City and County of San Francisco
Office of Contract Administration
Purchasing Division

Amendment Eight

THIS AMENDMENT (this "Amendment") is made as of **October 1, 2013**, in San Francisco, California, by and between **Oracle America, Inc., 1910 Oracle Way, Reston, VA 20190** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to purchase Exadata/Exalogic program licenses and support services, and increase the contract amount;

NOW, THEREFORE, Contractor and the City agree as follows:

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

    **1a.    Agreement.** The term "Agreement" shall mean the Oracle pre-printed License and Services Agreement (OLSA V071807) dated November 21, 2007 between Contractor and City, as amended by, **Amendment One** dated November 21, 2007, **Amendment Two** dated November 17, 2008, **Amendment Three** dated February 22, 2010, the **Assignment and Assumption Agreement** dated October 5, 2010, **Amendment Four** dated October 5, 2010, **Amendment Five** dated May 22, 2011, **Amendment Six** dated May 22, 2012, and **Amendment Seven** dated April 1, 2013.

    **1b.    Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2.    **Modifications to the Agreement.** The Agreement is hereby modified as follows:

    **2a.    Section 1.** Section 1, Definitions, of the Agreement currently reads as follows:

        **1.    Definitions.**

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 Amendment One, Amendment Two, Amendment Three, Amendment Four, Amendment Five, Amendment Six, and this document, Amendment Seven, are attached, and these documents shall be construed together as this "Agreement." |
| AMENDMENT | Amendment One, Amendment Two, Amendment Three, Amendment Four, Amendment Five, Amendment Six and this document, Amendment Seven, which contain 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 the Office of the Controller 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 the First Amendment shall control over any conflicting or
                       inconsistent terms set forth in any other Oracle Pre-Printed document.


THE ORDERING
DOCUMENTS              The Oracle ordering forms attached to Amendment One as Appendix
                       A, the Oracle ordering forms attached to Amendment Two as
                       Appendix B, the Oracle ordering forms attached to Amendment Three
                       as Appendix C, the Oracle ordering forms attached to Amendment
                       Four as Appendix D, the Oracle ordering forms attached to
                       Amendment Five as Appendix E, the Oracle ordering forms
                       attached to Amendment Six as Appendix F, and the Oracle ordering
                       forms attached to Amendment Seven as Appendix G.


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


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


WARRANTY
PERIOD                 The warranty period shall commence on (i) the effective date of the
                       November 2007 Ordering Document (Appendix A) 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 November 2007 and
                       May 2011 Ordering Documents.

<u>**Such section is hereby amended in its entirety to read as follows:**</u>

**1.    Definitions.**

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 of the Agreement, and Appendix H, Section C(1).

| AGREEMENT | The Oracle pre-printed License and Services Agreement (OLSA V071807), to which Amendment One, Amendment Two, Amendment Three, Amendment Four, Amendment Five, Amendment Six, Amendment Seven and this document, Amendment Eight, are attached, and these documents shall be construed together as this "Agreement." |
|---|---|
| AMENDMENT | Amendment One, Amendment Two, Amendment Three, Amendment Four, Amendment Five, Amendment Six, Amendment Seven, and this document, Amendment Eight, which contain 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 the Office of the Controller 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, Appendix H, 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 the first eight amendments shall control over any conflicting or inconsistent terms set forth in any other Oracle Pre-Printed document. |
|---|---|
| THE ORDERING DOCUMENTS | The Oracle ordering forms attached to Amendment One as Appendix A, the Oracle ordering forms attached to Amendment Two as Appendix B, the Oracle ordering forms attached to Amendment Three as Appendix C, the Oracle ordering forms attached to Amendment Four as Appendix D, the Oracle ordering forms attached to Amendment Five as Appendix E, the Oracle ordering forms attached to Amendment Six as Appendix F, the Oracle ordering forms attached to Amendment Seven as Appendix G, and the Oracle ordering forms attached to Amendment Eight as Appendix H. |
| SOURCE CODE | The human readable compliable form of the Licensed Software to be provided by Contractor. |
| SPECIFICATIONS | The functional and operational characteristics of the Licenses Software as described in Contractor's current published Documentation. |
| WARRANTY PERIOD | The warranty period shall commence on (i) the effective date of the November 2007 Ordering Document (Appendix A) and continue for 12 (twelve) months for the software and each related update to the software and (ii) the Effective Date of this Amendment incorporating Ordering Document (Appendix H) and continue for 12 (twelve) months for the software and each related update to the software and (iii) 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 November 2007, May 2011, and November 15, 2013 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 the Office of the Controller. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Office of the Controller, unless otherwise indicated by the context.

**2b. Section 3.** Section 3, City's Payment Obligation, of the Agreement currently reads as follows:

### 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.

To cover the purchase under the Oracle order document attached as Appendix G to this Seventh Amendment, the amount for the Support fees shall be increased by four hundred twenty-five thousand, six hundred ninety-six dollars ($425,696).

In no event shall the aggregate amount of the Software License payments exceed one million, six hundred and eight thousand, and five hundred and twenty nine dollars ($1,608,529). In no event shall the aggregate amount of Support payments exceed one million, nine hundred seventy four thousand three hundred and ten dollars ($1,974,310).

In no event shall the total amount for all software and services paid under this contract exceed three million, five hundred eighty-two thousand and eight hundred thirty-nine dollars ($3,582,839).

The City shall pay the fees for the Software Licensed pursuant to each order document attached to this Agreement in one lump sum after the Controller has certified the funds

regarding that order and issued a Purchase Order. Payments of fees for Support shall be invoiced by Contractor in arrears on a quarterly basis.

## Such section is hereby amended in its entirety to read as follows:

### 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.

To cover the purchase under the Oracle order document attached as Appendix H to this Amendment Eight, the amount for the Software Licenses, Exadata/Exalogic Software and Support fees shall be in an amount not to exceed six hundred and fifty eight thousand sixty eight dollars and no cents ($658,068.00). Support for the Licenses obtained pursuant to Appendix H shall be for one year from the Effective Date of this Amendment (November 15, 2013).

In no event shall the aggregate amount of the Software License payments exceed two million, one hundred and forty seven thousand, nine hundred and twenty nine dollars and no cents ($2,147,929.00). In no event shall the aggregate amount of Support payments

exceed two million, ninety two thousand nine hundred and seventy eight dollars and no cents ($2,092,978.00).

In no event shall the total amount for all software and services paid under this contract exceed four million, two hundred and forty thousand nine hundred and seven dollars and no cents ($4,240,907.00).

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

2c.   **Section 4.**  Section 4, Term of the Agreement, currently reads as follows:

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 procuring the license, and shall be in the quantity that City designates in its ULA certification delivered to Contractor in accordance with Section 1 of Amendment One to the November 2007 Ordering Document (Appendix E).

b.   **Term of the Support and Update Services**

Subject to Section 5, the term of the Support shall be from the date of Acceptance to July 15, 2014 unless sooner terminated in accordance with the provisions of this Agreement. This term may be renewed annually at City's option for two (2) additional one year terms (with the price caps set forth in Section 1.3 of Amendment One to the November 2007 Ordering Document, Appendix E) by issuance of an amendment to this Agreement.

**Such section is hereby amended in its entirety to read as follows:**

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 procuring the license, and shall be in the quantity that City designates in its ULA certification delivered to Contractor in accordance with Section 1 of Amendment One to the November 2007 Ordering Document (Appendix E), and Ordering Document dated November 15, 2013 (Appendix H).

### b. Term of the Support and Update Services

Subject to Section 5, the term of the Support shall be from the date of Acceptance to July 15, 2014 for Appendices A-G, unless sooner terminated in accordance with the provisions of this Agreement. Support for the Licenses obtained pursuant to Appendix H shall be for one year from the Effective Date of this Amendment. This term may be renewed annually at City's option for two (2) additional one year terms (with the price caps set forth in Section 1.3 of Amendment One to the November 2007 Ordering Document, Appendix E; and Section D.2.d. of Appendix H) by issuance of an amendment to this Agreement.

**2d. Section 24.** Section 24, Indemnification and General Liability, of the Agreement currently reads as follows:

### 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.

**Such section is hereby amended in its entirety to read as follows:**

### 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 is 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.

As used in this Section 24 and notwithstanding anything to the contrary set forth herein, the term "property" shall not include intangible property (e.g., software, documentation).

**2e. Section 25.** Section 25, Liability of the Parties, of the Agreement shall remain as currently written and the following new paragraphs shall be added to the end of it:

WITH RESPECT ONLY TO APPENDIX H, THE PARTIES AGREE THAT, 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 **APPENDIX H** OF THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS APPENDIX H. CONTRACTOR'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO APPENDIX H OF THIS AGREEMENT SHALL BE CAPPED AT THE

GREATER OF FEES THE CITY PAID TO CONTRACTOR UNDER APPENDIX H FOR LICENSE, SERVICES AND MAINTENANCE OR ONE MILLION TWO HUNDRED THOUSAND DOLLARS AND NO CENTS ($1,200,000.00).

FOR AVOIDANCE OF DOUBT, THE PARTIES AGREE THAT THE SECOND AND FOURTH PARAGRAPHS OF SECTION 25 SHALL NOT APPLY TO APPENDIX H, AND THE FIRST AND THIRD PARAGRAPHS OF SECTION 25 SHALL APPLY TO THIS LIMITATION OF LIABILITY FOR APPENDIX H.

**2f.** **Section 29(b).** Section 29(b), Termination; Survival, of the Agreement currently reads as follows:

### 29. Termination

**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 violation shall not revoke the perpetual licenses granted under this agreement. This section and the following sections of the Agreement shall survive termination of expiration of this Agreement: 12, 15, 16, 21-28, and 38 through 43.

**Such section is hereby amended in its entirety to read as follows:**

### 29. Termination

**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 violation shall not revoke the perpetual licenses granted under this Agreement. This section and the following sections of the Agreement shall survive expiration of the term of this Agreement: 12, 15, 16, 21-28, and 38 through 43.

**2g.** **Appendix H.** The November 15, 2013 Ordering Document regarding the Software Licenses and Exadata/Exalogic Software, is added to the Agreement and incorporated by reference hereto as **Appendix H.**
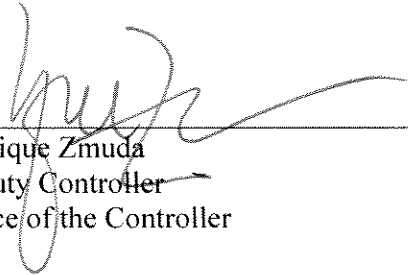
**3.** **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after November 15, 2013.

**4.** **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

Recommended by:
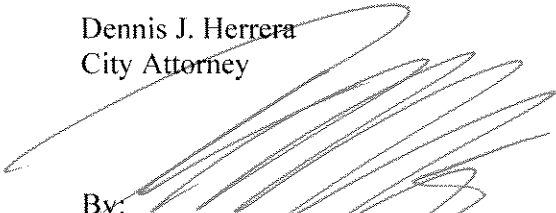
Monique Zmuda
Deputy Controller
Office of the Controller

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Rosa M. Sánchez
Deputy City Attorney

Approved:

Jaci Fong
Director of the Office of Contract
Administration, and Purchaser

**CONTRACTOR**

Oracle America, Inc.
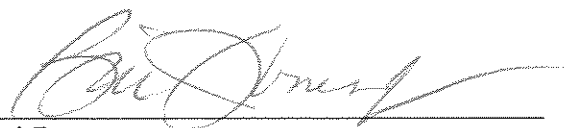
William Simpson
Manager, Public Sector License Contracts

City vendor number: 41827

Appendices:

Appendix H: Oracle Ordering Document dated November 15, 2013.

# ORACLE

## ORDERING DOCUMENT

Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, CA 94065

| | | | |
|---|---|---|---|
| **Your Name** | City and County of San Francisco | **Your Contact** | Mike Dearman |
| **Your Location** | 1 Dr Crlton B Goodlett Place | **Phone Number** | 415-554-7500 |
| | San Francisco, CA 94102 | **Email Address** | mike.dearman@sfgov.gov |

### Programs and Program-Related Service Offerings

| Product Description / License Type | Quantity | Net Fee |
|---|---|---|
| Real Application Clusters - Processor Perpetual | 16 | 114,080.00 |
| Software Update License & Support | | 25,097.60 |
| Oracle GoldenGate - Processor Perpetual | 16 | 86,800.00 |
| Software Update License & Support | | 19,096.00 |
| Oracle Data Masking Pack - Processor Perpetual | 8 | 28,520.00 |
| Software Update License & Support | | 6,274.40 |
| * Exadata Storage Server Software - Disk Drive Perpetual | 36 | 111,600.00 |
| Software Update License & Support | | 24,552.00 |
| * Oracle Exalogic Elastic Cloud Software - Processor Perpetual | 64 | 198,400.00 |
| Software Update License & Support | | 43,648.00 |
| **Program and Program-Related Service Offerings Fees** | | 658,068.00 |

| Fee Description | | Net Fee |
|---|---|---|
| Program Fees | | 539,400.00 |
| Program-Related Service Offerings Fees | | 118,668.00 |
| Total Fees | | 658,068.00 |

## A. Agreement and Accessibility.

### 1. Agreement

This order incorporates by reference the terms of the Oracle Licenses and Services Agreement V071807 dated November 21, 2007, Amendment One dated November 21, 2007, Amendment Two dated November 17, 2008, Amendment Three dated February 22, 2010, the Assignment and Assumption Agreement dated October 5, 2010, Amendment Four dated October 5, 2010, Amendment Five dated May 22, 2011, Amendment Six dated May 22, 2012, Amendment Seven dated April 1, 2013, and Amendment Eight dated October 1, 2013 (effective November 15, 2013) (collectively, the "Agreement," Oracle reference name "**US-OLSA-10013938-21-NOV-2007**"). The following defined terms in the Agreement shall have the same meaning as the stated terms in this order: "agreement" and "Agreement; "programs" and "Programs"; "program documentation" and "Program Documentation"; "services" and "Program-related Service Offerings"/"Hardware-related Service Offerings"; "Software Updates" or "Product Support" and "Software Update License & Support"; "you/your and "You/Your".

### 2. Accessibility

The product(s) being provided under the Agreement are, at the time of delivery, capable of providing comparable access to individuals with disabilities consistent with the applicable provisions of the Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as 'Section 508'), in effect as of the date of the Agreement, subject to the comments and exceptions (if any) noted on the applicable Voluntary Product Accessibility Templates (VPATs) (available at www.oracle.com/us/corporate/accessibility) for each product, when they are used in accordance with the Contractor's associated documents and other written information, and provided that any assistive technologies and any other products used with them properly interoperate with them.

## B. Terms Specific to Program(s)

### 1. Delivery and Installation

a. You are responsible for installation of the Programs unless the Programs have been pre-installed by Oracle on the Hardware You are purchasing under the order or unless You purchase installation services from Oracle for those Programs.

b. Except as set forth in section B.1.c below, Oracle has made available to you for electronic download at the electronic delivery web site located at the following Internet URL: http://edelivery.oracle.com/exempt the programs listed above. Through the Internet URL, you can access and electronically download to your California location the current production release as of the effective date below of the software and related program documentation for each

program listed above. You shall have 60 days from the effective date of this ordering document to complete the download of the software and program documentation. Please be advised that not all programs are available on all hardware/operating system combinations. For current program availability, please check the electronic delivery web site specified above. You acknowledge that Oracle is under no further delivery obligation under this ordering document, electronic download or otherwise. You agree to execute and return the attached **Certificate of Electronic Delivery** simultaneously with the execution and return of this ordering document.

Provided that you have continuously maintained technical support for the programs and in the licensed quantities listed above, Oracle will make available to you for electronic download the updates provided under technical support to the programs listed above. Should you require a replacement copy of the software or program documentation, such replacement copy shall also be delivered electronically. You shall not be entitled to any replacement copy in the form of tangible media for the software or the program documentation.

You acknowledge and agree that (i) you have not received any tangible media for the programs listed above as of the effective date, (ii) any rights to receive tangible media granted under the agreement shall not be applicable to or provided for the programs listed in above or any updates for these programs and (c) you are solely responsible for ensuring that tangible media is not ordered by you from Oracle for the programs listed above or any updates to these programs. You acknowledge and agree that you have requested to receive all updates provided by Oracle under Oracle's Technical Support Services via electronic delivery and you are solely responsible for ensuring that you do not order tangible media from Oracle for the programs which you receive via electronic delivery. In the event that you order updates for delivery via tangible media shipment (i.e., shipment of CD Pack(s)), sales taxes and interest may be due and you agree to reimburse Oracle for any applicable sales taxes and interest (interest rate used will be the applicable state's rate on sales tax underpayments) related to acquisition of such updates as specified in the agreement.

c. For the Exadata Storage Server Software - Disk Drive Perpetual and Oracle Exalogic Elastic Cloud Software - Processor Perpetual programs denoted with an asterisk (*) in the tables above section A: Oracle has made available to you for electronic download at the electronic delivery web site located at the following Internet URL: http://edelivery.oracle.com the programs listed in the Programs and Program Support Services section of this order. Through the Internet URL, you can access and electronically download to your location the current production release as of the effective date below of the software and related program documentation for each program listed. Provided that you have continuously maintained technical support for the programs listed, you may continue to download the software and related program documentation. Please be advised that not all programs are available on all hardware/operating system combinations. For current program availability please check the electronic delivery web site specified above. You acknowledge that Oracle is under no further delivery obligation with respect to programs under this order, electronic download or otherwise. You are responsible for installation of the programs unless the programs have been pre-installed by Oracle on the hardware you are purchasing under the order or you purchase installation services from Oracle with respect to such programs.

## C. General Terms

### 1. Commencement Date

For all program licenses, the commencement date is upon the effective date of this order. The period of performance for all services for the programs is effective upon the effective date of this order.

### 2. Summary of Fees

You have ordered Programs and 12 months of technical support services. Listed above is a summary of net fees due under this order. These fees are in US Dollars and are exclusive of any applicable shipping charges or applicable taxes.

### 3. Pricing Invoicing and Payment Obligation

a. In entering into payment obligations under this order, You agree and acknowledge that You have not relied on the future availability of any Hardware, Program or updates. However, (i) if You order technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under the Agreement, if and when available, in accordance with Oracle's then current technical support policies, and (ii) the preceding sentence does not change the rights granted to You under this order and the Agreement.

b. Service fees are invoiced after the performance of the service; specifically, technical support fees are invoiced quarterly in arrears.

c. In addition to the prices listed on the order, Oracle will invoice You for any applicable freight charges or applicable taxes, and You will be responsible for such charges and taxes notwithstanding any express or implied provision in the "Incoterms" referenced in the Order and Delivery Policies. The Order and Delivery Policies may be accessed at http://oracle.com/contracts.

d. Program fees are invoiced as of the Commencement Date for the Programs.

e. Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.

You may change a Hardware order prior to shipment subject to the then current change order fee as established by Oracle from time to time. The applicable change order fees and a description of allowed changes are defined in the Order and Delivery Policies, which may be accessed at http://oracle.com/contracts.

f. Provided that you comply with the delivery terms in the Delivery and Installation section, Oracle shall not invoice you for sales tax pursuant to California law based on the net license and net technical support fees in the tables above section A for the programs delivered by electronic download; however, you agree to reimburse Oracle, according to the amount which shall be specified in Oracle's invoice to you, for applicable sales taxes arising from imposition of sales taxes based on the net license and net technical support fees for the program licenses listed in the tables above section A, if tangible media is ordered by you causing the exemption associated with the electronic delivery of the program licenses listed in the tables above section A to be invalidated.

### 4. Segmentation

The purchase of (a) hardware and/or related hardware support, (b) programs and/or related technical support, or (c) other services are all separate offers and separate from any other order for (i) hardware and/or related hardware support, (ii) programs and/or related technical support, or (iii) other services you may receive or have received from Oracle. You understand that you may purchase (x) hardware and/or related hardware support, (y) programs and/or related technical support, or (z) other services independently of any other product or service. Your obligation to pay for (i) hardware and/or related hardware support is not contingent on performance of any other service or delivery of programs, (ii) programs and/or related technical support is not contingent on delivery of hardware or performance of any other service, or (iii) other services is not contingent on delivery of hardware, delivery of programs or performance of any additional/other service.

### 5. Source Code

Oracle may deliver source code as part of its standard delivery for particular programs, operating system or integrated software; all source code delivered by

Oracle is subject to the terms of the agreement, the applicable order and the applicable program documentation.

## 6. Order of Precedence

In the event of inconsistencies between the terms contained in this order and the Agreement, the Agreement shall take precedence. This order will control over the terms contained in any purchase order.

## 7. Offer Validity

By signing below, the parties agree that the agreement and this order constitute the entire agreement between the parties with regard to the subject matter herein and as such, no other preprinted, non-negotiated or other terms and conditions, on the customer's purchase order or elsewhere, shall apply. The offer is valid through 15-NOV-2013 and shall become binding upon execution by you and acceptance by Oracle.

## 8. Oracle's License Definitions and Rules

A copy of Oracle License Definitions and Rules, which shall only apply to software and software licenses purchased through this Appendix H, is attached hereto and incorporated by reference.

## 9. Territory

The program licenses included on this order are for use in the U.S.

## 10. Customer Reference

In consideration of the discounts granted to You under the order, Oracle may refer to You as a Customer in sales presentations, marketing vehicles and activities.

## 11. Limited Use Programs

All Programs listed in the tables above section A are limited use Programs. These Programs may only be used for the **eMerge PeopleSoft Project**.

## 12. Technical Support Cap

Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS"), which is calculated at 22% of the fees for the applicable licenses, acquired with your order may be renewed annually, and, if you renew SULS for the same number of licenses for the same programs, for the first and second renewal years the fee for SULS will not increase by more than 0% over the prior year's fees; and for the third and fourth renewal years the fee for SULS will not increase by more than 2% over the prior year's fees. Oracle will use commercially reasonable efforts to provide you a written notice with a quote for your annual SULS renewal at least thirty (30) days prior to the expiration of the applicable maintenance period.

## D. Future Purchases

### 1. Additional Copies of Programs

Provided that You have continuously maintained technical support for the Programs listed in the table(s) located above section A, You may order media packs at the standard media fee in effect at the time Your order is placed provided the Programs listed in the table(s) located above section A for use on the computer/operating system combination requested by You are available in a production release.

### 2. Price Hold

a. For a period of nine (9) months from the effective date of this order, You may order the Programs (and first year of SULS for the Programs) at the appropriate license and support fees specified on the attached Price Hold Exhibit, provided (i) such Programs are available in production release when ordered; and (ii) You have continuously maintained SULS for the Program licenses listed in the Program and Program-Related Service Offerings section above.

b. For the Programs listed in Table A of the Price Hold Exhibit, each order placed pursuant to this section must be at least $50,000.00 in net license fees. Your purchase on any such order of Programs and/or license types that are not listed in Table A of the attached Price Hold Exhibit will count towards this minimum purchase amount. Any relevant purchase minimums for the Programs in effect as of the effective date of this order will apply to the Program licenses ordered under this section.

c. Each order placed pursuant to this section will specify Oracle's delivery obligation. If the order specifies delivery, the Programs will be delivered via electronic download. If electronic download is not possible or otherwise agreed to by the parties, tangible media will be delivered. Whenever the delivery of tangible media is required, You will be invoiced for the applicable media and the shipping charges; shipping terms will be FCA: Shipping Point, Pre-paid and Add.

| City and County of San Francisco | | Oracle America, Inc. | |
|---|---|---|---|
| Signature | | Signature | |
| Name | Monique Zmuda | Name | William Simpson |
| Title | Deputy Controller | Title | Manager, Public Sector License Contracts |
| Signature Date | 10/15/2013 | Signature Date | October 9, 2013 |
| Effective Date | November 15, 2013 | | |

## CERTIFICATE OF ELECTRONIC DELIVERY

This Certificate of Electronic Delivery is executed as of the effective date set forth below **City and County of San Francisco** ("you") and relates to the electronic delivery of certain software programs provided by Oracle America, Inc. ("Oracle"). This Certificate of Electronic Delivery shall be governed by the terms of the Oracle Licenses and Services Agreement V071807 between you and Oracle dated November 21, 2007, Amendment One dated November 21, 2007, Amendment Two dated November 17, 2008, Amendment Three dated February 22, 2010, the Assignment and Assumption Agreement dated October 5, 2010, Amendment Four dated October 5, 2010, Amendment Five dated May 22, 2011, Amendment Six dated May 22, 2012, Amendment Seven dated April 1, 2013, and Amendment Eight effective dated October 1, 2013 (effective November 15, 2013) (collectively, the "Agreement," Oracle reference name "US-OLSA-10013938-21-NOV-2007").

As of the date of this Certificate of Electronic Delivery, you agree that Oracle has provided you with an Internet URL through which you can download all the programs provided in the ordering document between Oracle and you dated November 15, 2013 (the "ordering document"). You will have 60 days from the effective date of the ordering document to complete your download of the programs provided.

You agree that Oracle has completed all of the delivery responsibilities required by the ordering document and the Agreement and no additional shipment of the programs on tangible media (CD's, Disks, Tapes, etc.) shall be provided or is required.

The effective date of this Certificate of Electronic Delivery is November 15, 2013.

**City and County of San Francisco**

Signature: _____

Name: _____

Title: _____

Date: _____

**PRICE HOLD EXHIBIT**

**Table A: Price Hold for *eMerge PeopleSoft Project***

| Program | Quantity | Net License Fee | Net SULS Fee |
|---|---|---|---|
| Real Application Clusters - Processor Perpetual | 1 | 10,350.00 | 2,277.00 |
| Oracle GoldenGate - Processor Perpetual | 1 | 7,875.00 | 1,732.50 |
| Oracle Data Masking Pack - Processor Perpetual | 1 | 5,175.00 | 1,138.50 |
| Exadata Storage Server Software - Disk Drive Perpetual | 1 | 4,500.00 | 990.00 |
| Oracle Exalogic Elastic Cloud Software - Processor Perpetual | 1 | 4,500.00 | 990.00 |
| Oracle Database Enterprise Edition - Processor Perpetual | 1 | 21,375.00 | 4,702.50 |
| Tuning Pack - Processor Perpetual | 1 | 2,250.00 | 495.00 |
| Diagnostics Pack - Processor Perpetual | 1 | 2,250.00 | 495.00 |
| Advanced Security - Processor Perpetual | 1 | 5,175.00 | 1,138.50 |
| Partitioning - Processor Perpetual | 1 | 5,175.00 | 1,138.50 |
| Oracle Active Data Guard - Processor Perpetual | 1 | 5,175.00 | 1,138.50 |

**Table B: Price Hold for the *City and County of San Francisco***

| Program | Quantity | Net License Fee | Net SULS Fee |
|---|---|---|---|
| Real Application Clusters - Processor Perpetual | 1 | 12,650.00 | 2,783.00 |
| Oracle GoldenGate - Processor Perpetual | 1 | 9,625.00 | 2,117.50 |
| Oracle Data Masking Pack - Processor Perpetual | 1 | 6,325.00 | 1,391.50 |
| Exadata Storage Server Software - Disk Drive Perpetual | 1 | 5,500.00 | 1,210.00 |
| Oracle Exalogic Elastic Cloud Software - Processor Perpetual | 1 | 5,500.00 | 1,210.00 |
| Oracle Database Enterprise Edition - Processor Perpetual | 1 | 26,125.00 | 5,747.50 |
| Tuning Pack - Processor Perpetual | 1 | 2,750.00 | 605.00 |
| Diagnostics Pack - Processor Perpetual | 1 | 2,750.00 | 605.00 |
| Advanced Security - Processor Perpetual | 1 | 6,325.00 | 1,391.50 |
| Partitioning - Processor Perpetual | 1 | 6,325.00 | 1,391.50 |
| Oracle Active Data Guard - Processor Perpetual | 1 | 6,325.00 | 1,391.50 |
| Database Lifecycle Management Pack - Processor Perpetual | 1 | 6,600.00 | 1,452.00 |
| Oracle Application Management Suite for PeopleSoft - Processor Perpetual | 1 | 8,250.00 | 1,815.00 |
| Oracle Advanced Compression - Processor Perpetual | 1 | 6,325.00 | 1,391.50 |
| Spatial and Graph - Processor Perpetual | 1 | 9,625.00 | 2,117.50 |
| WebLogic Server Enterprise Edition - Processor Perpetual | 1 | 13,750.00 | 3,025.00 |
| Oracle Business Intelligence Suite Enterprise Edition Plus - Processor Perpetual | 1 | 121,687.50 | 26,771.25 |
| Oracle Business Intelligence Foundation Suite - Processor Perpetual | 1 | 165,000.00 | 36,300.00 |
| Data Integrator Enterprise Edition - Processor Perpetual | 1 | 12,650.00 | 2,783.00 |
| Real Application Clusters - Named User Plus Perpetual | 1 | 253.00 | 55.66 |
| Oracle GoldenGate - Named User Plus Perpetual | 1 | 192.50 | 42.35 |
| Oracle Data Masking Pack - Named User Plus Perpetual | 1 | 126.50 | 27.83 |
| Oracle Database Enterprise Edition - Named User Plus Perpetual | 1 | 522.50 | 114.95 |
| Tuning Pack - Named User Plus Perpetual | 1 | 55.00 | 12.10 |
| Diagnostics Pack - Named User Plus Perpetual | 1 | 55.00 | 12.10 |
| Advanced Security - Named User Plus Perpetual | 1 | 126.50 | 27.83 |
| Partitioning - Named User Plus Perpetual | 1 | 126.50 | 27.83 |
| Oracle Active Data Guard - Named User Plus Perpetual | 1 | 126.50 | 27.83 |
| Database Lifecycle Management Pack - Named User Plus Perpetual | 1 | 132.00 | 29.04 |
| Oracle Application Management Suite for PeopleSoft - Named User Plus Perpetual | 1 | 165.00 | 36.30 |
| Oracle Advanced Compression - Named User Plus Perpetual | 1 | 126.50 | 27.83 |
| Spatial and Graph - Named User Plus Perpetual | 1 | 192.50 | 42.35 |
| WebLogic Server Enterprise Edition - Named User Plus Perpetual | 1 | 275.00 | 60.50 |
| WebLogic Server Management Pack Enterprise Edition - Named User Plus Perpetual | 1 | 132.00 | 29.04 |
| Oracle Business Intelligence Suite Enterprise Edition Plus - Named User Plus Perpetual | 1 | 1,100.00 | 242.00 |
| Oracle Business Intelligence Foundation Suite - Named User Plus Perpetual | 1 | 2,021.25 | 444.68 |
| Data Integrator Enterprise Edition - Named User Plus Perpetual | 1 | 379.50 | 83.49 |

# Definitions and Licensing Rules:

To fully understand Customer's license grant, Customer needs to review the definition for the licensing metric and term designation as well as the licensing rules which are listed below.

**Applications National Language Support (NLS) Supplement Media Packs:** Please be advised that only a subset of the products included on an Applications NLS Supplement Media Pack have been translated. For existing supported customers, My Oracle Support has information on which products have been translated for the supported languages (https://support.oracle.com). For new or unsupported customers, please contact your Oracle Account Manager for this information.

**Oracle Financing Contract:** is a contract between you and Oracle (or one of Oracle's affiliates) that provides for payments over time of some or all of the sums due under your order.

## Order Specific License Definitions and Rules

**Disk Drive**: is defined as a spinning media device that stores data accessed by the Oracle Exadata Storage Server Software program.

**Processor:** shall be defined as all processors where the Oracle programs are installed and/or running. Programs licensed on a processor basis may be accessed by your internal users (including agents and contractors) and by your third party users. The number of required licenses shall be determined by multiplying the total number of cores of the processor by a core processor licensing factor specified on the Oracle Processor Core Factor Table which can be accessed at http://oracle.com/contracts. All cores on all multicore chips for each licensed program are to be aggregated before multiplying by the appropriate core processor licensing factor and all fractions of a number are to be rounded up to the next whole number. When licensing Oracle programs with Standard Edition One or Standard Edition in the product name (with the exception of Java SE Support, Java SE Advanced, and Java SE Suite), a processor is counted equivalent to an occupied socket; however, in the case of multi-chip modules, each chip in the multi-chip module is counted as one occupied socket.

For example, a multicore chip based server with an Oracle Processor Core Factor of 0.25 installed and/or running the program (other than Standard Edition One programs or Standard Edition programs) on 6 cores would require 2 processor licenses (6 multiplied by a core processor licensing factor of .25 equals 1.50, which is then rounded up to the next whole number, which is 2). As another example, a multicore server for a hardware platform not specified in the Oracle Processor Core Factor Table installed and/or running the program on 10 cores would require 10 processor licenses (10 multiplied by a core processor licensing factor of 1.0 for 'All other multicore chips' equals 10).

For the purposes of the following program: Oracle GoldenGate, only (a) the processors running the Oracle database from which you capture data and (b) the processors running the Oracle database where you will apply the data must be counted for the purpose of determining the number of licenses required.

## Licensing Rules for Oracle Technology Programs and Oracle Business Intelligence

**Failover**: Subject to the conditions that follow below, your license for the programs listed on the US Oracle Technology Price List, which may be accessed at http://www.oracle.com/corporate/pricing/pricelists.html, includes the right to run the licensed program(s) on an unlicensed spare computer in a failover environment for up to a total of ten separate days in any given calendar year (for example, if a failover node is down for two hours on Tuesday and three hours on Friday, it counts as two days). The above right only applies when a number of machines are arranged in a cluster and share one disk array. When the primary node fails, the failover node acts as the primary node. Once the primary node is repaired, you must switch back to the primary node. Once the failover period has exceeded ten days, the failover node must be licensed. In addition, only one failover node per clustered environment is at no charge for up to ten separate days even if multiple nodes are configured as failover. Downtime for maintenance purposes counts towards the ten separate days limitation. When licensing options on a failover environment, the options must match the number of licenses of the associated database. Additionally, when licensing by Named User Plus, the user minimums are waived on one failover node only. Any use beyond the right granted in this section must be licensed separately. In a failover environment, the same license metric must be used for the production and failover nodes when licensing a given clustered configuration.

**Testing:** For the purpose of testing physical copies of backups, your license for the Oracle Database (Enterprise Edition, Standard Edition or Standard Edition One) includes the right to run the database on an unlicensed computer for up to four times, not exceeding 2 days per testing, in any given calendar year. The aforementioned right does not cover any other data recovery method - such as remote mirroring - where the Oracle program binary files are copied or synchronized.