

AMENDMENT ONE

City and County of San Francisco
OFFICE OF CONTRACT ADMINISTRATION

Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

**SOFTWARE LICENSE AND MAINTENANCE AGREEMENT
AMENDMENT TO ORACLE LICENSE AND SERVICES AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND**

Oracle USA, Inc.

This amendment one (the "Amendment") is made as of this 16th day of November, 2007 in the City and County of San Francisco, State of California, by and between: **Oracle USA, Inc.** 500 Oracle Parkway, Redwood City, California, 94065, hereinafter referred to as Oracle or "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Department of Human Resources (DHR) wishes to license certain software from Contractor and obtain technical and maintenance services; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement and as specified by the Ordering Documents.

Now, THEREFORE, the parties agree as follows:

1. Definitions – Related to Software License

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

ACCEPTANCE City's Acceptance of the Licensed Software shall be deemed to have occurred upon the effective date of the Ordering Document, and post acceptance testing, if any, shall be governed by the procedures set forth in Section 8.

AGREEMENT The Oracle pre-printed License and Services Agreement (OLSA V071807), to which this document is attached, and this Amendment shall be construed together as this "Agreement."

AMENDMENT This document, which contains City's express terms that both (i) supplement and (ii) control over any conflict or clear inconsistency with the terms of the OLSAv071807.

**AUTHORIZATION; or
AUTHORIZATION
DOCUMENT** This Agreement, a Blanket Purchase Order, Contract Order, or Purchase Order of the City, properly executed by DHR and Purchasing, and certified by the Controller for the specific funding of this Agreement or any modification thereof. A Purchase Order certified by the Controller indicates full funding for that order.

DOCUMENTATION Shall have the definition as "Program Documentation" in the OLSAV071807 paragraph A.

**LICENSED
SOFTWARE** One or more of the proprietary computer software programs identified in the Authorization Document, all related materials, Documentation, all corrections, patches or updates thereto, and other written information received either under the respective Ordering Document(s) or by virtue of being a current customer of Oracle's Software Update License and Support (Support) by City from Contractor, whether in machine-readable or printed form. The Authorization Document may identify more than one software product or more than one copy of any product.

OBJECT CODE Machine readable compiled form of Licensed Software provided by Contractor.

PRECEDENCE Notwithstanding the terms of any other document executed by the parties as a part of this Agreement, including the Ordering Documents, the terms of this Amendment shall control over any conflicting or inconsistent terms set forth in any other Oracle Pre-Printed document.

**THE ORDERING
DOCUMENTS** The Oracle ordering form attached to this Amendment as Appendix A.

SOURCE CODE The human readable compliable form of the Licensed Software to be provided by Contractor.

SPECIFICATIONS The functional and operational characteristics of the Licensed Software as described in Contractor's current published Documentation.

WARRANTY PERIOD The warranty period shall commence on (i) the effective date of the Ordering Document and continue for 12 (twelve) months for the software and each related update to the software and (ii) the date of performance of technical services and continue for 90 (ninety) days thereafter for technical services, unless greater periods for (i) and (ii) are specified in the Ordering Documents.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of DHR. The words

“sufficient,” “necessary,” or “proper,” and the like, mean sufficient, necessary or proper in the judgment of DHR, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. City’s delivery of a purchase order to Contractor manifests such certifications and authorizations.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

3. City's Payment Obligation

The City will pay all invoices within 30 days of the invoice date. However, failure to pay within the 30 days of the invoice date shall not be deemed a default or material breach of this Agreement without notice to the City and a reasonable opportunity to cure. In no event shall City be liable for interest or late charges for any late payments made after such 30-day period.

Contractor and the City understand and intend that the obligations of the City to pay fees for Support hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

No fees or expenses will be paid except those specifically agreed upon, in writing, in the Ordering Documents. Under no circumstances shall the fees and expenses result in payment of an amount that exceeds the total amount of this Agreement as set forth below.

Notwithstanding anything in this Agreement to the contrary, City shall pay any sales and use taxes that may be imposed upon the services and commodities obtained under this Agreement as long as the amount of such taxes are clearly identified on the Contractor's invoice. The City shall not be required to pay taxes directly to the tax assessing authority. City shall not pay any taxes based on Contractor's income.

The City shall pay fees for Support, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of the Agreement, upon presentation of invoices furnished by Contractor in a form acceptable to the Controller. Payments will be made by warrant drawn on the Treasurer of the City.

In no event shall the amount of the Software License payment exceed Three Million Two Hundred Thirty Thousand, One Hundred Twenty Eight dollars (\$3,230,128). In no event shall the fees for Support exceed Seven Hundred Ten Thousand, Six Hundred Twenty-Eight dollars (\$710,628).

In no event shall the total amount for all software and services paid under this contract exceed Three Million Nine Hundred Forty Thousand, Seven Hundred Fifty Six dollars (\$3,940,756).

The City shall pay the fee for the Software Licensed pursuant to this Agreement in one lump sum after the Controller has certified the funds and issued a Purchase Order. Payments of fees for Support shall be invoiced by Contractor in arrears on a quarterly basis.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

4. Term of the Agreement

a. Term of the License

Subject to Section 5, the license granted under this Agreement shall commence upon Acceptance of the Licensed Software and shall continue in perpetuity. All licenses granted under this Agreement shall be perpetual unless otherwise stated in the specific Ordering Document. In addition to the licenses procured via the Ordering Document, City has the option to procure additional licenses and related support noted on the Ordering Document's price hold exhibit by issuance of an amendment to this Agreement.

b. Term of the Support and Update Services

Subject to Section 5, the term of the Support shall be from Acceptance for one year unless sooner terminated in accordance with the provisions of this Agreement. This term may be renewed annually at City's option for eight additional one year terms (with the price caps set forth in Section B.7 of the Ordering Document) by issuance of an amendment to this Agreement.

5. Effective Date of the Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

6. License

a. Grant of License. Subject to the terms and conditions of the Agreement, Contractor grants City a non-exclusive and non-transferable perpetual license to use the Licensed Software unless a different term is specified in the Ordering Documents. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Agreement grants City no title or right of ownership in the Licensed Software.

b. Escrow – Contractor shall deposit the most current source code for each licensed core program and all supporting documentation with an escrow agent acceptable to the City and will add City as a beneficiary to each applicable escrow agreement with the escrow agent. Contractor shall maintain the most up to date source code for each licensed core program in escrow at all times.

Contractor agrees that in the event it ceases to be in the business of marketing and/or providing Support for the Licensed Software (including next-generation versions of substantially similar functionality), and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, City shall be entitled to obtain without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at City's locations.

c. Restrictions on Use. City is authorized to use the Licensed Software only for City's internal purposes. The City shall be authorized to use the Licensed Software at any City business location. In addition, City shall be authorized to use the Licensed Software at any non-City location in the United States if required due to emergency circumstances as determined by City.

d. Documentation. Contractor shall provide City with the Licensed Software specified in the Authorization Document. Contractor grants to City permission to duplicate all Documentation for City's internal use.

e. Authorized Modification. City shall also be permitted to develop, use and modify Application Program Interfaces (API's), macros and user interfaces. For purposes of this Agreement, such development shall be deemed an authorized modification. Contractor shall make no claim under this Agreement to ownership of any APIs, macros or other interfaces developed by or at the direction of the City.

For purposes of services related to City's development, use and modification, the City may make the programs or materials provided by Contractor available to a third party. In addition the City may cause or permit such actions as required by law for interoperability, disassembly or decompilation of the programs and; the City may disclose results of any internal program benchmark tests prepared by or on behalf of the City for the development, use and modification authorized herein to requestors without Oracle's prior written consent, provided such disclosure is made in accordance with the law(s) requiring disclosure of public information..

Oracle has no general objection to the City's use of third party programs including but not limited to Crystal Reports and Cognos in conjunction with the software licensed under this Agreement. Oracle recognizes that City has and will license third party programs that City will use with Oracle products. Based on information provided to Oracle as of the effective date, Oracle agrees that such use does not constitute an unauthorized modification or violate the licenses granted under this Agreement.

7. Delivery

a. Delivery. Contractor shall make the Licensed Software products available to download by City beginning no later than the date specified in the Ordering Document, after certification of the purchase order and notice to Contractor.

8. Acceptance Testing. Acceptance testing shall have the meaning provided in the Ordering Documents.

9. Left Blank by Agreement of the Parties

10. Changes in Operating System. In the event City desires to obtain a version of the Licensed Software that operates under an operating system or hardware that differs from that specified in the respective Ordering Document, City may select and download such alternative version from those on the Oracle website without paying any charge or fee to Oracle, provided City (i) has remained a continuous, compliant subscriber to Support and is not in breach of the terms of this Agreement, (ii) pays any third party fees associated with the migration, (iii) agrees to any mutually agreeable terms different from the terms of the Agreement which relate to such version, (iv) may use both the original and the alternate versions simultaneously to the extent such use does not violate the quantity or similar metrics for the Licensed Software specified in the Ordering Documents, and (v) executes any additional documentation reasonably requested by Oracle regarding the alternative version.

11. Warranties: Right to Grant License

Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City, and the exclusive and complete remedy for breach of such warranty is stated in paragraph 12 of this Agreement.

12. Infringement Indemnification

If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed Software infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Licensed Software constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event a final injunction is obtained against City's use of the Licensed Software by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Licensed Software as contemplated hereunder, (b) replace the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either party

hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing Licensed Software.

Oracle understands that the City is obtaining the Licensed Software to modify for its internal business needs. Oracle's duty to indemnify the City regarding the Licensed Software will not be voided or limited by the City's alteration of the Licensed Software or use outside the scope of use identified in Oracle's user documentation.. However, Oracle will not indemnify the City to the extent that an infringement claim is based solely upon the City's alteration of the Licensed Software or upon the combination of any material with any product or services not provided by Oracle.

13. Guaranteed Maximum Costs.

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.

c. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

14. Invoice Format

Invoices furnished by Contractor under this agreement must be emailed or original invoices on Contractor's letterhead with the following information: City purchase order number, vendor's invoice number, invoice date, invoice amount; Ship and Bill To address specified on the purchase order; description of item or service; date shipped or period covered; vendor's remittance address and terms of payment. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

15. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval. (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City. (c) Conspires to defraud the City by getting a false claim allowed or paid by the City. (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City. (e) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

16. Payment Does Not Imply Acceptance of Work

Subject to the warranty stated in the Agreement, the granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. During the respective Warranty Period, Software, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

17. Maintenance Scope of Service Coverage

Oracle shall perform the Support obligations referenced in section H of the OLSAv071807 component of this Agreement. Software that is properly configured to perform the functionality stated in the program documentation is understood to be "unaltered" as that term is used in the Oracle Technical Support Policies.

18. Left Blank by Agreement of the Parties.

19. Left Blank by Agreement of the Parties.

20. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor shall assign adequate personnel resources to provide the level of service in this Agreement.

City, in its reasonable discretion, may request that Oracle remove particular persons who are providing services under this Agreement, and Oracle shall comply with such requests if the City reasonably considers that the continued assignment is not in the best interest of the City and notifies Oracle of the foregoing, and Oracle cannot otherwise address the City's concerns to the City's reasonable satisfaction.

21. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of Oracle's employees, even though such equipment may be furnished, rented or loaned to Contractor by City.

22. Independent Contractor; Payment of Employment Related Taxes and Other Expenses

a. Independent Contractor. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Employment Related Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

23. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification and General Liability," section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, with Employers' Liability limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned and Non-owned and hired auto coverage, as applicable.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the following address:

City and County of San Francisco
Department of Human Resources
Project eMerge
25 Van Ness Ave., Ste. 345
San Francisco, CA. 94102
Attn: Rachel Cukierman

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. Policy shall be indorsed and insurer shall provide written notice to City of policy cancellation for any reason. Insurer shall also provide thirty days' advance written notice to City of any reduction in coverage or nonrenewal of coverage.

h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

24. Indemnification and General Liability

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and in not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related third party costs that the City necessarily incurs.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

There shall be no limitation on the ability of either party to bring an action arising from or relating to this agreement except those set forth in California Law setting forth applicable statutes of limitation.

Contractor's indemnification obligation applies only if (i) Contractor is notified in writing of the claim promptly following City receiving the claim, (ii) City reasonably assist Contractor in obtaining information about the facts underlying the claim, and (iii) Contractor has sole control over resolution of the claim.

25. Liability of the Parties

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 14 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CONTRACTOR BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT. CONTRACTOR'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING UNDER THIS AGREEMENT FOR CONTRACTOR'S NEGLIGENCE SHALL BE CAPPED AT THE TOTAL, NOT TO EXCEED AMOUNT FOR ALL SOFTWARE, SERVICES AND EXPENSES TO BE PAID UNDER THIS CONTRACT SET FORTH IN SECTION 3 OF THIS AMENDMENT.

CONTRACTOR'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (2) CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO SECTION 12 INFRINGEMENT INDEMNIFICATION HEREIN, (3) LIMIT CLAIMS OR GENERAL DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT, (4) STATUTORY DAMAGES SPECIFIED IN THIS AGREEMENT, AND (5) WRONGFUL DEATH CAUSED BY CONTRACTOR.

Contractor's liability to the City for loss of the City's data attributable to the City's use of the Licensed Software shall be limited to the Contractor's making reasonable efforts to assist the City in restoring such data from the City's back-up system without Contractor charging a fee for such assistance; the City must be current on Support while such assistance is provided.

26. Nondisclosure

a. City agrees that it shall treat the Licensed Software with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is accepted by the City until the license is terminated as provided herein.

b. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

- (1) is now or hereafter becomes publicly known;

- (2) is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;
- (3) is known to the City prior to its receipt of the Licensed Software;
- (4) is subsequently developed by the City independently of any disclosures made hereunder by Contractor;
- (5) is disclosed with Contractor's prior written consent;
- (6) is disclosed by Contractor to a third party without similar restrictions.

27. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor that is confidential or proprietary by law or City designation shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent Contractor would use to protect its own proprietary data.

28. Protection of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code ("Protection of Private Information"), including the remedies provided. The provisions of Chapter 12M are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12M. Consistent with the requirements of Chapter 12M, Contractor agrees to all of the following:

a. Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (3) The disclosure is expressly required by a judicial order.

b. Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

c. Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical

information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

d. Any failure of Contractor to comply with Chapter 12M shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

29. Termination

a. **Basis for Termination by City.** City shall have the right, without further obligation or liability to Contractor (except as specified in Sections 28 (Protection of Private Information): (i) to immediately terminate this Agreement or the applicable Authorization Document if Contractor commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City for any prepaid fees for Support.

b. **Survival.** Termination of this Agreement for any reason other than non-payment of the fee for the perpetual license or an uncured violation of the license grant after a 30 day written notice from Oracle to cure the violation shall not revoke the perpetual licenses granted under this agreement. This section and the following sections of this Agreement shall survive termination of expiration of this Agreement: 12, 15, 16, 21-28, and 38 through 43.

30. Notice to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or fax, and shall be addressed as follows:

To City: City and County of San Francisco
Department of Human Resources
Project eMerge
25 Van Ness Ave., Ste. 345
San Francisco, CA. 94102
Attn: Rachel Cukierman

To Contractor: Oracle USA, Inc.
500 Oracle Parkway
Redwood City, California, United States, 94065
Attention: General Counsel, Legal Department

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.

If e-mail notification is used, the sender must specify a Receipt notice.

Any notice of default must be sent by registered mail.

31. Bankruptcy

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to

insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

32. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

33. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

34. Compliance with Americans with Disabilities Act

Contractor acknowledges the City's assertion that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement, if any, in a manner that complies with the ADA and any and all other expressly applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement, if any, and further agrees that any material violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

35. Sunshine Ordinance

In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

36. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series

of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

37. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

38. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

39. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

40. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall attempt to reconcile the disagreement by promptly offering a meaning and intent of the Agreement that is based on a good faith, independent consideration. The parties recognize that referring to Purchasing does not preclude court redress of the disputed interpretation.

41. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

42. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

43. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

44. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and laws as are applicable.

45. Oracle License and Services Agreement

Paragraph L, "Entire Agreement," is deleted in its entirety.

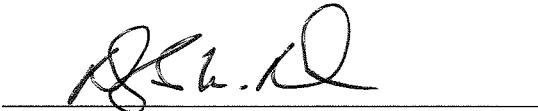
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

Oracle USA, Inc.



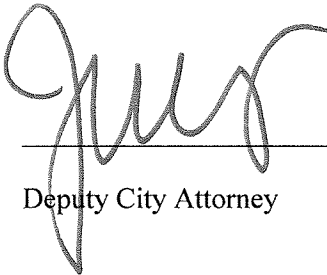
Micki Callahan
Director
Department of Human Resources

Douglas Doran
Director, Contracts
Oracle USA, Inc.
500 Oracle Parkway
Redwood City, California 94065

Approved as to Form:


City vendor number: 71766

Dennis J. Herrera
City Attorney

By 

Deputy City Attorney

Approved:



Naomi Kelly
Director of the Office of Contract
Administration, and Purchaser

Appendix A: Ordering Document