ORACLE’S END USER TERMS OF SERVICE
FOR THE
ELOQUA PLATFORM APPLICATION

BEFORE USING ORACLE’S ELOQUA PLATFORM APPLICATION (AS DEFINED BELOW), PLEASE READ THESE END USER TERMS OF SERVICE (THESE "TERMS"). THESE TERMS ARE INCORPORATED BY REFERENCE INTO THE ORDER FORM EXECUTED BY THE COMPANY IDENTIFIED AS THE "CUSTOMER" THEREIN ("CUSTOMER") AND ORACLE, PURSUANT TO WHICH THE CUSTOMER RECEIVES THE RIGHT TO ACCESS AND USE ORACLE’S ELOQUA PLATFORM APPLICATION (THE "ORDER FORM"). THESE TERMS AND THE ORDER FORM TOGETHER FORM A BINDING AND EXECUTED WRITTEN AGREEMENT BETWEEN CUSTOMER AND ORACLE, EFFECTIVE AS OF THE FIRST DATE OF MUTUAL EXECUTION BY ORACLE AND CUSTOMER OF THE ORDER FORM (THIS "AGREEMENT”).

1. The Eloqua Platform Application.
   (a) **Access and Availability.** Oracle will make the Eloqua Platform Application available to (a) Customer and (b) individuals who are authorized by Customer to use the Eloqua Platform Application on behalf of the Customer and who have been supplied user identification and passwords by Customer (or by Oracle at Customer's request), including employees, consultants, contractors, and agents of Customer ("Users"). Oracle hereby grants the Customer and its Users a limited, non-exclusive right to access and use one database instance of the Eloqua Platform Application, in each case during the Subscription Term and in accordance with this Agreement (including the specific access rights and limitations set forth in the Order Form) (the "Subscription"). Customer's Subscription is not dependent on any future functionality or features (or any public comments or other disclosure made by Oracle with respect thereto). "Eloqua Platform Application" means the online, website application provided by Oracle to which Oracle grants Customer and its Users access as part of the Subscription Customer has ordered.

   (b) **Subscription Term.** Customer’s initial subscription term for the Eloqua Platform Application commences on the expected "Subscription Start Date" stated in the Order Form, or, if later or if none is provided in the Order Form, the day User login names and a password are issued to Customer to access the Eloqua Platform Application under the Order Form (the "Subscription Start Date"). The Subscription will continue for the "Initial Subscription Term" specified in the Order Form (the "Initial Subscription Term"), and will automatically renew for successive one (1) year periods (each, a "Renewal Term") at the Eloqua Platform Application subscription price in effect on a generally commercially available basis at the time of the renewal, based on the actual number of contacts loaded into the Eloqua Platform Application and product functionality being used by Customer, unless (i) either party gives the other party written notice of non-renewal at least thirty (30) days prior to the end of the Initial Subscription Term or the Renewal Term then in effect or (ii) the parties mutually execute a separate order form for such renewal, in which case (a) the separate mutually executed renewal order form will be deemed to be an addendum to and become part of the "Order Form" for purposes of this Agreement, and will therefore be governed in part by these Terms and will become a part of this Agreement, (b) the renewal term set forth in such separate mutually executed renewal order form will be deemed to be a "Renewal Term" hereunder and (c) this sentence will continue to apply for further subsequent renewals. The Initial Subscription Term plus all Renewal Terms are referred to herein as the "Subscription Term".

   (c) **Money Back Guarantee (SmartStart Program).** Provided that Customer has purchased the SmartStart services (as set forth in the Order Form) and has permitted and cooperated with Oracle or Oracle’s designee to complete all of the elements of the SmartStart services described in the Order Form, during the first six (6) months of the Initial Subscription Term, Customer may terminate this Agreement for any reason upon thirty (30) days prior written notice to Oracle, in which event Oracle will refund Customer a prorated amount equal to the pre-paid Subscription Fees covering the whole months that would have remained, absent such early termination, in Customer’s Initial Subscription Term following the effective date of such early termination.

   (d) **Customer Affiliates.** The Subscription is granted solely to the Customer and its Users, and not any other third parties (including not to any of Customer’s Affiliates), except as otherwise set forth in the Order Form. Customer’s Affiliate’s may purchase Subscriptions to the Eloqua Platform Application under separate Order Forms, provided that if any Affiliates are granted any right to access or use the Eloqua Platform Application hereunder, Customer will remain fully responsible and liable for all acts and omissions of such Affiliates and will cause such Affiliates to comply with the provisions of this Agreement. “Affiliate” means, with respect to a party, any entity which directly or indirectly controls, is controlled by or is under common control with such party, wherein "control", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of such party.
(e) **Customer Number of Contacts.** The Subscription price is based on the number of customer contacts that are uploaded into the Eloqua Platform Application. Customer will use best efforts to accurately calculate the number of contacts in its customer data list to purchase the Subscription that most accurately fits its good faith projected number of contacts in its customer data list. Oracle and its subcontractors will have the right to monitor or audit remotely the number of customer contacts that are uploaded into the Eloqua Platform Application. Unless otherwise stated in the Order Form, (i) if Customer exceeds the number of contacts in the contact band set forth in the Order Form, Oracle will have the right to charge Customer Oracle’s then-current subscription fee for such overage, and (ii) for each Renewal Term, Oracle will have the right to charge Customer Oracle’s then-current subscription fee that applies to the greater of (a) the number of contacts uploaded by Customer during the term immediately prior to such Renewal Term and (b) the number of contacts in the contact band for which Customer was initially charged for the term immediately prior to such Renewal Term.

(f) **Service Level Agreement and Support.** Oracle will provide the general maintenance services and technical support described in the Service Level Agreement (“SLA”) set forth in Schedule A.

2. **Customer Conduct and Use.**

(a) **Customer Data; Upload Restrictions.** Customer will retain all right, title and interest in and to all data uploaded by Customer and its Users to the Eloqua Platform Application that would typically be provided in the planning, execution or analysis of marketing programs, as well as all information generated by Users using of the Eloqua Platform Application (collectively, “Customer Data”). Customer will not upload into the Eloqua Platform Application any financial or medical information of any nature, or any personally identifiable information (e.g., social security numbers, driver’s license numbers, birth dates, personal bank account numbers, passport or visa numbers, passwords and credit card numbers), and none of the foregoing will be deemed “Customer Data” hereunder, and Customer will remove such information from the Eloqua Platform Application immediately or, at its reasonable discretion, Oracle may purge the same from the Eloqua Platform Application. Oracle will not access Customer Data uploaded by Customer except: (i) to respond to service or technical problems; (ii) to monitor compliance with this Agreement; (iii) if there has been a violation of this Agreement; (iv) to assess or determine whether the Eloqua Platform Application is being properly implemented and configured for the service(s) purchased by Customer; (v) at Customer’s request; or (vi) upon Customer’s written consent (including by email). Oracle may also collect data with respect to Customer’s use of the Eloqua Platform Application and report on such usage in an aggregated and anonymous manner.

(b) **Compliance.** Customer is responsible for (i) all activities that occur with respect to the Customer account, (ii) its and its Users’ use of the Eloqua Platform Application and compliance with this Agreement, and (iii) all Customer Data and other data uploaded, stored or accessible by Customer or its Users via or on the Eloqua Platform Application. Customer and its Users will comply with all applicable privacy, publicity, data protection, electronic communications, spam and other laws in connection with the use of the Eloqua Platform Application, including the CAN-SPAM Act of 2003 (U.S.A.), the Personal Information Protection and Electronic Documents Act (PIPEDA) (Canada), the EU Data Protection Directive.

(c) **Certain Restrictions.** Customer and its Users will use the Eloqua Platform Application for internal business purposes only as contemplated by this Agreement and will not:

- tamper with the security of the Eloqua Platform Application or Oracle’s other customer accounts;
- attempt to probe, scan or test the vulnerability of the Eloqua Platform Application, breach the security or authentication measures of the Eloqua Platform Application without proper authorization or willfully render any part of the Eloqua Platform Application unusable;
- access data on the Eloqua Platform Application not intended for the Customer or log into a server or account on the Eloqua Platform Application that Customer is not authorized to access;
- lease, distribute, (sub)license, sell or otherwise commercially exploit the Eloqua Platform Application, use the Eloqua Platform Application for timesharing or service bureau purposes or otherwise for the benefit of a third party, or make the Eloqua Platform Application (including any evaluation version) available to a third party other than as contemplated in this Agreement;
- allow any third party that offers or provides services that are competitive with Oracle’s products or services to use or access the Eloqua Platform Application, use or access the Eloqua Platform Application to develop a product or service that is competitive with Oracle’s products or services or otherwise copy any ideas, features, functions or graphics of the Eloqua Platform Application;
- use the Eloqua Platform Application in violation of Oracle’s Acceptable Usage Policy (AUP) for the Eloqua Platform Application available at [http://www.oracle.com/contracts](http://www.oracle.com/contracts), which is hereby incorporated by reference and made a part of these Terms;
- reverse engineer, decompile, disassemble, translate or seek to obtain the source code of the Eloqua Platform Application, or modify or create a derivative work of the Eloqua Platform Application or any related documentation;
- remove or obscure any product identification, proprietary, copyright or other notices contained in the Eloqua Platform Application or related documentation;
- create any link, API or other interface to the Eloqua Platform Application accessible by any other third party or frame or mirror any content contained or accessible from the Eloqua Platform Application; or
- disclose (whether orally or in writing) information or analysis regarding the specifications or performance of the Eloqua Platform Application (including benchmark tests).
(d) Communications. Customer will be responsible for the content of all communications sent using the Eloqua Platform Application. Customer will not use the Eloqua Platform Application to communicate any message or material that (i) is libellous, harmful to minors, obscene or constitutes pornography; (ii) infringes the intellectual property rights of any third party or is otherwise unlawful; or (iii) would otherwise give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law. Oracle will use reasonable efforts to provide Customer with the opportunity to remove or disable access to any offending material or content.

(e) Suspension. In the event of any breach or threatened breach of this Agreement by Customer or any Users (including non-payment of fees), without limiting Oracle’s other rights and remedies, Oracle may immediately suspend Customer’s access to the Eloqua Platform Application.

3. Confidentiality

(a) Scope. “Confidential Information” means all information of a party (“Disclosing Party”) disclosed to the other party (“Receiving Party”) that is designated in writing or otherwise identified as confidential at the time of disclosure.. The terms and conditions of the Order Form are Confidential Information of Oracle.

(b) Restrictions. The Receiving Party will: (i) not use the Disclosing Party’s Confidential Information for any purpose outside of this Agreement; (ii) not disclose such Confidential Information to any person or entity, other than its (a) employees who have a “need to know” for the Receiving Party to exercise its rights or perform its obligations hereunder and (b) professional advisers, and actual or prospective investors, provided that such employees, investors, acquirers and professional advisers are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this Section 3; and (ii) use reasonable measures to protect the confidentiality of such Confidential Information.

(c) Exceptions. If the Receiving Party is required by applicable law or court order to make any disclosure of such Confidential Information, it will first give written notice of such requirement to the Disclosing Party, and permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Further, this Section 3 will not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt; (ii) is or has become publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

(d) Equitable Relief. The Receiving Party acknowledges that unauthorized disclosure of Confidential Information could cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient remedy and, therefore, that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law or equity.

4. Fees; Interest; Taxes. Customer shall pay to Oracle all fees specified in the Order Forms. Except as otherwise provided in the Order Forms, all fees are quoted in United States currency. Fees are based on Subscriptions purchased, whether or not Customer actually utilizes the service and/or Professional Services purchased. Customer will reimburse Oracle for reasonable expenses related to providing any Professional Services. All payment obligations are non-cancellable and, except as set forth in Section 6(b) below, all fees paid are non-refundable. Except as expressly set forth in this Agreement, all amounts paid Oracle are non-refundable. Fees will be invoiced in advance in accordance with the terms of the Order Form. Unless otherwise stated in the Order Form, all fees are due within thirty (30) days from the invoice date. All amounts payable hereunder are exclusive of any sales, use and other taxes or duties, however designated (collectively “Taxes”). Customer will be solely responsible for payment of all Taxes, except for those taxes based on the income of Oracle. Customer will not withhold any Taxes from any amounts due Oracle. If Oracle pays any such taxes on behalf of Customer, Customer will reimburse Oracle for such payments.

5. Proprietary Rights. Customer is permitted to access and use the Eloqua Platform Application, but this Agreement is not otherwise an agreement for the sale or license of any software. Customer acknowledges that the Eloqua Platform Application contains copyrighted and proprietary products and materials, certain components of which are licensed from one or more of Oracle’s licensors. Oracle and Oracle’s licensors solely and exclusively retain all right, title and interest in and to the Eloqua Platform Application and related support, documentation and professional services deliverables, and all related and underlying software, interfaces, databases, data models, structures, non-Customer-specific data, aggregated statistical data, technology, reports and other intellectual property, plus all intellectual and other proprietary rights therein or thereonto (all of the foregoing, the “Oracle IP”). Except for the Subscription granted hereunder, Customer has no right, title or interest in or to the Oracle IP.

6. Term and Termination.

(a) Term and Termination. This Agreement will be effective during the Subscription Term, unless earlier terminated as follows. Unless otherwise stated in the Order Form, this Agreement may only be terminated: (i) by a party upon written notice to the other party (A) if the other party breaches a material term of this Agreement that is uncured within thirty (30) days after receipt of notice of such breach; (B) 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; or (C) immediately in the event of a material breach by the other party...
of Section 2 of these Terms; (ii) by Oracle pursuant to Section 9(a); or (iii) by Customer during the first six (6) months of the Initial Subscription Term pursuant to Section 1(c).

(b) Outstanding Fees. Customer will pay all fees owed to Oracle that have accrued up until termination of this Agreement immediately upon such termination. In addition, if Oracle terminates this Agreement pursuant to clause (i) of Section 6(a), Customer will pay Oracle, within thirty (30) days after termination, all unpaid amounts that would have been owed to Oracle for the remainder of the then-current Subscription Term absent early termination. However, if Customer terminates this Agreement pursuant to Section 6(a), Oracle will refund Customer a prorated amount equal to the pre-paid Subscription Fees covering the whole months that would have remained, absent such early termination, in Customer's Subscription Term following the effective date of such early termination.

(c) Effect of Termination. Upon any termination of this Agreement, Customer will immediately cease all use of and access to the Eloqua Platform Application and delete (or, at Oracle's request, return) all related documentation, passwords and access codes and any other Oracle Confidential Information in its possession. Oracle will have no liability for any suspension or termination of Customer's access to the Eloqua Platform Application, or any termination of this Agreement, provided that it is conducted in accordance with the terms of this Agreement. Upon written request by Customer made within thirty (30) days after termination, Oracle will provide Customer with temporary access to the Eloqua Platform Application solely for Customer to retrieve its Customer Data, but not any other purpose. After such 30-day period, Oracle will have no obligation to maintain or provide access to such Customer Data and will thereafter, unless legally prohibited and except for archival backup purposes, have the right to delete all such Customer Data in its possession or control. Sections 3, 4, 5, 6, 8, 9 and 10 of these Terms will survive any termination or expiration of this Agreement.

7. Warranties.

(a) Corporate Authority. Each party represents and warrants that it has the legal power to enter into this Agreement. For purposes of this clause, “Services” means, collectively, both the Eloqua Platform Application and the Professional Services that you have ordered.

(b) Functionality Warranty. Oracle warrants that the (i) Eloqua Platform Application will operate in substantial conformity with the then current version of the applicable documentation provided by Oracle, and (ii) Professional Services will be performed in a professional manner consistent with industry standards. ORACLE DOES NOT GUARANTEE THAT (A) SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ORACLE WILL CORRECT ALL SERVICES ERRORS, (B) THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER DATA, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY ORACLE, AND (C) THE SERVICES WILL MEET CUSTOMER REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. CUSTOMER ACKNOWLEDGES THAT ORACLE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ORACLE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER DATA OR THIRD PARTY CONTENT. ORACLE DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.

FOR ANY BREACH OF THE SERVICES WARRANTY, CUSTOMER’S EXCLUSIVE REMEDY AND ORACLE’S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, CUSTOMER MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO CUSTOMER THE FEES FOR THE Terminated SERVICES THAT CUSTOMER PRE-PAID TO ORACLE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

(c) Security Warranty. Oracle has implemented Appropriate Security Measures (as hereinafter defined) and maintains the Eloqua Platform Application at reputable third party Internet service providers and co-location facilities. "Appropriate Security Measures" means commercially reasonable efforts to ensure that Customer Data will be maintained accurately and safeguarded including the use of technical and physical controls to protect Customer Data against destruction, loss, alteration, unauthorized disclosure to third parties or unauthorized access by employees or contractors employed by Oracle.

(d) Disclaimer. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. Limitations of Liability.

For purposes of this clause, “Services” means, collectively, both the Subscription to the Eloqua Platform Application and the Professional Services that you have ordered.
NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), DATA, OR DATA USE. ORACLE’S MAXIMUM LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER’S ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO ORACLE FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM LESS ANY REFUNDS OR CREDITS RECEIVED BY CUSTOMER FROM ORACLE UNDER SUCH ORDER.


(a) Oracle Indemnification. Oracle shall indemnify and hold harmless Customer against any loss, damage or cost (including reasonable and necessary attorney’s fees) (“Losses”) incurred in connection with claims, demands, suits or proceedings made or brought by a third party (“Claims”) against Customer alleging that the use of the Eloqua Platform Application, as contemplated hereunder, infringes the intellectual property rights of a third party. Notwithstanding the foregoing, if Oracle reasonably believes that Customer’s use of any portion of the Eloqua Platform Application is likely to be enjoined by reason of a Claim of infringement, violation or misappropriation of any third party intellectual property rights then Oracle may, at its expense and in its sole discretion: (i) procure for Customer the right to continue using the Eloqua Platform Application; or (ii) replace or modify the applicable software, services or other material so that there is no longer any infringement, violation or misappropriation, provided that such replacement or modification does not adversely affect the functional capabilities of the Eloqua Platform Application. If, in Oracle’s opinion, (i) and (ii) above are infeasible or commercially impracticable, Oracle may, in its sole discretion, terminate this Agreement and refund Customer a prorated amount equal to the pre-paid Subscription Fees covering the whole months that would have remained, absent such early termination, in Customer’s Subscription Term following the effective date of such early termination. The foregoing indemnification obligation of Oracle will not apply: (1) if the Eloqua Platform Application is modified by any party other than Oracle, but solely to the extent the alleged infringement is caused by such modification; (2) if the Eloqua Platform Application is combined with other non-Oracle products, applications, or processes not authorized by Oracle, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Eloqua Platform Application; (4) to any third party deliverables or components contained within the Eloqua Platform Application that are not provided by Oracle; or (5) to any action arising as a result of the Customer Data. THIS SECTION 9(a) SETS FORTH ORACLE’S SOLE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

(b) Customer Indemnification. Customer will indemnify, defend and hold Oracle and its Affiliates, and their officers, directors, employees, agents and contractors (“Oracle Indemnitees”), harmless from and against any Losses incurred in connection with Claims against Oracle Indemnitees arising from or relating to Customer’s communications with its actual and potential customers, use of Customer Data or other use of the Eloqua Platform Application, in each case except to the extent Oracle is obligated to indemnify Customer under Section 9(a).

(c) Procedure. Each party’s indemnity obligations are subject to the following: (i) the aggrieved party will promptly notify the indemnifier in writing of the Claim; (ii) the indemnifier will have sole responsibility for and control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle or defend any Claim unless it unconditionally releases the aggrieved party of all liability); and (iii) the aggrieved party will cooperate fully to the extent necessary, and execute all documents necessary for the defense of such Claim.


(a) Entire Agreement; Interpretation. This Agreement (which consists of the Order Form and these Terms) constitutes the entire agreement and sets forth the entire understanding between the parties hereto with respect to Customer’s Subscription to the Eloqua Platform Application described in the Order Form, and supersedes all prior agreements and discussions with respect thereto. In the event of an inconsistency between the terms and conditions of these Terms and the Order Form, the terms of the Order Form will govern. This Agreement will control over any different or additional terms of a Customer purchase order or other non-Oracle ordering document, and no terms included in any Customer purchase order or other non-Oracle ordering document will apply to the Customer’s Subscription or use of the Eloqua Platform Application. Headings contained in this Agreement are inserted for convenience of reference only and will not in any way define or affect the meaning or interpretation of any provision of this Agreement. For purposes hereof, “including” means “including without limitation”.

(b) Marketing. Neither party may issue any press release regarding this Agreement without the other party’s prior written consent. Either party may include the name and logo of the other party in lists of customers or vendors in accordance with the other party’s standard guidelines.

(c) Relationship of Customer and Oracle. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party’s behalf without the other party’s prior written consent.
(d) **Modifications and Waiver.** No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and fully executed by both parties hereto. Any waiver of any right or remedy under this Agreement must be in writing and signed by each party. No delay in exercising any right or remedy will operate as a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be construed as a waiver of any right or remedy on any future occasion.

(e) **Assignment.** This Agreement and any rights or obligations hereunder may not be assigned, sublicensed or otherwise transferred by the parties without the prior written consent of the non-assigning party, except that either party may assign or transfer this Agreement upon a change of control of a party or by operation of law by providing the non-assigning party with prior written notice thereof provided that the assignee agrees in writing to be bound by all terms and conditions of this Agreement.

(f) **Governing Law.** This Agreement is governed by the substantive and procedural laws of the State of California and Customer and Oracle agree 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.

(g) **Notices.** Any notice required under this Agreement shall be provided to the other party in writing. If Customer has a dispute with Oracle or if Customer wishes to provide a notice under the Indemnification section of this Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA  94065. Attention: General Counsel, Legal Department.

(h) **Severability.** If any provision of this Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision will be modified to the extent necessary to render it enforceable, or will be severed from this Agreement, and all other provisions of this Agreement will remain in full force and effect.

(i) **Facsimile Transmission/Counterparts/Electronic Signatures.** This Agreement will be deemed executed upon mutual execution of the Order Form, which may be executed and delivered by facsimile or email, and upon receipt such transmission will be deemed delivery of an original, and which may be executed in several counterparts each of which when executed will be deemed to be an original, and such counterparts will each constitute one and the same instrument. The parties consent to electronic signatures for the purpose of executing this Agreement by e-mail or other electronic means, subject to compliance with any applicable laws, rules or regulations. Any such documents that are delivered electronically and accepted are deemed to be “in writing” to the same extent and with the same effect as if the Agreement had been signed manually. In no event will electronic execution expand such assent to include any terms other than those explicitly set forth in this Agreement.

(j) **Force Majeure.** Neither party to this Agreement will be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labor difficulties, governmental action or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

(k) **Subcontractors.** Oracle may use the services of subcontractors for the provision of any Eloqua Platform Application and performance of any services under this Agreement; provided, however, Oracle will be responsible for each subcontractor’s performance of services under this Agreement and for each subcontractor’s compliance with the terms and conditions of this Agreement.
Schedule A

EUTOS SERVICE LEVEL AGREEMENT (SLA)

1. Eloqua Platform Application Availability

The Oracle Eloqua Platform Application will be available 24 hours per day, 7 days per week, excluding any scheduled maintenance as described below.

**Category 1 – Scheduled Maintenance**

There will be a weekly scheduled maintenance period every Sunday between 5:00 AM Eastern Time (“ET”) to 11:00 AM ET to perform system maintenance, backup, and upgrade functions for the Eloqua Platform Application. The weekly scheduled maintenance period does not require the Eloqua Platform Application to be offline; however, during the maintenance period, the Eloqua Platform Application may have short periods of instability and may be offline for up to one hour.

If scheduled maintenance is required outside of the weekly scheduled maintenance period described above, Oracle will notify Customer at least three (3) days in advance. Such scheduled maintenance would occur between 11:00 PM ET and 1:00 AM ET on a planned weekday, after 9:00 PM ET on a Friday, or anytime on a Saturday.

**Category 2 – Unscheduled Maintenance**

Unscheduled maintenance may be required to resolve issues that are critical for Customer and/or performance of the Eloqua Platform Application. Oracle will notify Customer via email at least eight (8) hours prior to the unscheduled maintenance. The unscheduled maintenance will be conducted between 9:00 PM ET and 3:00 AM ET and will last no more than one (1) hour in duration. All scheduled and unscheduled maintenance notifications are logged and communicated via the Oracle Trust Site discussion area in Customer Central (Oracle’s online customer support portal).

**Target System Availability Level of Oracle’s Eloqua Platform Application**

Oracle works to meet a Target System Availability of 98%, measured across the production Eloqua Platform, for the measurement period of one calendar month, commencing at Oracle’s activation of the customer’s instance of the Eloqua Platform.

**Definition of Availability and Unplanned Downtime**

“Availability” or “Available” means Customer is able to log in and access the OLTP or transactional portion of the Oracle Cloud Services, subject to the following provisions. “Unplanned Downtime” means any time during which the services are not Available, but does not include any time during which the services or any services component are not Available due to:

- any problems resulting from Customer combining or merging the Platform Application with any hardware or software not supplied by Eloqua or not identified by Eloqua in writing as compatible with the Platform Application; and any problems caused by modifications in any version of the Platform Application not made or authorized by Eloqua in writing.
- A failure or degradation of performance or malfunction resulting from scripts, data, applications, equipment, infrastructure, software, penetration testing, performance testing, or monitoring agents directed or provided or performed by Customer.
- Planned outages, scheduled or announced maintenance or maintenance windows, or outages initiated by Oracle at the request or direction of Customer for maintenance, activation of configurations, backups or other purposes that require the service to be temporarily taken offline.
- Unavailability of management, auxiliary or administration services, including administration tools, reporting services, utilities, or other services supporting core transaction processing.
- Outages occurring as a result of any actions or omissions taken by Oracle at the request or direction of Customer.
- Outages resulting from Customer equipment or third party equipment not within the sole control of Oracle.
- Events resulting from an interruption or shut down of the services due to circumstances reasonably believed by Oracle to be a significant threat to the normal operation of the services, the operating infrastructure, the facility from which the services are provided, access to, or the integrity of Customer data (e.g., a hacker or a virus attack).
- Outages due to system administration, commands, or file transfers performed by Customer users or representatives.
- Outages due to denial of service attacks, natural disasters, changes resulting from government, political, or other regulatory actions or court orders, strikes or labor disputes, acts of civil disobedience, acts of war, acts against parties (including carriers and Oracle’s other vendors), and other force majeure events.
- Inability to access the services or outages caused by Customer’s conduct, including negligence or breach of Customer material obligations under the agreement, or by other circumstances outside of Oracle’s control
- Lack of availability or untimely response time of Customer to respond to incidents that require Customer participation for source identification and/or resolution, including meeting Customer responsibilities for any services
- Outages caused by failures or fluctuations in electrical, connectivity, network or telecommunications equipment or lines due to Customer conduct or circumstances outside of Oracle’s control

**Measurement of Eloqua Platform Application Availability**

Eloqua Platform Application Availability = (Total Hours in Reporting Period – Unscheduled Maintenance which causes unavailability – Severity 1 issue durations (as defined in Section 2) - Scheduled Maintenance – Excluded*) / (Total Hours in Reporting Period – Scheduled Maintenance – Excluded*) X 100%.

*Excluded means the following: (i) unavailability caused by circumstances beyond Oracle’s reasonable control, including, without limitation, acts of God, acts of government, emergencies, natural disasters, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Oracle employees), or any other force majeure event or factors; (ii) any problems resulting from Customer combining or merging the Eloqua Platform Application with any hardware or software not supplied by Oracle or not identified by Oracle in writing as compatible with the Eloqua Platform Application; (iii) interruptions or delays in providing the service resulting from telecommunications or Internet service provider failures outside of Oracle’s datacenter as measured by Gomez (a third party website availability monitoring provider); (v) any interruption or unavailability resulting from Customer’s use of the Eloqua Platform Application in an unauthorized or unlawful manner or any interruption resulting from the misuse, improper use, alteration, or damage of the Eloqua Platform Application; (vi) any problems caused by modifications in any version of the Eloqua Platform Application not made or authorized by Oracle in writing; and (vii) any problems resulting from Customer’s or any third party’s acts, errors or omissions or any systems not provided by Oracle.

2. **Product Support**

Oracle’s Product Support Team provides live Standard Support from 8:00 AM to 8:00 PM Monday to Friday in Customer’s Prime Region. Customer’s Prime Region is the region that best covers the primary user of the Eloqua Platform Application. Regions and coverage times are (a) North America, 8:00 AM to 8:00 PM Eastern Time, (b) EMEA, 8:00 AM to 8:00 PM Greenwich Mean Time and (c) APAC, 8:00 AM to 8:00 PM Singapore Time. Standard Support includes one Prime Region; if Customer has users outside Customer’s Prime Region and would like Oracle to provide live support coverage in addition to the coverage in the Prime Region then Customer may purchase such additional live support in the regions other than the Prime Region for additional cost. The most effective channel to reach Oracle’s live support team is to use the Oracle Customer Support Portal which requires an application login. Alternatively, Customer can contact Oracle at 1-866-FAST-ROI, Press 1.

**Product Support Response Times for Severity Levels**

Severity Level Definitions:

- **Severity 1**: Eloqua Platform Application Halted (Eloqua Platform Application outage or down, severe business impact)
- **Severity 2**: Essential Eloqua Platform Application Functionality Impacted (customer cannot send any emails, cannot access landing pages, unrecoverable data corruption, unrecoverable loss of form submission)
- **Severity 3**: Eloqua Platform Application Impacted (Eloqua Platform Application partially down (Data Card Services, Program Builder, Data Import, Data Export, Reporting)), extreme slowness, functionality working intermittently (i.e., Data Import fails intermittently)
- **Severity 4**: Eloqua Platform Application Impaired (Eloqua Platform Application is working but functionality or performance is impaired – generally bugs with a workaround)
- **Severity 5**: General Questions and Product Information
### Standard Support First Response Time (between 8AM to 8PM in your Prime Region, unless otherwise stated)

<table>
<thead>
<tr>
<th>Severity</th>
<th>Response**</th>
<th>Updates</th>
<th>Resolution**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity 1</td>
<td>Within 1 hour (7/24)</td>
<td>Every 2 hours via email, Oracle Trust Site or login page (7/24)</td>
<td>Within 8 hours (7/24)</td>
</tr>
<tr>
<td>Severity 2</td>
<td>Within 4 hours (5/12)</td>
<td>Every 8 hours via email, Oracle Trust Site or login page (5/12)</td>
<td>Within 1 hour (5/24)</td>
</tr>
<tr>
<td>Severity 3</td>
<td>8 hours</td>
<td>No Updates Provided</td>
<td>See below***</td>
</tr>
<tr>
<td>Severity 4</td>
<td>Within 24 hours</td>
<td>No Updates Provided</td>
<td>Within 4 hours</td>
</tr>
<tr>
<td>Severity 5</td>
<td>Within 48 hours</td>
<td>No Updates Provided</td>
<td>Within 4 hours</td>
</tr>
</tbody>
</table>

### Premier and Premier with Designated Strategic Account Management First Response Time (5/24 unless otherwise stated)

<table>
<thead>
<tr>
<th>Severity</th>
<th>Response**</th>
<th>Updates</th>
<th>Resolution**</th>
</tr>
</thead>
<tbody>
<tr>
<td>Premier</td>
<td>Within 1 hour</td>
<td>Every 2 hours via email, Oracle Trust Site or login page (7/24)</td>
<td>Within 8 hours (7/24)</td>
</tr>
<tr>
<td>Premier with Designated Strategic Account Management</td>
<td>Within 5/24</td>
<td>Every 4 hours via email, Oracle Trust Site or login page (5/24)</td>
<td>Within 24 hours (5/24)</td>
</tr>
<tr>
<td>Premier with Designated Strategic Account Management</td>
<td>Within 1 hour (5/24)</td>
<td>Weekly updates from Premier Rep</td>
<td>See below***</td>
</tr>
<tr>
<td>Premier with Designated Strategic Account Management</td>
<td>Within 4 hours</td>
<td>No Updates Provided</td>
<td>See below***</td>
</tr>
<tr>
<td>Premier with Designated Strategic Account Management</td>
<td>Within 8 hours</td>
<td>No Updates Provided</td>
<td>See below***</td>
</tr>
</tbody>
</table>

** The Response and Resolution times are measured from when Customer notifies Oracle Product Support, either through the Oracle Support Portal or by telephone, about a performance problem with the Oracle Eloqua Platform Application and Oracle issues a trouble ticket number to Customer. Customer must have a ticket number for a claim under this SLA to be valid.

*** Oracle will use commercially reasonable continuous efforts to provide a computer-based interim resolution.

### Customer Escalation Procedures for Severity Levels

The table below displays the automatic escalation procedures for Severity Level 1, 2, 3, 4, and 5 situations, based on how long a case is unresolved.

<table>
<thead>
<tr>
<th>Escalation Level</th>
<th>Expected Time After Escalation</th>
<th>Contact for Standard Support</th>
<th>Contact for Premier Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Agreed Service Level Fails + 2 Hours</td>
<td>Product Support (Customer Central) 1-866-327-8764</td>
<td>Manager Global Product Support</td>
</tr>
<tr>
<td>Second</td>
<td>Agreed + 4 hours</td>
<td>Manager Global Product Support</td>
<td>Director Global Product Support</td>
</tr>
<tr>
<td>Third</td>
<td>Agreed + 8 Hours</td>
<td>Director Global Product Support</td>
<td>SVP Customer Strategy and Success</td>
</tr>
</tbody>
</table>