

MASTER SUBSCRIPTION TERMS AND CONDITIONS

Purchases of Services (as defined below) under a Purchase Schedule(s) with Oracle Canada ULC ("**Oracle**") and the party named in such Purchase Schedule ("**Customer**") shall be subject to the following additional Terms and Conditions as of the date specified in the Purchase Schedule(s) (the "**Effective Date**"). By executing a Purchase Schedule(s), Customer agrees to be bound by the following additional Terms and Conditions.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

"**Agreement**" means these Master Subscription Terms and Conditions, Purchase Schedule(s), information contained in an Oracle URL or policy referenced in the foregoing and such other documents, attachments and exhibits that the parties' authorized representatives may mutually agree to from time to time.

"**Affiliate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Content**" means the information, documents, software, products and services contained or made available to Customer in the course of using the Service.

"**Customer Data**" means all electronic data or information submitted by or on behalf of Customer or Users to the Services.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Purchase Schedule**" means the ordering documents for Customer's purchases from Oracle that are executed hereunder by the parties from time to time. Purchase Schedules shall be deemed incorporated herein by reference.

"**Services**" means the online, Web-based applications and/or platform, OEM Products and Content provided by Oracle, and/or other designated websites as described in the User Guide, that are ordered by Customer under a Purchase Schedule, including associated offline components but excluding Third Party Applications.

"**Third-Party Applications**" means online, Web-based applications and offline software products that are provided by third parties but interoperate with the Services.

"**OEM Products**" means online, Web-based applications and offline software products ordered, if any, by Customer under a Purchase Schedule that are owned by third parties and are to be provided to Customer by Oracle on a pass through or OEM basis.

"**User Guide**" means the online user guide for the Services, accessible via the Services, as updated from time to time.

"**Users**" means individuals who are authorized by Customer to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by Customer (or by Oracle at Customer's request). Users may include but are not limited to employees, consultants, contractors and agents of Customer, or third parties with which Customer transacts business.

2. SERVICES

2.1 Provision of Services. Subject to Customer's compliance with this Agreement and timely payment of the applicable fees, Oracle shall make the Services available to Customer pursuant to this Agreement and the applicable Purchase Schedule during each subscription term. Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Oracle regarding future functionality or features.

2.2 User Subscriptions. Unless otherwise specified in the applicable Purchase Schedule, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be purchased under an additional Purchase Schedule during the subscription term at the pricing as defined in the Purchase Schedule, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing User subscriptions. User subscriptions are for designated Users and cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

2.3 Customer Affiliates. Customer may purchase Services subject to the terms of this Agreement for use by any of its Affiliates by executing Purchase Schedules hereunder. Customer shall remain responsible for its Affiliates' compliance with the terms of this Agreement and warrants that it has the authority to bind its Affiliates to the terms of this Agreement.

2.4 Oracle Responsibilities.

a. Oracle shall: (i) provide to Customer support for the Services as defined below in 2.4.b ("Support"), (ii) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Oracle shall give at least 8 hours notice via the Services and which Oracle shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday), or (b) any unavailability caused by circumstances beyond Oracle's reasonable control, including without limitation, downtime resulting from the unavailability of Third-Party Applications (e.g., Salesforce.com), acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Oracle employees), or Internet service provider failures or

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delays, and (iii) provide the Services only in accordance with applicable laws and government regulations.

b. Oracle shall provide to Customer the level of Support specified in the Purchase Schedule for the Services. Oracle will provide such Support under Oracle customer support policies for the Services in effect at the time the Support Services are rendered. The current version of the Support policies can be found at <http://www.bigmachines.com/supportpolicy.php>. The customer support policy for the Services, incorporated in this Agreement, is subject to change at Oracle's discretion. Oracle will not materially reduce the level of Support provided for the Services during a subscription term for which subscription fees have been paid.

- 2.5 Customer Responsibilities.** Customer shall (i) be responsible for Users' compliance with this Agreement, including but not limited to the Acceptable Use set forth in Section 2.6; (ii) be solely responsible for the accuracy, quality, integrity and legality of Customer Data and of the means by which it acquired Customer Data; (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Oracle promptly of any such unauthorized access or use; and (iv) use the Services only in accordance with the User Guide and applicable laws and government regulations. Customer shall not (a) make the Services available to any third party other than Users, (b) sell, resell, rent, lease, license, sublicense, assign, transfer, distribute, time-share or otherwise exploit the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy or intellectual property rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.
- 2.6 Acceptable Use.** Customer acknowledges and agrees that Oracle does not monitor or police the content of communications or data of Customer or its Users uploaded in or transmitted through the Services, and that Oracle shall not be responsible for the content of any such communications or transmissions. Customer shall use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations. Customer agrees not to load into the Service any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) contains viruses or other contaminating or destructive features; (c) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (d) otherwise violates any applicable law (including, without limitation, the laws and regulations governing unfair competition). Oracle reserves the right to delete, move or edit any Customer Data that it may determine, in its sole discretion, violates this Agreement or is otherwise inappropriate.

3. THIRD-PARTY PROVIDERS AND OEM PRODUCTS

- 3.1 Acquisition of Third-Party Products and Services.** Any acquisition by Customer of third-party products or services, including but not limited to Third-Party Applications, implementation, customization and other consulting services, and any exchange of data between Customer and any third-party provider, is solely between Customer and the applicable third-party provider. Oracle does not warrant or support third-party products or services, whether or not they are designated by Oracle as "certified" or otherwise, except as specified in the Purchase Schedule. No purchase of third-party products or services is required to use the Services.
- 3.2 Third-Party Applications and Customer Data.** If Customer installs or enables third party components, whether Third Party Application or OEM Products, for use with the Services, Customer acknowledges that Oracle may allow providers of those products to access Customer Data as required for the interoperation of such products with the Services. Oracle shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by Third-Party Application providers or OEM Product providers.
- 3.3 OEM Products.** Customer acknowledges that any OEM Products are proprietary products and materials of Oracle's suppliers as identified in the Purchase Schedule, which are obtained under a license from such suppliers. Customer's use of any OEM Products shall be subject to, and Customer shall (i) comply with this Agreement and any applicable license agreement for OEM Products that is attached as an exhibit to this Agreement or otherwise provided to Customer in conjunction with the OEM Products ("OEM License"), (ii) Customer shall only use the OEM Products in conjunction with the Services, (iii) Customer shall have no broader use rights with respect to the OEM Products than it has to the Services in the form provided by Oracle and as described in the User Guide, and (iv) such rights to OEM Products shall be only for the Term of this Agreement. In the event of a conflict between an OEM License and this Agreement, the terms of the OEM License shall prevail with respect to OEM Products. Notwithstanding anything herein to the contrary, Oracle makes no warranty with respect to any OEM Products provided under this Agreement. Customer's sole remedy with respect to such OEM Products shall be pursuant to the original licensor's warranty, if any, to Customer, to the extent permitted by the original licensor. Oracle may add and/or substitute equivalent product or service for any OEM Products in the event of unavailability or changes of Services requirements.

4. FEES AND PAYMENT

- 4.1 User Fees.** Customer shall pay all fees specified in all Purchase Schedules hereunder subject to this Section 4.1. Except as otherwise specified herein or in a Purchase Schedule, (i) fees are quoted and payable in Canadian Dollars (ii) fees are based on services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant subscription term stated on the Purchase Schedule. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full

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monthly period and the monthly periods remaining in the subscription term. Oracle may, after the first twelve (12) months of the initial term, modify the amount of fees; provided, however, that Oracle will not increase fees in any given twelve-month period during the initial term by more than the cumulative annual changes to the Consumer Price Index (CPI) (all Items U.S. City Average), issued from time to time by the Bureau of Labor Statistics of the United States Department of Labor or any successor agency that shall issue such CPI, during the preceding twelve-month period plus 5%.

- 4.2 Invoicing and Payment.** Fees will be invoiced in advance and otherwise in accordance with the relevant Purchase Schedule. Unless otherwise stated in the Purchase Schedule, fees are due net thirty (30) days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information in the Services as well as for payment of any fees or charges associated with Customer's payment other than those charged by Oracle's bank.
- 4.3 Overdue Charges.** If any amounts invoiced hereunder are not received by Oracle by the due date, then at Oracle's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) Oracle may condition future subscription renewals and Purchase Schedule on payment terms shorter than those specified in the "Invoicing and Payment" section above.
- 4.4 Suspension of Service.** If any charge owing by Customer is 30 days or more overdue, Oracle may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full.
- 4.5 Payment Disputes.** Oracle shall not exercise its rights under 4.3 (Overdue Payments) or 4.4 (Suspension of Service) until after 60 days from the payment due date if the applicable charges are under reasonable and good-faith dispute and Customer is cooperating diligently to resolve the dispute.
- 4.6 Taxes.** Unless otherwise stated, Oracle's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Oracle has the legal obligation to pay or collect Taxes for which Customer is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Oracle with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Oracle is solely responsible for taxes assessable against it based on its income, property and employees.

5. PROPRIETARY RIGHTS

- 5.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Oracle and its licensors reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 5.2 Restrictions.** Customer shall not (i) permit any third party to access the Services except as permitted herein or in the applicable Purchase Order, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for its own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.
- 5.3 Ownership of Customer Data.** As between Oracle and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer grants Oracle and its subcontractors a limited, personal, transferable, non-exclusive license to use the Customer Data for the sole purpose to and solely as required to perform the Services.
- 5.4 Suggestions.** Oracle and its licensors shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the Services.
- 5.5 Federal Government End Use Provisions.** Oracle provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Oracle or the third party vendor to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

6. CONFIDENTIALITY

- 6.1 Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential. Confidential Information of Customer shall include Customer Data; Confidential Information of Oracle shall

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include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Purchase Schedules, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

- 6.2 Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.
- 6.3 Protection of Customer Data.** Without limiting the above, Oracle shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Oracle shall not (a) modify Customer Data, (b) disclose Customer Data except as compelled by law in accordance with the "Compelled Disclosure" section below or as expressly permitted in writing by Customer, or (c) access Customer Data except to provide the Services and prevent or address service or technical problems, or at Customer's request in connection with customer support matters.
- 6.4 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

7. WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 7.1 ORACLE Warranties.** Oracle warrants, subject to section 7.4 below, that (i) the Services shall perform materially in accordance with the User Guide, and (ii) the functionality of the Services will not be materially decreased during a subscription term. For any breach of either such warranty, Customer's sole and exclusive remedy shall be as provided in the "Termination for Cause" and "Refund or Payment upon Termination" sections below.
- 7.2 Mutual Warranties.** Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will use industry standard methods to prevent the transmission to the other party of any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).
- 7.3 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY AND THEIR LICENSORS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON INFRINGEMENT, UNINTERRUPTED OR ERROR FREE SERVICE, ERROR CORRECTION, AVAILABILITY, ACCURACY AND ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. Customer acknowledges that Oracle does not control the transfer of data over telecommunications facilities, including the Internet. Oracle does not warrant secure operation of the Services or that it will be able to prevent third party disruptions of the Services. Customer acknowledges further that the Services 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.
- 7.4 OEM Products.** Any warranties applying to the OEM Products, if any, are made solely by the third party owner of such OEM Product and are limited to those offered by the applicable third party owner of the OEM Product to Customer in the OEM License, if any. ORACLE MAKES NO WARRANTIES WITH RESPECT TO SUCH PRODUCTS.

8. MUTUAL INDEMNIFICATION

- 8.1 Indemnification by Oracle.** Oracle shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the Services as permitted hereunder infringes or misappropriates the patent or copyright of a third party ("**Claim**"), and shall indemnify Customer for damages finally awarded against, and for reasonable attorney's fees incurred by, Customer in connection with any such Claim that are specifically attributable to such Claim, or those

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costs and damages agreed to in a monetary settlement of such action; provided that Customer (a) promptly gives Oracle written notice of the Claim, (b) gives Oracle sole control of the defense and settlement of the Claim (provided that Oracle may not settle or defend any Claim unless it unconditionally releases Customer of all liability), and (c) provides to Oracle all reasonable assistance, at Oracle's expense. If the Services become, or in Oracle's opinion are likely to become, the subject of a Claim, Oracle may, at its option and expense, either (i) procure for Customer the right to continue using the allegedly infringing materials; (ii) replace or modify the same so that they become non-infringing; or (iii) terminate Customer's right to use all or part of the Services and give Customer a refund or credit (at Oracle's discretion) for the fees actually paid by Customer to Oracle for the prior twelve month period for the relevant Services as of the date of termination less a reasonable allowance for the period of time Customer actually used the relevant Services. Notwithstanding the foregoing, Oracle will have no obligation of defense or indemnification or otherwise with respect to any claim or demand based upon (i) any use of the Services not in accordance with this Agreement and the User Guide; (ii) an OEM Product or a Third Party Application, (iii) any modification of the Services made by or content provided by any person other than Oracle; (iv) where Customer continues the allegedly infringing activity after being notified thereof and is provided modifications, replacements or other remedies that would have avoided the alleged infringement.

- 8.2 Indemnification by Customer.** Customer shall defend Oracle against any claim, demand, suit, or proceeding made or brought against Oracle by a third party alleging that (i) the Customer Data, or Customer's use of the Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, or (ii) a claim arising from the breach by Customer or Affiliates or Users of the Acceptable Use Policy as described in Section 2.6 hereof, and shall indemnify Oracle for any damages finally awarded against, and for reasonable attorney's fees incurred by, Oracle in connection with any such claim that are specifically attributable to such claim, or those costs and damages agreed to in a monetary settlement of such action; provided that Oracle (a) promptly gives Customer written notice of the Claim, (b) gives Customer sole control of the defense and settlement of the Claim (provided that Customer may not settle or defend any Claim unless it unconditionally releases Oracle of all liability), and (c) provides to Customer all reasonable assistance, at Customer's cost.
- 8.3 Exclusive Remedy.** This "Mutual Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of third party claim for infringement or otherwise.

9. LIMITATION OF LIABILITY

- 9.1 Limitation of Liability.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 8 ("MUTUAL INDEMNIFICATION"), IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$500,000 OR THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE. IN NO EVENT SHALL ORACLE'S LICENSORS HAVE ANY LIABILITY TO CUSTOMER UNDER THIS AGREEMENT.
- 9.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY OR THEIR LICENSORS HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, REVENUES, DATA, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE SERVICE OR OEM PRODUCT INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SAME OR FOR ANY CONTENT, OR ANY INTERRUPTION IN THE SERVICE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. TERM AND TERMINATION

- 10.1 Term of Agreement.** This Agreement commences on the Effective Date and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.
- 10.2 Term of User Subscriptions.** User subscriptions commence on the start date specified in the applicable Purchase Schedule and continue for the subscription term specified therein. Except as otherwise specified in the applicable Purchase Schedule, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant subscription term. Without limiting the foregoing, Customer acknowledges and understands that (i) access to the Services, including Force.com, may be suspended due to Customer's non-payment to Salesforce.com or other breach of Customer's agreement with Salesforce.com and (ii) in the event Customer's relationship with Salesforce.com is terminated as a result of non-payment or other material breach of Customer's agreement with Salesforce.com, the subscription to the Services would also be terminated for cause. In no case will any such termination or suspension give rise to any liability of Oracle and/or Salesforce.com to Customer for a refund or other

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compensation.

- 10.3 Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, Oracle may terminate this Agreement should the agreement between Oracle and Salesforce.com terminate or expire for any reason.
- 10.4 Refund or Payment upon Termination.** Upon any termination for cause by Customer or termination by Oracle other than for cause, Oracle shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Oracle, Customer shall pay any unpaid fees covering the remainder of the term of all Purchase Schedule after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Oracle for the period prior to the effective date of termination.
- 10.5 No Retention of Customer Data.** CUSTOMER DATA ENTERED INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER, WILL BE LOST UPON EXPIRATION OR TERMINATION OF THE LAST REMAINING SUBSCRIPTION TO THE SERVICES. THEREFORE, CUSTOMER MUST EXPORT ITS CUSTOMER DATA BEFORE THE END OF THE SUBSCRIPTION PERIOD OR THE CUSTOMER DATA WILL BE PERMANENTLY LOST.
- 10.6 Surviving Provisions.** The sections titled "Fees and Payment," "Proprietary Rights," "Confidentiality," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Return of Customer Data," "Surviving Provisions" and "General Provisions" shall survive any termination or expiration of this Agreement.

11. GENERAL PROVISIONS

- 11.1 Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each of Oracle and Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.
- 11.2 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
- 11.3 No Third-Party Beneficiaries.** This Agreement is for the benefit of the parties and their successors and permitted assigns, and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party. Notwithstanding the above, the parties acknowledge that Oracle's licensors may be direct and intended third party beneficiaries of this Agreement and may be entitled to enforce it directly against Customer to the extent this Agreement relates to OEM Products, if any.
- 11.4 Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv), except for notices of termination or an indemnifiable claim ("**Legal Notices**"), the first business day after sending by email. Notices to Oracle shall be addressed to: Oracle Canada ULC, 100 Milverton Drive Mississauga, Ontario L5R 4H1, Attention: General Counsel, Legal Department. All notices to Customer shall be addressed to the relevant Service system administrator designated by Customer. Billing-related notices to Customer shall also be addressed to the relevant billing contact designated by Customer, and Legal Notices to Customer shall also be addressed to Customer's signatory of this Agreement or any person designated beneath the signature area below.
- 11.5 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 11.6 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 11.7 Assignment.**
 (a) Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Purchase Schedule), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, Oracle shall refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

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(b) Notwithstanding section (a) above, Customer acknowledges that Oracle Corporation (“Oracle”) has, directly or indirectly, acquired Oracle and as part of the integration process Oracle is consolidating and reorganizing the Oracle subsidiaries worldwide. If this Agreement is countersigned before such local legal combinations are completed, the Agreement is between Oracle and Customer. If the Agreement is countersigned on or after such local legal combinations are completed, the Agreement is between the Oracle affiliate with which Oracle has been consolidated, and Customer. Customer acknowledges that in all cases where there is a reference to Oracle in this Agreement, an Oracle affiliate will fulfill these obligations as successor in interest to Oracle. Oracle and Oracle may assign this Agreement to any Oracle affiliate without the consent of Customer.

- 11.8 Governing Law and Jurisdiction.** This Agreement is governed by the substantive and procedural laws of the province of Ontario and Customer and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in Toronto, Ontario 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.
- 11.9 Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Purchase Schedules, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Without limiting the foregoing, this Agreement supersedes the terms of any online Master Subscription Agreement electronically accepted by Customer. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Purchase Schedule, the terms of such exhibit, addendum or Purchase Schedule shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Purchase Schedules) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.
- 11.10 Counterparts; Electronic Execution.** This Agreement may be executed electronically or by facsimile and in counterparts, which taken together shall form one legal instrument.
- 11.11 Compliance.** During the term of this Agreement and for a period of one (1) year following its termination, Oracle and its suppliers reserve the right, during Customer's normal business hours, to audit Customer's use of the Services. Customer shall maintain and make available to Oracle records sufficient to permit Oracle or an independent auditor retained by Oracle to verify, upon ten (10) days' written notice, Customer's use of the Services and/or compliance with the terms and requirements of this Agreement. In the event that any audit reveals any non-compliance, including but not limited to underpayment of fees in excess of 10% during any one year period, Customer shall promptly cure the non-compliance, pay Oracle any shortfall at Oracle's then current list price and reimburse Oracle the reasonable costs of such audit, provided, however, that the obligations under this Section 11.12 do not constitute a waiver of Oracle's termination rights or any other rights hereunder.
- 11.12 Force Majeure.** Neither party shall incur any liability to the other party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this Section 11.13. Such events, occurrences, or causes shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire or explosions.
- 11.13 Customer Attribution.** Customer agrees that Oracle may use and display Customer's name and logo: (a) on its customer list; and (b) with Customer's prior written approval, not to be unreasonably withheld or delayed, in other Oracle marketing materials.
- 11.14 Optional Professional Services.** The Services do not include, and do not require, that Customer purchase implementation and configuration services from Oracle. If Customer chooses to purchase such services from Oracle, however, the terms and conditions in the Professional Services Attachment shall apply to Oracle's provision of such services.



PROFESSIONAL SERVICES ATTACHMENT

At Customer's option and upon execution of one or more Statements of Work, Oracle will provide Professional Services (as defined below) to Customer, subject to the following additional terms and conditions.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1 "Professional Services"

Shall mean work performed by Oracle for Customer pursuant to a Statement of Work under this Agreement.

1.2 "Statement of Work"

Shall mean Oracle's standard form for ordering Professional Services, which has been completed and executed by both parties, and which specifies the scope and schedule of Professional Services to be performed by Oracle for Customer and the applicable fees. Each Statement of Work entered into hereunder shall be governed by the terms of this Agreement.

2. ORDERING, CHARGES, PAYMENT, TAXES

2.1 Who May Order. Customer or a Customer Affiliate may obtain Professional Services from Oracle by signing a Statement of Work hereunder. Customer represents and warrants that any Customer Affiliate who purchases Professional Services shall perform its obligations in accordance with these terms and conditions and the relevant Statement of Work.

2.2 Fees for Professional Services. Unless otherwise expressly stated in the applicable Statement of Work, Professional Services shall be provided on a time and materials ("T&M") basis at Oracle's T&M rates in effect at the time the Professional Services are performed. For avoidance of doubt, all work performed during the acceptance process detailed in section 5.2 shall be provided on a T&M basis in accordance with this section. On a T&M engagement, if an estimated total amount is stated in the applicable Statement of Work, that amount is solely a good faith estimate for Customer's budgeting and Oracle's resource scheduling purposes and not a guarantee that the work will be completed for that amount; the actual amount may be higher or lower. If the estimated amount is expended, Oracle will continue to provide Professional Services on a T&M basis under the same rates and terms, provided however that Oracle shall not perform such additional work or any work performed in excess of any estimated "cap", if any, identified in the Statement of Work or in Customer's purchase order unless and until Customer has properly authorized Oracle to do so.

2.3 Incidental Expenses. Customer shall reimburse Oracle for material(s) and reasonable travel, administrative, and out-of-pocket expenses incurred in conjunction with the Professional Services.

2.4 Invoicing and Payment. Oracle shall invoice Customer for Professional Services monthly, unless otherwise expressly stated in the applicable Statement of Work. Charges shall be due and payable thirty (30) days from the date of the invoice and shall be deemed overdue if unpaid thereafter.

2.5 Taxes. Charges for Professional Services hereunder do not include any federal, state, local or foreign taxes, duties or levies of any nature ("Taxes"). Any Taxes required to be paid by Oracle as a result of the Professional Services rendered hereunder (other than Taxes based on Oracle's income) shall be billed to and paid by Customer.

2.6 Failure to Make Payment. Notwithstanding anything herein to the contrary, if Customer fails to make payment on any due date, Oracle shall have the right to suspend Professional Services hereunder and, if such failure to make payment has not been cured within thirty (30) days of the due date, upon written notice, terminate any or all outstanding Statements of Work hereunder.

3. CONTRACT PROPERTY

3.1 Contract Property. Oracle hereby grants Customer a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to use for its internal business purposes anything delivered by Oracle to Customer in conjunction with the Professional Services ("Contract Property"). Oracle shall retain all ownership rights to the Contract Property.

3.2 Relationship to Online Service. The Professional Services provided under this Agreement may be in support of Customer's subscriptions to the Service governed by the Master Subscription Terms and Conditions and applicable Purchase Schedule(s) thereto. Neither these terms and conditions nor any Statement of Work hereunder grants Customer any license or rights to use the Services.

4. WARRANTY AND REMEDY

4.1 Warranty and Disclaimers. A. Oracle warrants that the Professional Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards.

B. Customer must report any deficiencies in the Professional Services to Oracle in writing within ninety (90) days of performance of such services in order to receive warranty remedies.

C. THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR



PROFESSIONAL SERVICES ATTACHMENT

IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, UNINTERRUPTED OR ERROR FREE DELIVERABLES, AND ANY AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

4.2 Warranty Remedy. For any breach of the warranty in Section 4.1, Customer's exclusive remedy, and Oracle's entire liability, shall be the re-performance of the Professional Services. If Oracle is unable to re-perform the Professional Services as warranted, Customer shall be entitled to recover the fees paid to Oracle for the deficient Professional Services.

5. GENERAL

5.1 Cooperation; Delays. A. Each party agrees to cooperate reasonably and in good faith with the other in the performance of the Professional Services and acknowledges that delays may otherwise result. Customer agrees to provide, or provide access to, the following: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from its employees and agents, continuous administrative access to its Services and other dependent accounts, coordination of onsite, online and telephonic meetings, and other resources as reasonably necessary for satisfactory and timely performance of the Professional Services.

B. Customer is also responsible for the following: (i) assigning a dedicated internal project manager for each Statement of Work to serve as a single point of contact for Oracle; (ii) defining and maintaining its business objectives and requirements that will guide its use of the Services; (iii) reviewing deliverables for conformance with relevant requirements; (iv) training its users generally in the use of the Services; and (v) administering the Services generally for its own internal business purposes.

C. Each party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and courteous manner in the performance of their duties under this Agreement. Either party may suspend performance hereunder immediately upon written notice should the other party's employees or agents fail to act accordingly.

D. Except where the relevant Statement of Work provides otherwise, scheduling of Oracle's resources must be agreed to no later than ten (10) business days prior to the date work is scheduled to begin. Subsequent scheduling changes requested by Customer may result in additional fees. Delays caused by Customer under a Statement of Work to which Oracle has dedicated resources and begun work will be billed to Customer as follows: (i) offsite planned resources will be billed at 50% of the planned hours during the period of the delay; and (ii) onsite planned resources will be billed at 100% of the planned hours during the period of the delay (maximum of 8 hours per business day). Delays caused by Customer that exceed ten (10) business days shall entitle Oracle to terminate the relevant Statement of Work for cause immediately upon written notice.

5.2 Acceptance. A. Upon completion of each deliverable under a Statement of Work, Oracle will provide a complete copy thereof to Customer and, upon request, demonstrate to Customer its functionality in conformance with the relevant specifications. Customer is responsible for conducting any additional review or testing of such deliverable pursuant to any applicable acceptance criteria or test suites agreed upon by the parties for such deliverable.

B. If Customer, in its reasonable and good faith judgment, determines that any submitted deliverable does not meet the applicable functional requirements set forth for such deliverable in the relevant Statement of Work, Customer must notify Oracle within ten (10) business days after Oracle's submission of the deliverable to give written notice to Oracle specifying any deficiencies in detail. Each deliverable shall be deemed accepted by Customer unless notice is provided to Oracle within ten (10) business days after Oracle's submission of the deliverable. Oracle shall use commercially reasonable efforts to promptly cure any such deficiencies within twenty (20) business days of such notice and then resubmit the deliverable for further review and acceptance testing in the same manner. Should any deliverable fail to satisfy the applicable functional requirements after the second resubmission of such deliverable to Customer, Customer may (i) again reject the deliverable and return it to Oracle for further cure and resubmission; or (ii) terminate the relevant Statement of Work for cause immediately upon written notice and recover all Professional Services fees associated with such deficient deliverable. Notwithstanding the foregoing, in the event the applicable functional requirements as stated in the Statement of Work are subsequently determined by the parties to be inappropriate or to require modification due to changed circumstances, incorrect assumptions or other reasons at the time of actual delivery and testing of a deliverable, the parties shall cooperate in good faith to appropriately modify such requirements.

C. Customer shall provide Oracle a written acceptance of each deliverable promptly upon acceptance. Failure to reject a deliverable within the applicable acceptance period shall be deemed acceptance of such deliverable.

D. Customer acknowledges and agrees that its payment of fees for Professional Services is not conditioned upon acceptance and/or completion of deliverables.

5.3 Changes to Scope. Any changes to the scope of work under a Statement of Work shall be made by written change order or amendment to the Statement of Work signed by an authorized representative of each party prior to implementation of such changes.

5.4 Subcontractors. Oracle may, in its reasonable discretion, use third party contractors inside or outside the United States to perform any of its obligations hereunder, including but not limited to migration of Customer Data.



BIGMACHINES

PROFESSIONAL SERVICES ATTACHMENT