

**CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF CONTRACT ADMINISTRATION**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT (this "Assignment") is dated **October 5, 2010** in San Francisco, California, by and between **Oracle USA, Inc.** ("Assignor") and **Oracle America, Inc.** ("Assignee").

RECITALS

WHEREAS, Assignor is a party to the Agreement (as defined below); and

WHEREAS, Assignor desires to assign the Agreement, and Assignee desires to assume the Agreement, each on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. **Definitions.** The following definitions shall apply to this Assignment:

(a) **Agreement.** The term "Agreement" shall mean the Oracle License and Service Agreement as amended by Amendment One dated November 21, 2007 (Agreement) between Assignor and City and County of San Francisco, a municipal corporation ("City"). The term "Agreement" shall include any amendments or modifications set forth in Appendix A attached hereto and made a part hereof.

(b) **Effective Date.** "Effective Date" shall mean October 5, 2010, the date of this Assignment.

(c) **Other Terms.** Terms used and not defined in this Assignment shall have the meanings assigned to such terms in the Agreement.

2. **Assignment.** Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Agreement and all of Assignor's duties and obligations thereunder, to the extent arising on or after the Effective Date.

3. **Assumption.** Assignee hereby accepts the assignment transfer and conveyance set forth in Section 2 and agrees to perform all of Assignor's duties and obligations under the Agreement, to the extent arising on or after the Effective Date.

4. **Indemnities**

**Assignee.** Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee or Assignor of the Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.

5. **Governing Law.** This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.
6. **Headings.** All section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.
7. **Entire Agreement.** This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreement and supersedes all other oral or written provisions.
8. **Further Assurances.** From and after the date of this Assignment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment or as may be required by City.
9. **Severability.** Should the application of any provision of this Assignment to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Assignment shall not be affected or impaired thereby and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of Assignor, Assignee and City.
10. **Successors; Third-Party Beneficiaries.** Subject to the terms of the Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as set forth in Section 12, nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.
11. **Notices.** All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below). All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or City may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

**Oracle USA, Inc.  
500 Oracle Parkway  
Redwood City, California 94065  
Attention: General Counsel, Legal Department**

If to Assignee:

**Oracle America, Inc.  
500 Oracle Parkway  
Redwood City, California 94065  
Attention: General Counsel, Legal Department**

If to City:

**City and County of San Francisco  
Office of the Controller  
Attention: Rachel Cukierman  
25 Van Ness Ave. Suite 345  
San Francisco, California 94102**

12. **Consent of City; No Release of Assignor; Waivers.** Each of Assignor and Assignee acknowledges that the prior written consent of City to this Assignment is required under the terms of the Agreement. City shall be a third party beneficiary of this Assignment (other than Section 4) and shall have the right to enforce this Assignment. Neither this Assignment nor the consent of City set forth below shall release Assignor in whole or in part from any of its obligations or duties under the Agreement if Assignee fails to perform or observe any such obligation or duty. Assignor authorizes City, without notice or demand and without affecting Assignor's liability hereunder or under the Agreement to release or consent to an assignment by Assignee of all or any part of the Agreement.

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first referenced above.

**ASSIGNOR** ORACLE AMERICA INC.  
SUCCESSOR IN INTEREST TO  
Oracle USA, Inc  
City Vendor #71766

By Krystian Koper  
Title Contracts Manager

**ASSIGNEE**  
Oracle America, Inc.  
City Vendor #41827

By Krystian Koper  
Title Contracts Manager

Subject to Section 12 of this Assignment, City hereby consents to the assignment and assumption described in Sections 2 and 3 of this Assignment.

**CITY**

Recommended by:

Ben Rosenfield  
Controller  
Office of the Controller

Approved as to Form:

Dennis J. Herrera  
City Attorney

By Rosa M. Sánchez  
Deputy City Attorney

Approved:

Naomi Kelly  
Director of Office of Contract Administration/ Purchaser

## **APPENDIX A**

### Amendments

Amendment Two dated November 17, 2008

Amendment Three dated February 22, 2010