information, content or Company Data provided to Oracle.

15. MODIFICATIONS TO LICENSED APPLICATIONS. Pursuant to the Company Order, We reserve the right to modify, suspend, or discontinue either or both of the Licensed Applications with or without notice to You, and We are not liable to You or any third party should We exercise Our right to modify either Licensed Application. If You object to any such changes, Your sole recourse is to discontinue using such Licensed Application. Continued access and/or use of the Licensed Applications following notice of any such changes shall indicate Your assent to and acceptance of such changes.

16. MODIFICATION TO TERMS. Oracle may change these terms and conditions from time to time and will notify You of any such changes by posting a notice of such changes on the Application Service or otherwise notifying You. If You object to any such changes, Your sole recourse shall be to cease using such Licensed Application. Continued access to and/or use of the Licensed Applications following notice of such modifications or changes shall indicate Your assent to and acceptance of this Agreement, including but not limited to all posted changes. You shall be responsible for notifying all Named Users of any such changes.

17. GENERAL PROVISIONS. This Agreement is governed by the substantive and procedural laws of the State of California and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement or to orders placed under it. You acknowledge that Oracle will have

the right to seek an injunction if necessary to prevent a breach of Your obligations hereunder. If any provision of this Agreement is held to be unenforceable, that provision will be disregarded for purposes of the dispute or other circumstance giving rise to such finding, and the remaining provisions will remain in full force. In the event that Oracle prevails in any proceeding or lawsuit brought by either party in connection with this Agreement, Oracle will be entitled to receive its costs, expert witness fees and reasonable attorney's fees, including costs and fees on appeal. The failure of Oracle to require Your performance of any provision in this Agreement shall not affect Oracle's full right to require such performance at any time thereafter; nor shall the waiver by Oracle of any breach of any provision of this Agreement be taken or held to be a waiver of the provision itself. You may not assign this Agreement. Any attempted or purported assignment by You shall be null and void. Excepting the Company Order or any other contractual agreement between Company and Oracle, this Agreement is the complete and exclusive statement of the agreement between Oracle and You, which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties in relation to the subject matter of this Agreement. In the event You need to contact or provide legal notice to Us, notice shall be delivered to: Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA 94065, Attention: General Counsel, Legal Department, and considered effective upon receipt. Any legal notice that We are required to delivered hereunder will be posted on the Application Service and deemed effective when posted.