

**Agreement Information**

This Amendment amends the Public Sector Agreement for Oracle Cloud Services, US-CSA-7416, and all amendments and addenda thereto (the "Agreement") between the City of Fort Lauderdale, a Florida municipality, ("You") and Oracle America, Inc., a Delaware corporation authorized to transact business in the State of Florida, ("Oracle").

The parties agree to amend the Agreement as follows:

1. In 1. AGREEMENT DEFINITIONS

Delete **1.15. "Users"** and replace it with the following:

**"1.15. "Users"** means those employees, contractors, and end users, as applicable, authorized by You to use the Cloud Services in accordance with this Agreement and Your order."

2. In 6. USE OF THE SERVICES

a. Delete the second sentence in subsection 6.1 and replace it with the following:

"6.1 By federating or otherwise associating Your and Your Users' usernames, passwords and accounts with Oracle, You accept responsibility for the timely and proper termination of user records in Your local (intranet) identity infrastructure or on Your local computers in accordance with Florida law."

b. Delete subsection 6.2 in its entirety and replace it with the following:

"6.2 You agree not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, including Your Content, Your Applications and Third Party Content, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to Oracle under this Agreement, Oracle reserves the right, but has no obligation, to take remedial action if any material violates the foregoing restrictions, including the removal or disablement of access to such material. Oracle shall have no liability to You in the event that Oracle takes such action. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content and Your Applications."

3. In 8. FEES AND TAXES

Add "Except to the extent You are exempt," to the start of the third sentence of subsection 8.1, so that the sentence reads as follows:

"8.1 Except to the extent You are exempt, You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the Services You ordered, except for taxes based on Oracle's income."

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4. In 9. SERVICES PERIOD; END OF SERVICES

Add “nondisclosure” to the one sentence in subsection 9.7, so that the subsection reads as follows:

“9.7 Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, infringement indemnity, payment, nondisclosure, and others which by their nature are intended to survive.”

5. In 11. DATA PROTECTION

Delete subsection 11.4 in its entirety and replace it with the following:

“11.4 You may not provide Oracle access to health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless specified in Your order. If available, You may purchase services from Oracle (e.g., Oracle Payment Card Industry Compliance Services, Oracle HIPAA Security Services, Oracle Federal Security Services, etc.) designed to address particular data protection requirements applicable to Your business or Your Content.”

6. In 14. INDEMNIFICATION

Delete the entire section 14 and replace it with the following:

“14.1 Subject to the terms of this Section 14 (Indemnification), if a third party makes a claim against You that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, “Material”) furnished by and used by You infringes the third party’s intellectual property rights, Oracle, at Oracle’s sole cost and expense, will defend You against the claim and indemnify You from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Oracle, if You do the following:

- a. notify Oracle promptly in writing, not later than 30 days after You receive notice of the claim (or sooner if required by applicable law) (Your failure to notify Oracle within thirty (30) days or sooner if required by law shall only relieve Oracle of its obligation to indemnify You under this paragraph if Oracle’s defense of such claim is prejudiced by such failure.);
- b. give Oracle sole control of the defense and any settlement negotiations (provided, however, that without Your written consent, Oracle may not settle a claim requiring payment by You of any non-reimbursable sum); and
- c. give Oracle the information, authority and assistance Oracle needs to defend against or settle the claim.

14.2 If Oracle believes or it is determined that any of the Material may have violated a third party’s intellectual property rights, Oracle may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Oracle may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees You may have paid to Oracle for such Material. If such return materially affects Oracle’s ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

14.3 Oracle will not indemnify You if You (a) alter the Material or use it outside the scope of use identified in Oracle’s user or program documentation or Service Specifications, (b) use a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to You, or (c) continue to use the applicable Material after the end of the license to use that Material. Oracle will not indemnify You to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by Oracle. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or Services not provided by Oracle. Oracle will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible to You within or from the Services (e.g., a social media post from a third party

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blog or forum, a third party Web page accessed via a hyperlink, etc.). Oracle will not indemnify You for infringement caused by Your actions against any third party if the Services as delivered to You and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time Services rights are obtained.

14.4 The term "Material" defined above does not include Separately Licensed Third Party Technology, except that solely with respect to Separately Licensed Third Party Technology that is part of or is required to use the Cloud Services and that is used: (a) in unmodified form; (b) as part of or as required to use the Cloud Services; and (c) in accordance with the usage grant for the relevant Cloud Services and all other terms and conditions of this Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for Materials under the terms of the Agreement.

14.5 This Section 14 provides Your exclusive remedy for any infringement claims or damages."

## 7. In 17. SERVICE ANALYSES

Delete this section in its entirety and replace it with the following:

"Oracle may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services Environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). Oracle may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content or Confidential Information, and Service Analyses do not contain Personal Data. Oracle retains all intellectual property rights in Service Analyses."

## 8. In 19. FORCE MAJEURE

Delete this section in its entirety and replace it with the following:

"Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services provided."

## 9. In 20. NOTICE

Delete subsection 20.1 in its entirety and replace it with the following:

"20.1 Any notice required under this Agreement shall be provided to the other party in writing. If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification Section of this Agreement, or if You become subject to bankruptcy, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA 94065. Attention: General Counsel, Legal Department."

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10. In 21. ASSIGNMENT

Delete this section in its entirety and replace it with the following:

“You may not assign this Agreement or give or transfer the Services (including the Oracle Programs) or an interest in them to another individual or entity. You may not finance Your acquisition of the Services. You may not grant a security interest in any portion of the Services to another entity.”

11. In 22. OTHER

a. Delete subsection 22.2 in its entirety and replace it with the following:

“22.2 If any term of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.”

b. Delete subsection 22.3 in its entirety and replace it with the following:

“22.3 This subsection is reserved.”

c. Delete subsection 22.4 in its entirety and replace it with the following:

“22.4 Oracle Programs and Services are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Oracle Programs and Services in such applications, if any.”

12. 25. GOVERNING LAW AND JURISDICTION

Add this new section as follows:

“This Agreement is governed by the substantive and procedural laws of the State of Florida and You and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida, Fort Lauderdale Division, in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement or to orders placed under it.”

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Subject to the modifications herein, the Agreement shall remain in full force and effect.

The Effective Date of this amendment is \_\_\_\_\_. (to be completed by Oracle)

**City of Fort Lauderdale**

\_\_\_\_\_  
John P. "Jack" Seiler, Mayor

ATTEST:

\_\_\_\_\_  
Jonda K. Joseph, City Clerk

\_\_\_\_\_  
Lee R. Feldman, City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney

Signature Date: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ as Deal Manager (an individual authorized by the corporation to bind the corporation) for Oracle America, Inc., a Delaware corporation authorized to transact business in the State of Florida.

(SEAL)

\_\_\_\_\_  
(Signature of Notary Public)  
State of \_\_\_\_\_  
(Print, Type, or Stamp Commissioned  
Name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_

[Type text]