

## DocuSign City Council Transmittal Coversheet

FILE	6876
File Name	Human Capital Management Software
Purchasing Contact	Suzzen Stroman
City Council Target Date	10/16/2018
Piggy Back Option	Yes
Contract Expiration	October 9, 2021
Ordinance	18-1424

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND ORACLE AMERICA, INC.  
(CONTRACT 6876)**

10/9/2018

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between **ORACLE AMERICA, INC.**, a corporation, whose address is **500 Oracle Parkway, Redwood Shores, CA 94065**, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**SCOPE OF SERVICES**

Supplier shall provide products and/or services in accordance with the City's document **FILE 6876 Human Capital Management Software**, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Contractor's Proposal (**Exhibit "A"**);
- (b) House Bill 89 Verification (**Exhibit "B"**)
- (c) Senate Bill 252 Certification (**Exhibit "C"**)
- (d) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "D"**)

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

**TOTAL CONTRACT AMOUNT**

The contract shall be for one (1) year, with the option for two (2) additional one (1) year extensions, in a total not-to-exceed \$422,460. Pricing shall be per Exhibit A attached

IN WITNESS WHEREOF, the parties of these presents have executed this Contract in the year and day first above written.

**CONTRACTOR**

DocuSigned by:  
BY: Tony Trevino  
D9995B340B3647A  
AUTHORIZED SIGNATURE

THIS CONTRACT HAS BEEN BOTH REVIEWED AND APPROVED as to financial and operational obligations and business terms.

DocuSigned by:  
Melissa Kraft      Melissa Kraft  
8407288232BE40E...  
SIGNATURE      PRINTED NAME

Chief Technology Officer  
TITLE  
Technology Services  
DEPARTMENT

Date: 18-Sep-2018 | 9:02 AM PDT

Name: Tony Trevino

Title: Manager, Deal Management

210-536-9395

PHONE NUMBER

tony.trevino@oracle.com

EMAIL ADDRESS

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

**CITY OF DENTON, TEXAS**

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

DocuSigned by:  
BY: Jennifer Walters  
C5BFAFC1821946D...

DocuSigned by:  
BY: Todd Hileman  
B776C711BA0D454...  
TODD HILEMAN  
CITY MANAGER

Date: 10/12/2018

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

DocuSigned by:  
BY: Mack Peinward  
7F9D328BF0204E5...

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES**

**CONTRACT FOR PRODUCTS AND RELATED SERVICES**

**ORACLE AMERICA, INC.**

**1. Introduction**

**A. Parties**

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Oracle America, Inc. (hereinafter "Vendor"), with its principal place of business at 500 Oracle Parkway, Redwood Shores, California 94065.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Comptroller of Public Accounts' Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-415, on 11/30/2017, for Oracle Branded Manufacturer Hardware, Software, Cloud and Related Products and Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-415 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

For purchase transactions under this Contract, the order of precedence shall be as follows: this Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, License Agreement; Appendix E-1, Sample Ordering Document Hardware and Software Products and First-Year Technical Support; Appendix E-2, Sample Ordering Document Technical Services; Appendix E-3, Sample Ordering Document Advanced Customer Support Services; Appendix E-4, Sample Ordering Document Oracle Linux and Oracle VM Support Services; Appendix E-5, Sample Ordering Document Renewal of Technical Support; Appendix E-6, Sample Ordering Document Oracle University Learning Credits; Appendix E-7, Sample Ordering Document Managed Cloud Services; Appendix E-8, Sample Ordering Document Cloud Services and Technical Cloud Services; Appendix E-9, Sample Ordering Document Technical Cloud Services Appendix E-10, Oracle University Oracle Learning Subscription; Appendix F, Delivery, Installation, Commencement Date and Acceptance; Appendix G, Public Sector General Terms; Appendix H, Public Sector Schedule P—Program; Appendix I, Public Sector Schedule S – Services; Appendix J, Public Sector Schedule LVM—Linux and Oracle VM Service Offerings; Appendix K, Public Sector Schedule H—Hardware Agreement; Appendix L, Schedule M—Oracle Managed Cloud Services; Appendix M, Schedule C—Cloud Services-Public Sector; Appendix N, Data Processing Agreement for Oracle Cloud Services; Appendix O, Oracle Services Privacy Policy; and Appendix P, Sample Statement of Work; Exhibit 1, Vendor's Response to RFO DIR-TSO-TMP-415, including all addenda; and Exhibit 2, DIR-TSO-TMP-415, including all addenda; are

incorporated by reference and constitute the entire agreement between DIR and Vendor governing purchase transactions. In the event of a conflict between the documents listed in this paragraph related to purchases, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Appendix E-1, then Appendix E-2, then Appendix E-3, then Appendix E-4, then Appendix E-5, then Appendix E-6, then Appendix E-7, then Appendix E-8, then Appendix E-9, then Appendix E-10, then Appendix F, then Appendix G, then Appendix H, then Appendix I, then Appendix J, then Appendix K, then Appendix L, then Appendix M, then Appendix N, then Appendix O, Appendix P, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions. Notwithstanding the foregoing, as between Appendix G (Public Sector General Terms) and the relevant Schedule for the products and services being purchased under the Contract (i.e., Appendix H, Public Sector Schedule P—Program; Appendix I, Public Sector Schedule S – Services; Appendix J, Public Sector Schedule LVM—Linux and Oracle VM Service Offerings; Appendix K, Public Sector Schedule H—Hardware Agreement; Appendix L, Schedule M—Oracle Managed Cloud Services; and Appendix M, Schedule C—Cloud Services-Public Sector), such Schedule shall take precedence over Appendix G (Public Sector General Terms) for such ordered product or service. Furthermore, for Cloud Services, Technical Cloud Services, and Managed Cloud Services, the Data Processing Agreement and the applicable Service Specifications (for Cloud Services) and Schedule incorporated into the Statement of Work (for Managed Cloud Services) shall take precedence; however, in any event this Contract shall prevail over all. Notwithstanding anything to the contrary stated elsewhere in this Contract, the parties understand and agree that Section 1.3 of the Data Processing Agreement means that the terms of that Data Processing Agreement take precedence only over Schedule C - Cloud Services, not over this base Contract.

## **2. Term of Contract**

The initial term of this Contract shall be two years commencing on the last date of approval by DIR and Vendor, with two (2) optional two-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days. Prior to expiration of each term, the contract will renew automatically under the same terms and conditions unless either party provides notice to the other party 60 days in advance of the renewal date stating that the party wishes to discuss modification of terms or not renew.

Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

## **3. Product and Service Offerings**

### **A. Products**

Products available under this Contract are limited to Oracle Branded Hardware, Software, Cloud and Related Products and Services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

DIR recognizes that technology is ever-evolving and advancing. DIR reserves the right to consider the addition of emerging technology such as next generation, enhancements and upgrades for products or services that are within the scope of Oracle Branded Hardware, Software, and Related Products and Services. Vendor may propose such products or services throughout the term of the Contract. Pricing and terms will be negotiated upon DIR acceptance. Any determination will be at DIR's sole discretion and any decision will be final.

**B. Services**

Services available under this Contract are limited to the services as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

Sections 7.2-7.6 of the Data Processing Agreement are subject to the provisions stated in this Section 3.B and the parties understand that the portions of Section 7 of the Data Processing Agreement pertaining to the European Union, European Economic Area, or EU Model Clauses are inapplicable to this Contract.

**C. Business Operations Transfer (Outsourcing)**

Notwithstanding any other provision of the Contract, a Customer may contract with a facilities management firm ("Outsourcer") to operate the licensed programs on behalf of the Customer provided such operation is either on the Customer's hardware and operating system or the same or comparable hardware and operating system at Outsourcer's site, and provided further (i) the Customer hereby assumes all responsibility for the confidentiality of all confidential information and protection of Oracle's proprietary rights, and (ii) the Customer shall give Oracle written notice of all licensed programs to be managed by Outsourcer at the same time as entering into such a contract, and (iii) the Customer assumes all liability for shipping the licensed programs to Outsourcer's site and return of the licensed programs to the Customer's site, and (iv) in no event shall Outsourcer be allowed to copy the licensed programs or be granted general development use access to the licensed programs except as specified herein and (v) to the extent allowable under Texas Law, the Customer agrees to indemnify Oracle of (a) any claims or demands brought against Oracle or its directors, employees or agents arising from or in connection with any such services provided by Outsourcer, or (b) Outsourcer's failure to abide by the terms and conditions of the Contract.

**D. Data Storage Location**

With respect to Cloud Services, the data center region refers to the geographic region in which the Cloud Services environment holding the Customer Data is physically located. The applicable data center region shall be set forth on the relevant Order Form and, for data center regions outside of the continental United States, such Order Form shall include a list of the specific countries included in the applicable data center region. For data center regions outside of the continental United States, Vendor and Customer may mutually agree to limit the countries where the cloud services may be performed and the Customer data may be located to a subset of the countries within the applicable data center region. Oracle understands that Customers under this Contract are public sector entities and, as a result, there may be a legal requirement for Customer data be stored in the continental United States. As a result, the data center region applicable to Customer's Orders will be the continental United States, unless otherwise stated in the relevant Order Form. Oracle shall

not change the applicable data center region nor transfer Customer's Cloud Services environment to a data center located outside the applicable data center region, unless an authorization is executed by an authorized representative of the Customer. For clarity, the authorization is required also for transfers of the Cloud Services environment outside the continental United States, in the case of Customer Orders for which the applicable data center region is the continental United States. Such authorization must detail the specified sets of data to be allowed to be located in the specified country(es) for specified periods of time; however, such authorization shall not constitute authorization with respect to any other set of data or to a subsequent change to any other data center region. For avoidance of doubt, this restriction does not apply to an activity taken or initiated by Customer or Customer's end users, such as a remote Cloud Service access from outside the data center region. Where agreed upon by the parties, additional terms regarding access of data by Oracle for support and maintenance from outside the continental United States may be included in the Order Form, including specifics identifying the data to be accessed, the countries from which it will be accessed, and the effective period of the agreement.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

**5. DIR Administrative Fee**

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three quarters of one percent (.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Kelly A Parker, CTPM, CTCM  
Director, Cooperative Contracts  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-1647  
Facsimile: (512) 475-4759  
Email: [kelly.parker@dir.texas.gov](mailto:kelly.parker@dir.texas.gov)

If sent to the Vendor:

Sheila Poggi

Contracts Manager, Public Sector Deal Management  
Oracle America, Inc.  
1910 Oracle Way  
Reston, VA 20190  
Phone: (703) 364-1507  
Email: [sheila.poggi@oracle.com](mailto:sheila.poggi@oracle.com)

## 7. Software License, Service and Leasing Agreements

### A. Software License Agreement

1) Customers acquiring products, including software licenses under the Contract shall hold, use and operate such products, including hardware and software licenses, subject to compliance with the Software License Agreement set forth in Appendix D, Appendix F, Appendix G, Appendix H, and Appendix K of this Contract. No changes to the Software License Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D, Appendix F, Appendix G, Appendix H, or Appendix K; provided however that the Customer and Vendor may agree to additional transaction-specific terms and conditions in an Order Form, including usage limitations, so long as they do not remove the rights or protections of Customer set forth in the Software License Agreement, or the responsibilities of Vendor set forth in the Software License Agreement. Vendor shall make the Software License Agreement terms and conditions available to all Customers at all times.

2) Compliance with the terms and conditions contained in Appendix D, Appendix F, Appendix G, Appendix H, and Appendix K is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the terms and conditions contained in Appendix D, Appendix F, Appendix G, Appendix H, and Appendix K. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the terms and conditions contained in Appendix D, Appendix F, Appendix G, Appendix H, and Appendix K.

### B. Service Agreement

Services provided under this Contract shall be in accordance with the Contract, including any applicable Appendices and the relevant Order Form for such service; samples of such Order Forms for services are set forth in Appendix E 1-10 of this Contract.

### C. Conflicting or Additional Terms

As provided for elsewhere in this Contract and the Appendices to this Contract, certain of the incorporated or linked or supplemental documents may be subject to change. However, no financial obligation of the Contractor shall be affected by any change in such documents, nor will additional material obligations be placed on the Customer as a result of these changes.

Any update to such linked documents shall only apply to purchases of the associated Vendor product or service offering after the effective date of the update; and, provided further, that, if Vendor has responded to a solicitation or request for pricing, no update of such linked documents on or after the initial date of Vendor's initial response shall apply to that purchase



unless Vendor directly informs Customer of the update before the purchase is consummated.

Upon Customer request, a reference copy of any policies or terms expressly incorporated via hyperlink can be attached to the relevant Order for reference and review by the Customer.

Vendor shall not [without prior written agreement from Customer's authorized signatory,] require any additional document that results in a material reduction in the level of performance or availability of the Services provided: 1) results in a material reduction in the level of performance or availability of the Services provided to the Customer; or 2) imposes additional financial costs, burdens, or obligations upon Customer, or imposes additional material burdens, or obligations upon Customer.

If Vendor attempts to do any of the foregoing, the prohibited documents will be void and inapplicable to the contract between DIR and Vendor or Vendor and Customer, and Vendor will nonetheless be obligated to perform the contract without regard to the prohibited documents, unless Customer elects instead to terminate the contract as provided under this Contract. The foregoing requirements apply to all contracts, including, but not limited to, contracts between Customer and a reseller who attempts to pass through documents and obligations from its Manufacturer or Publisher.

**8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts.**

**A. Appendix A, Section 1, Contract Scope** is hereby restated in its entirety as follows:

The Vendor shall provide the products and related services specified in Section 3 of the Contract for purchase by Customers. In addition, DIR and Vendor may agree to provisions that allow Vendor and/or Order Fulfiller to lease the products offered under the Contract. Terms used in Appendix A shall have the meanings set forth Section 3. Terms used but not defined herein shall have the meaning ascribed to them elsewhere in the Contract as appropriate.

**B. Appendix A, Section 2, No Quantity Guarantees** is hereby restated in its entirety as follows:

The Contract is not exclusive to the Vendor. Customers may obtain products and related services from other sources during the term of the Contract. DIR makes no express or implied warranties whatsoever that any particular quantity or dollar amount of products and related services will be procured through the Contract.

**C. Appendix A, Section 3, Definitions** is hereby restated in its entirety as follows:

**A. Customer** - any Texas state agency, unit of local government, institution of higher education as defined in Section 2054.003, Texas Government Code, the Electric Reliability Council of Texas, the Lower Colorado River Authority, a volunteer fire department, as defined by Section 152.001, Tax Code, and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code, and any local government as authorized through the Interlocal

Cooperation Act, Chapter 791, Texas Government Code, the state agencies and political subdivisions of other states as authorized by Section 2054.0565, Texas Government Code.

- B. Compliance Check** – an audit, at DIR’s expense, of Vendor’s compliance with the Contract may be performed by, but not limited to, a third party auditor, DIR Internal Audit department, or DIR contract management staff or their designees.
  - C. Contract** – the document executed between DIR and Vendor into which this Appendix A is incorporated.
  - D. CPA** – refers to the Texas Comptroller of Public Accounts.
  - E. Day** - shall mean business days, Monday through Friday, except for State and Federal holidays, unless otherwise specified as calendar days. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day. Furthermore, the parties hereby clarify that “day” shall mean a calendar day (unless otherwise specified) when used in Appendices D-O or in an Order Form.
  - F. Order Form** – is Vendor’s standard ordering document forms used by Customer when placing an order; copies of the standard forms are attached as samples in Appendices E-1 - E-10. The standard forms may be updated by Vendor from time to time upon DIR approval. An Order Form requires the signature of the Customer and the Order Fulfiller.
  - G. Order Fulfiller** – the party, either Vendor or a party that may be designated as a Reseller (as defined in Section 7.B) by Vendor who is fulfilling a Purchase Order pursuant to the Contract.
  - H. Purchase Order** - the Customer’s fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument) and when issued shall mean all funds have been appropriated for such order for the then-current fiscal period.
  - I. State** – refers to the State of Texas.
- D. Appendix A, Section 4., General Provisions, A. Entire Agreement**, is hereby restated in its entirety as follows:

The Contract, which includes the Appendices, Exhibits, and the information that is incorporated into the Contract by written reference (including reference to information contained in a URL or referenced policy with any conflicts with the DIR Contract to be addressed as set forth in Section 4.C of Appendix A and 7.C of the DIR Contract), constitutes the entire agreement between DIR and the Vendor. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in the Contract, Appendices, or its Exhibits shall be binding or valid.

The Contract, together with the applicable Order Form, is the complete agreement for the products and/or services ordered by the Customer and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such products and/or services.

**E. Appendix A, Section 4.B, Modification of Contract Terms and/or Amendments, Paragraph 2,** is restated in its entirety as follows:

- 1) The terms and conditions of the Contract shall govern all transactions by Customers under the Contract. The Contract may only be modified or amended upon mutual written agreement of DIR and Vendor.
- 2) Customers shall not have the authority to modify the terms of the Contract; however, additional Customer terms and conditions that do not conflict with the Contract or that are more beneficial to the Customer and, in each case, are acceptable to Order Fulfiller may be added in an Order Form and given effect. No additional term or condition added in a Purchase Order issued by a Customer can conflict with or diminish a term or condition of the Contract, but the Customer and Order Fulfiller may agree to additional terms and/or conditions that are more beneficial to the Customer. Pre-printed terms and conditions on any Purchase Order issued by Customer hereunder will have no force and effect. In the event of a conflict between a Customer's Purchase Order and the Contract, the Contract terms shall control unless otherwise agreed to in writing by DIR and Vendor.
- 3) Customers and Vendor will negotiate and enter into written agreements regarding statements of work, service level agreements, remedies, acceptance criteria, information confidentiality and security requirements, and other terms specific to their Purchase Orders under the Contract with Vendors.

**F. Appendix A, Section 4.D, Assignment,** is hereby restated in its entirety as follows:

DIR or Vendor may assign the Contract without prior written approval to: (i) a successor in interest (for DIR, another state agency as designated by the Texas Legislature); or (ii) a subsidiary, parent company or affiliate, or in connection with a merger, consolidation, acquisition, internal restructuring or sale of all or substantially all of the assets of the Vendor; or (iii) as necessary to satisfy a regulatory requirement imposed upon a party by a governing body with the appropriate authority. Assignment of the Contract under the above terms shall require written notification by the assigning party. Any other assignment by a party shall require the written consent of the other party and a mutually agreed written Contract amendment.

**G. Appendix A, Section 4.E, Survival,** is hereby restated in its entirety as follows:

All applicable software license agreements, warranties or service agreements that were entered into between Vendor and a Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract in accordance DIR contract and Order Form terms with DIR contract and agreements terms and subject to the provisions in the related Order Form. All Order Forms (and related Purchase Orders issued and) accepted by Vendor or Order Fulfiller shall survive expiration or termination of the Contract in accordance with DIR Contract and Order Form terms. Rights and obligations under this Contract which by their nature should survive, including, but not limited to the DIR Administrative Fee; and any and all payment obligations invoiced prior to the

termination or expiration hereof; obligations of confidentiality; and, indemnification, will remain in effect after termination or expiration hereof.

**H. Appendix A, Section 4.F, Choice of Law**, is restated in its entirety as follows:

The laws of the State of Texas shall govern the construction and interpretation of the Contract. Exclusive venue for all actions will be in the courts located in Texas. Nothing in the Contract or its Appendices shall be construed to waive the State's sovereign immunity. Notwithstanding anything contained herein to the contrary, or anything contained in the Data Processing Agreement, the parties understand and agree that they are not submitting to European Union law or jurisdiction.

**I. Appendix A, Section 5.A, Definitions**, is restated in its entirety as follows:

The parties hereby clarify that this Section 5.A of the Contract applies to Technical Services purchased pursuant to an Order Form for Technical Services, a sample of which is proved in Appendix E-2; and that any deliverables provided to the Customer pursuant to the Contract in accordance with Oracle's provision of Managed Cloud Services, Cloud Services and/or Technical Cloud Services shall be governed by Section 2 (Rights Granted) of Schedule M (Appendix L of this Contract) for Managed Cloud Services or Section 2 (Rights Granted) of Schedule C (Appendix M of this Contract) for Cloud Services and Technical Cloud Services, as applicable.

1) "Work Product" means any and all deliverables produced by Vendor for Customer under a Statement of Work issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the effective date of the Contract, including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to Customer under the Contract or a Statement of Work, and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use or benefit of Customer in connection with this Contract or a Statement of Work, or with funds appropriated by or for Customer or Customer's benefit: (a) by any Vendor personnel or Customer personnel, or (b) any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel,

any portion of same was created, invented or conceived by such person while affiliated with Customer.

2) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.

3) "Statement of Work" means a document signed by Customer and Vendor describing a specific set of activities and/or deliverables, which may include Work Product and Intellectual Property Rights, that Vendor is to provide Customer, issued pursuant to the Contract.

4) "Third Party IP" means the Intellectual Property Rights of any third party that is not a party to this Contract, and that is not directly or indirectly providing any goods or services to Customer under this Contract.

5) "Vendor IP" shall mean all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Vendor (a) prior to providing any Services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of Customer relating to the Services or Work Product, or (b) after the Effective Date of the Contract if such tangible or intangible items or things were independently developed by Vendor outside Vendor's provision of Services or Work Product for Customer hereunder and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Vendor or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Vendor or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

**J. Appendix A, Section 5.B, Ownership**, is restated in its entirety as follows:

The parties will mutually agree on one of the following provisions (either 5.B.i or 5.B.ii) below, as applicable, to allocate intellectual property rights in deliverables created within the scope of technical services identified in an exhibit under a particular Order Form, a sample of which is provided in Appendix E-2 to the Contract. If an Order Form does not refer to one of the provisions below or otherwise contain or reference terms allocating intellectual property rights in such deliverables, then the intellectual property rights in such deliverables shall be allocated between the parties pursuant to subsection 5.B.i below.

i. "Upon payment for the services under this order, you have the non-exclusive, non-assignable except as otherwise provided for in the Contract, royalty free perpetual, limited right to use for your internal business operations, anything developed by Oracle and delivered to you under this order. You may allow your agents and contractors (including, without limitation, outsourcers) to use the deliverables for this purpose and

you are responsible for their compliance with this order in such use. Oracle retains all ownership and intellectual property rights to anything developed or delivered under this order. For anything developed or delivered under this order that is specifically designed to allow your customers and suppliers to interact with you in the furtherance of your internal business operations, such use is allowed under the agreement.”

ii. “Joint Property” means those deliverables developed by Oracle solely for you under this order and those deliverables developed jointly by Oracle and you under this order; Joint Property does not include any Oracle Works (defined below). Upon payment of all fees due under this order, Oracle and you agree that we each jointly own the copyright interest in Joint Property and that we each do not have to account to one another for use of Joint Property. “Oracle Works” means: (a) anything provided by or on behalf of Oracle from a repository; (b) any software code generated by computer aided software engineering (CASE) tools; (c) any tools, interfaces, and utilities developed by or on behalf of Oracle; and (d) any derivative works of (a) through (c) above. Oracle retains all right, title and interest, including all copyrights, in any Oracle Works. Upon payment of all fees due under this order, you have the non-exclusive, non-assignable, royalty free, perpetual limited right to use, solely as a component of Joint Property, Oracle Works that are incorporated into Joint Property. You may allow your agents and contractors (including, without limitation, outsourcers) to use, as set forth in the preceding sentence, Oracle Works that are incorporated into Joint Property and you are responsible for their compliance with this order in such use. This order does not grant, amend, or modify any license for any programs or documentation owned or distributed by Oracle.

The technical services provided under the Contract may be related to the Customer’s license to use Programs owned or distributed by Vendor which the Customer may acquire under a separate order. The agreement referenced in that order shall govern the Customer’s use of such Programs.

- K. Appendix A, Section 5.C, Further Actions**, is deleted in its entirety.
- L. Appendix A, Section 5.D, Waiver of Moral Rights**, is deleted in its entirety.
- M. Appendix A, Section 5.E, Confidentiality**, is deleted in its entirety.
- N. Appendix A, Section 5.F, Injunctive Relief**, is deleted in its entirety.
- O. Appendix A, Section 5.G, Return of Materials Pertaining to Work Product**, is deleted in its entirety.
- P. Appendix A, Section 5.H, Vendor License to Use**, is deleted in its entirety.
- Q. Appendix A, Section 5.J, Agreement with Subcontracts**, is deleted in its entirety.
- R. Appendix A, Section 5.K, License to Customer**, is deleted in its entirety.

**S. Appendix A, Section 5.I, is renumbered to be Section 5.C, Third-Party Underlying and Derivative Works, is restated in its entirety as follows:**

a. For Services (other than Managed Cloud Services, Cloud Services and Technical Cloud Services) the following terms shall apply to deliverables:

- i. Upon payment for the services under an Order Form, Customer shall have the non-exclusive, non-assignable except as otherwise provided for in the Contract, royalty free perpetual, limited right to use for the Customer's internal business operations, anything developed by Vendor and delivered to the Customer under such Ordering Form. The Customer may allow its agents and contractors (including, without limitation, outsourcers) to use the deliverables for this purpose and the Customer is responsible for their compliance with the Order Form in such use. Unless otherwise provided for in the Order Form pursuant to Appendix A, Section 5.B of the Contract, Vendor retains all ownership and intellectual property rights to anything developed or delivered under an Order Form. For anything developed or delivered under an Order Form that is specifically designed to allow a Customer's customers and suppliers to interact with the Customer in the furtherance of the Customer's internal business operations, such use is allowed under the Contract.
- ii. With respect to Technical Services, Vendor agrees to notify Customer in the Order Form, or on delivery of the Work Product or Technical Services deliverables if the deliverables include any Third Party IP. On request, Vendor shall provide Customer with documentation confirming a third party's written approval for Vendor to use any Third Party IP that may be embodied or reflected in the Work Product as provided for in the Contract.

b. For Managed Cloud Services, the following terms shall apply to deliverables:

During the services term for the Managed Cloud Services ordered and subject to the Customer's payment obligations, and except as otherwise set forth in this Contract, Appendix G – Public Sector General Terms, Appendix L – Schedule M – Managed Cloud Services or the Order Form, the Customer will have a limited, non-exclusive, non-assignable, right to access and use anything developed by Vendor and delivered to the Customer as part of the Oracle Managed Cloud Services specified in the Customer's Order Form solely for the Customer's internal business operations, and subject to the terms of this Contract, Appendix G – Public Sector General Terms, Appendix L - Schedule M – Managed Cloud Services and the applicable Order Form. Vendor retains all ownership and intellectual property rights to anything developed by Vendor and delivered to the Customer as part of Managed Cloud Services under this Contract.

c. For Cloud Services and Technical Cloud Services, the following terms (as set forth in Appendix M – Schedule C - Cloud Services) shall apply to deliverables:

For the duration of the Services Period (as defined in Appendix M – Schedule C - Cloud Services) and subject to the Customer's payment obligations, and except as otherwise set forth in this Contract, Appendix G - Public Sector General Terms, Appendix M – Schedule

C – Cloud Services or the Order Form, the Customer shall have the non-exclusive, non-assignable, royalty free, worldwide, limited right to access and use anything developed by Vendor and delivered to the Customer as part of the Cloud Services or Technical Cloud Services, solely for the Customer’s internal business operations and subject to the terms of the Contract, Appendix G – Public Sector General Terms, Appendix M – Schedule C - Cloud Services and the Order Form, including the Service Specifications (as defined in Appendix M – Schedule C - Cloud Services). The Customer may allow its Users (as defined in Appendix M – Schedule C - Cloud Services) to use any such deliverables for this purpose and the Customer is responsible for the Customer’s Users’ compliance with Contract, Appendix G – Public Sector General Terms, Appendix M – Schedule C - Cloud Services and the Order Form.

- T. Appendix A, Section 5.L, is renumbered to be Section 5.D, Vendor Development Rights, is restated in its entirety as follows:**

Nothing in this Contract shall preclude Vendor from developing for itself, or for others, materials which are competitive with those produced as a result of the Services provided hereunder, provided that no Intellectual Property Rights of Customer therein are infringed by such competitive materials.

- U. Appendix A, Section 6.A, Electronic and Information Resources Accessibility Standards, As Required by 1 TAC Chapters 206 and 213 (Applicable to State Agency and Institution of Higher Education Purchases only), is hereby restated in its entirety as follows:**

**1)** Effective September 1, 2006, to the extent required by law, state agencies and institutions of higher education shall procure products which comply with the State Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

**2)** The extent to which with an Oracle product is, prior to any customizations, 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') effective as of June, 2001, or the Revised version in Appendix A (known as 'Revised Section 508') effective as of January, 2018 or as revised effective March, 2017, and the Web Content Accessibility Guidelines (WCAG) version 2.0 level AA, is indicated by the dependencies, comments and exceptions (some of which may be significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT) available at [www.oracle.com/accessibility](http://www.oracle.com/accessibility) for each product, when they are used in accordance with Oracle's associated documents and other written information, and provided that any assistive technologies and any other products used with them properly interoperate with them. In the event that no VPAT is available for a particular Oracle product, please contact the Oracle Accessibility Program Office at [accessible\\_ww@oracle.com](mailto:accessible_ww@oracle.com). In some cases, the outcome may be that a product is still being evaluated for accessibility, may be scheduled to meet accessibility standards in a future release, or may not be scheduled to meet accessibility standards at all. Oracle Support customers with disabilities may use the online My Oracle Support or call Oracle Support at 1.800.223.1711. Hearing-impaired customers in



the U.S. who wish to speak to an Oracle Support representative may use a telecommunications relay service (TRS). Information about the TRS is available at <http://www.fcc.gov/cgb/consumerfacts/trs.html>, and a list of telephone numbers is available at <http://www.fcc.gov/cgb/dro/trsphonebk.html>. International hearing-impaired customers should use the TRS at +1.605.224.1837. Oracle Support will respond to product accessibility issues according to the current Technical Support Policies. No other terms, conditions, statements or any other such representations regarding or related to accessibility shall apply to the Oracle products provided under this Contract. Oracle cannot make any commitments about future product directions, including plans to address accessibility or the availability of VPATs. Product direction remains at the sole discretion of Oracle.

**V. Appendix A, Section 6.B, Purchase of Commodity Items (applicable to State Agency Purchases Only),** is hereby restated in its entirety as follows:

1) Texas Government Code, §2157.068, requires State agencies to buy commodity items (as defined in 6.B.2, below, in accordance with contracts developed by DIR, unless the agency obtains an exemption from DIR, or a written certification that a commodity is not on DIR contract (for the limited purpose of purchasing from a local government purchasing cooperative).

2) Commodity items are commercially available software, hardware and technology services that are generally available to businesses or the public and for which DIR determines that a reasonable demand exists in two or more state agencies. Hardware is the physical technology used to process, manage, store, transmit, receive or deliver information. Software is the commercially available programs that operate hardware and includes all supporting documentation, media on which the software may be contained or stored, related materials, modifications, versions, upgrades, enhancements, updates or replacements. Technology services are the services, functions and activities that facilitate the design, implementation, creation, or use of software or hardware. Technology services include seat management, staffing augmentation, training, maintenance and subscription services. Technology services do not include telecommunications services. Seat management is services through which a state agency transfers its responsibilities to a vendor to manage its personal computing needs, including all necessary hardware, software and technology services.

3) Vendor agrees to coordinate all State agency commodity item sales through existing DIR contracts. Institutions of higher education are exempt from this Subsection 6.B.

**W. Appendix A, Section 7. Contract Fulfillment and Promotion, A. Service, Sales and Support of the Contract,** is hereby restated in its entirety as follows:

Vendor shall provide service, sales and support resources to serve all Customers throughout the State. It is the responsibility of the Vendor to sell, market, and promote products and services available under the Contract. Vendor shall use its best efforts to ensure that potential Customers are made aware of the existence of the Contract. All sales to Customers for products and services available under the Contract shall be processed through the Contract, except as may be approved otherwise by DIR in writing.

**X. Appendix A, Section 7.B, Use of Order Fulfillers**, is hereby restated in its entirety as follows:

DIR agrees to permit Vendor to utilize designated third parties to provide sales support resources to Customers (such designated third parties are hereinafter referred to as "Resellers"). Such participation is subject to the following conditions:

**1) Designation of Resellers**

- a) Vendor may designate Resellers to act as the distributors for products and services available under the Contract. In designating Resellers, and to the extent required by law, Vendor must be in compliance with the State's Policy on Utilization of Historically Underutilized Businesses, a copy of which shall be provided to Vendor. In addition to any required Subcontracting Plan, Vendor shall provide DIR with the following Reseller information: Reseller name, Reseller business address, Reseller CPA Identification Number, Reseller contact person email address and phone number. Vendor may also note that certain Resellers may only sell limited products and/or services offered under the Contract.
- b) DIR reserves the right to require the Vendor to rescind any such Reseller participation or request that Vendor name additional Resellers should DIR determine it is in the best interest of the State.
- c) Vendor shall be responsible for its Resellers' performance under and compliance with the terms and conditions of the Contract to the extent provided in the Contract and subject to the limitations set forth in the Contract. Vendor shall enter into contracts with Resellers and use terms and conditions that are consistent with the terms and conditions of the Contract.
- d) Vendor shall have the right to qualify Resellers and their participation under the Contract provided that: i) any criteria is uniformly applied to all potential Resellers based upon Vendor's established, neutrally applied criteria, ii) the criteria is not based on a particular procurement, and iii) all Customers are supported under the different criteria.
- e) Vendor shall not prohibit Resellers from participating in other procurement opportunities offered through DIR.

**2) Changes in Reseller List**

Vendor may add Resellers throughout the term of the Contract upon written authorization by DIR. In addition, Vendor may delete Resellers at any time throughout the term of the Contract upon written notice to DIR. Prior to adding or deleting Resellers, Vendor must make a good faith effort in the revision of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses, a copy of which shall be provided to Vendor. Vendor shall provide DIR with its updated Subcontracting Plan and the Reseller information listed in Section 7.B.1.a above.

**3) Reseller Pricing to Customer**

Reseller pricing to the Customer for Order Forms placed under this Contract shall comply with the Customer price as stated within Section 4 of the Contract, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee, provided that nothing shall preclude a Reseller from offering Customers prices lower than as stated in Section 4 and Appendix C.

Y. **Appendix A, Section 7.C, Product Warranty and Return Policies**, is hereby restated in its entirety as follows:

**1) Product and Service Warranties**

a) Hardware. Vendor provides a limited warranty (the "Oracle Hardware Warranty") for the hardware purchased by the Customer pursuant to the Contract. Vendor warrants that the hardware will be free from, and using the operating system and integrated software and integrated software options will not cause in the hardware, material defects in materials and workmanship for one year from the date the hardware is delivered to Customer. Customer must notify Vendor of any hardware warranty deficiency within one year after delivery. **VENDOR DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE HARDWARE.** You may access a more detailed description of the Oracle Hardware Warranty at <http://www.oracle.com/support/policies.html> ("the warranty web page") incorporated herein by reference. Any changes to the Oracle Hardware Warranty details specified on the warranty web page will not apply to hardware ordered prior to such change. The Oracle Hardware Warranty applies only to hardware that has been (i) manufactured by Vendor and (ii) sold by Vendor (either directly or by a Reseller). The hardware may be new or like new. The Oracle Hardware Warranty applies to Hardware that is new and Hardware that is like-new which has been remanufactured and certified for warranty by Oracle. Replacement units for defective parts or hardware items replaced under the Oracle Hardware Warranty may be new or like new quality.

Notwithstanding the foregoing, Oracle represents that all components sold are warranted as new components. During the course of quality control of a newly manufactured piece of equipment and other manufacturing related initial testing on the new piece of equipment a vendor may need to replace faulty components. Those faulty components may be returned to the originating manufacturing with supporting documentation. If in the opinion of the originating manufacturer, the part (or sub-assembly) subsequently meets Oracle specification, the originating manufacturer may re-ship the product to Oracle as new inventory. On re-certification by Oracle Quality control, that part or sub-assembly is returned to the supply chain inventory for use in the assembly process as new product.

Such replacement units assume the warranty status of the hardware into which they are installed and have not separate or independent warranty of any kind. Title in all defective parts or hardware items shall transfer back to Vendor upon removal from the hardware. The Oracle Hardware Warranty does not apply to normal wear of the hardware or media. The Oracle Hardware Warranty is extended only to the original purchaser of the hardware and may be void in the event that title to the hardware is transferred to a third party.

b) Programs. Vendor warrants that a program licensed to the Customer pursuant to the Contract will operate in all material respects as described in the applicable documentation for one year after delivery (i.e., via physical shipment or electronic download) to Customer. Customer must notify Vendor of any program warranty deficiency within one year after delivery. **VENDOR DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT VENDOR WILL CORRECT ALL PROGRAM ERRORS.**

c) **Media.** Vendor warrants that the media for programs, operating system and integrated software purchased by the Customer pursuant to the Contract will be free from material defects in materials and workmanship under normal use for a period of 90 calendar days from the date the media is shipped to Customer. Customer must notify Vendor of any media warranty deficiency within 90 calendar days after delivery. The operating system and integrated software is provided "AS IS".

d) **Services.** Vendor warrants that services (except Managed Cloud Services, Cloud Services and Technical Cloud Services) will be provided in a professional manner consistent with industry standards. Customer must notify Vendor of any services warranty deficiencies within 90 calendar days from performance of the deficient services. The warranties, disclaimers and exclusive remedies for breach of warranty for Managed Cloud Services are provided for in Schedule M (attached as Appendix L to the Contract) and for Cloud Services and Technical Cloud Services are provided for in Schedule C (attached as Appendix M to the Contract).

## 2) Exclusive Remedies

a) **Hardware.** CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE ABOVE HARDWARE WARRANTIES SHALL BE THE REPAIR OR, AT VENDOR'S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE PRODUCT, OR, IF SUCH REPAIR OR REPLACEMENT IS NOT REASONABLY ACHIEVABLE, THE REFUND OF THE FEES PAID TO THE ORDER FULFILLER FOR THE DEFECTIVE PRODUCT AND ANY UNUSED, PREPAID FEES FOR TECHNICAL SUPPORT SERVICES RELATED TO SUCH DEFECTIVE PRODUCT.

b) **Programs.** CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE ABOVE PROGRAM WARRANTIES SHALL BE THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF VENDOR CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER, VENDOR MAY END THE RELATED PROGRAM LICENSE AND CUSTOMER MAY RECOVER THE FEES CUSTOMER PAID TO THE ORDER FULFILLER FOR SUCH PROGRAM LICENSE AND ALL UNUSED, PREPAID FEES FOR TECHNICAL SUPPORT SERVICES RELATED TO SUCH PROGRAM LICENSE.

c) **Media.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LAIBILITY FOR BREACH OF THE ABOVE MEDIA WARRANTIES SHALL BE THE REPLACEMENT OF THE DEFECTIVE MEDIA, PROVIDED IT IS RETURNED TO VENDOR WITHIN THE APPLICABLE WARRANTY PERIOD, AND SUBJECT TO STANDARD SHIPPING AND HANDLING FEES.

d) **Services.** CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VENDOR'S ENTIRE LIABILITY FOR ANY BREACH OF THE ABOVE SERVICES WARRANTIES, SHALL BE THE REPERFORMANCE OF THE DEFICIENT SERVICES OR, IF VENDOR CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, CUSTOMER MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO THE ORDER FULFILLER FOR THE DEFICIENT SERVICES.

e) General. **TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**3) Invalidation of the Hardware or Media Warranties by Customer**

No warranty will apply to hardware, operating system, integrated software, integrated software options or media which has been:

- a) modified, altered or adapted without Vendor's written consent (including modification by removal of the Vendor serial number tag on the hardware);
- b) maltreated or used in a manner other than in accordance with the relevant documentation;
- c) repaired by any third party in a manner which fails to meet Vendor's quality standards;
- d) improperly installed by any party other than Vendor or an authorized Vendor certified installation partner;
- e) used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use;
- f) relocated without Vendor's written consent, to the extent that problems are attributable to such relocation;
- g) used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- h) used by parties appearing on the most current U.S. export exclusion list;
- i) relocated to countries subject to U.S. trade embargo or restrictions;
- j) used remotely to facilitate any activities in the countries referenced in (h) or (i) above;
- or
- k) purchased from any entity other than Vendor or a Reseller.

**Z. Appendix A, Section 7.D, Customer Site Preparation**, is hereby restated in its entirety as follows:

Customers shall prepare and maintain its site in accordance with written instructions furnished by Order Fulfiller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation. Customer acknowledges that to operate certain hardware, its facility must meet a minimum set of site requirements. Such site requirements may change from time to time, as communicated by Order Fulfiller and the applicable documentation provided with the hardware.

**Z. Appendix A, Section 7.E, Internet Access to Contract and Pricing Information** is hereby restated in its entirety as follows:

**1) Vendor Webpage**

Within thirty (30) calendar days of the effective date of the Contract, Vendor will establish and maintain a webpage specific to the products and service offerings under the Contract that are clearly distinguishable from other, non-DIR Contract offerings on the Vendor's website. The webpage must include:

- a) the products and services offered;

- b) product and service specifications;
- c) specific Contract pricing;
- d) i) discount percentage (%) off MSRP, or (ii) List Price;
- e) designated Resellers;
- f) contact information (e.g., name, telephone number and/or email address) for Vendor and designated Resellers;
- g) instructions for obtaining Order Forms and placing orders;
- h) Vendor's warranty and order and delivery policies;
- i) return policies;
- j) the DIR Contract number with a hyperlink to the Contract's DIR webpage;
- k) a link to the DIR "Cooperative Contracts" webpage; and
- l) the DIR logo in accordance with the requirements of this Section.

If Vendor does not meet the webpage requirements listed above, DIR may cancel the contract without penalty, subject to the notice and cure provisions set forth in Section 11.B.3. below.

## **2) Accurate and Timely Contract Information**

Vendor will use commercially reasonable efforts to ensure that the website information specified in the above paragraph will be accurately and completely posted, maintained and displayed in an objective and timely manner. Vendor, at its own expense, shall correct any non-conforming or inaccurate information posted at Vendor's website within ten (10) business days after receipt of written notification by DIR.

## **3) Webpage Compliance Checks**

Periodic compliance checks of the information posted for the Contract on Vendor's webpage will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this webpage is uniform with the pricing as stated in the Contract.

## **4) Webpage Changes**

Vendor hereby consents to a link from the DIR website to Vendor's webpage in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to suspend, terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Vendor with subsequent notice of link suspension, termination or removal. Vendor shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

## **5) Use of Access Data Prohibited**

If Vendor stores, collects or maintains data electronically as a condition of accessing Contract information, such data shall only be used internally by Vendor for the purpose of implementing or marketing the Contract, and shall not be disseminated to third parties, other than Resellers or used for other marketing purposes. The Contract constitutes a public document under the laws of the State and Vendor shall not restrict access to Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

**6) Responsibility for Content**

Vendor is solely responsible for administration, content, intellectual property rights, and all materials at Vendor's website. DIR reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent the Contract.

**BB. Appendix A, Section 7.F, DIR Logo**, is hereby restated in its entirety as follows:

Vendor and Reseller may use the DIR logo in the promotion of the Contract to Customers with the following stipulations: (i) the logo may not be modified in any way, (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Reseller logo, (iii) the DIR logo is only used to communicate the availability of products and services under the Contract to Customers, and (iv) any other use of the DIR logo requires prior written permission from DIR.

**CC. Appendix A, Section 7.G, Vendor and Reseller Logo**, is hereby restated in its entirety as follows:

If DIR receives Vendor's prior written approval, DIR may use the Vendor's name and logo in the promotion of the Contract to communicate the availability of products and services under the Contract to Customers. Use of the logos may be on the DIR website or on printed materials. Any use of Vendor's logo by DIR must comply with and be solely related to the purposes of the Contract and any usage guidelines communicated to DIR from time to time. DIR shall not use Vendor's trademarks in a manner that misrepresents its relationship with Vendor or Vendor's products and services, is otherwise misleading or confusing, or reflects negatively on Vendor. If Vendor, in its sole discretion, determines that DIR's use of Vendor's trademarks is not in compliance with the Contract, Vendor shall promptly notify DIR and DIR shall promptly modify or discontinue its use of such trademarks as directed by Vendor. Nothing contained in the Contract will give DIR any right, title, or interest in or to Vendor's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Vendor.

**DD. Appendix A, Section 7.H, Trade Show Participation**, is hereby restated in its entirety as follows:

Vendor may participate in one or more DIR sponsored trade shows each calendar year. Vendor understands and agrees that participation, at the Vendor's expense, includes providing a manned booth display or similar presence. DIR will provide four months advance notice of any requested participation. Vendor must display the DIR logo at any such requested trade show(s) that potential Customers will attend. DIR reserves the right to approve or disapprove of the location or the use of the DIR logo in or on the Vendor's booth.

**EE. Appendix A, Section 7.K, DIR Cost Avoidance**, is hereby restated in its entirety as follows:

As part of the performance measures reported to state leadership, DIR must provide the cost avoidance the State has achieved through the Contract. Upon reasonable request by DIR and no more than twice annually, Vendor shall provide DIR with a detailed report of a representative sample of products sold under the Contract. The report shall contain: product

part number, product description, list price, and price to Customer under the Contract, and, to the extent it exists, pricing from any other Vendor contracts with NASPO, GSA, TCPN or TIP.

**FF. Appendix A, Section 8.C, Customer Price** is hereby restated in its entirety as follows:

1) The price to the Customer shall be calculated as follows:

Customer Price = (MSRP or List Price – Customer Discount as set forth in Appendix C, Pricing Index) x (1 + DIR Administrative Fee Percentage, as set forth in the Contract).

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided by the Vendor or its Reseller at a greater discount than the applicable discount in this Contract to a DIR eligible Texas Customer who is not purchasing those products or services under this Contract then the applicable discount in this Contract shall be adjusted to that greater discount by written amendment as set forth herein. The foregoing requirement applies only to products or services provided by Vendor or its Resellers for a quantity of one (1) hardware product under like terms and conditions, and does not apply to volume or special pricing purchases. To the extent that either party provides written notice to the other party that a greater discount was provided by Vendor in accordance with this section, then both parties will utilize best efforts to amend this Contract within thirty (30) business days to reflect the lower price. Any Contract changes finalized pursuant to this section within thirty (30) business days after the date of the notice of such greater discount shall be prospective and not retroactive to the date of that notice. Any Contract changes finalized pursuant to this section more than thirty (30) business days after the date of such notice shall be retroactive to the date of that notice.

**GG. Appendix A, Section 8.D, Shipping and Handling Fees** is hereby restated in its entirety as follows:

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On Board (Oracle's shipping terminology for same is DDP-Delivered Duty Paid) Customer's Destination. No additional fees shall be charged to the Customer for standard shipping and handling within the United States. If the Customer requests expedited or special delivery, or delivery outside of the United States, Customer will be responsible for any charges for expedited or special delivery or such delivery to such locations outside of the United States. Where relevant, each party to this Contract agrees to comply with all relevant export laws and regulations, including the Export Administration Act and Regulations, to assure that no information is exported directly or indirectly, in violation of law.

**HH. Appendix A, Section 8.E, Tax Exempt** is hereby restated in its entirety as follows:

DIR represents as per Section 151.309, Texas Tax Code, governmental Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, DIR represents that Customers under this Contract are exempt from Federal Excise Taxes, 26



United States Code Sections 4253(i) and (j). Customers shall provide evidence of tax-exempt status to Vendor upon request

**II. Appendix A, Section 8.F, Travel Expense Reimbursement** is hereby restated in its entirety as follows:

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized for state employees as adopted by each Customer; and provided, further, that all reimbursement rates shall not exceed the maximum rates established for state employees under the current State Travel Management Program (<http://www.window.state.tx.us/procurement/prog/stmp/>). Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 of the Contract is not applicable to travel expense reimbursement. Anticipated travel expenses will be discussed between the Customer and Vendor prior to inclusion of such estimated travel expenses in the relevant Ordering Form. Travel expenses for a transaction must be approved by the Customer during such discussion and Customer's funding of such travel expenses on a Purchase Order (defined below), after such discussion, will serve as Customer's approval of such travel expenses. Customer shall provide Vendor with a copy of all applicable travel reimbursement policies prior to requiring the Vendor to provide any services for which Vendor might incur travel expenses.

**JJ. Appendix A, Section 8.G, Changes to Prices** is hereby restated in its entirety as follows:

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price lists shall be made available at a web site to be accessible by the Customers, as further described in Appendix C; and any updates to such price lists shall take effect automatically during the term of this Contract and shall be passed onto the Customer in all Order Forms (defined below) issued after any such price list updates are effective, published and posted on Vendor's DIR website.

1) Updated price lists must be requested with a signed cover letter (which may be delivered to DIR via email) indicating the change in price and must be accompanied by a copy of the updated manufacturer or publisher's price list.

2) Requests for updated price lists will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Updated price lists that are not accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted updated price list is rejected, Vendor may request that the product or service rejected be removed from the Contract. The product or service will be removed from the Contract upon execution of a written Contract amendment, which shall be transmitted to Vendor by DIR within thirty (30) calendar days after receipt of the Vendor's written request to remove the product or service and executed by both parties without undue delay. Existing pricing must

be honored up to the date of execution of the Contract amendment. Vendor anticipates updates to price lists at least once annually; however, price lists may not be updated for at least ninety (90) calendar days after the Contract effective date.

3) In the event that an updated price list that has been rejected under the process described in section 2 above includes a price decrease, such price decrease may be passed onto the Customer in Order Forms.

**KK. Appendix A, Section 8.H, Purchase Orders** is hereby restated in its entirety as follows:

All orders will be placed directly with the Order Fulfiller. Order Forms shall be effective and binding upon Vendor or Order Fulfiller when accepted by Order Fulfiller; provided that (i) the Order Form is accompanied by a Purchase Order; (ii) the Order Form incorporates the Contract; (iii) the fees on the Purchase Order and Order Form are the same; and (iv) the Order Form is executed by the Customer and the Order Fulfiller. Once an order is accepted by the Order Fulfiller, the Customer's order is non-cancelable and the sums paid nonrefundable, except as provide elsewhere in the Contract.

Vendors will be required to comply with the disclosure requirements of Section 2252.908, Texas Government Code, as enacted by House Bill 1295, 84th Regular Session, when execution of a contract requires an action or vote by the governing body of a governmental entity before the contract may be signed.

**LL. Appendix A, Section 8.I, Invoices** is hereby restated in its entirety as follows:

- 1) Invoices shall be submitted by the Order Fulfiller directly to the Customer and shall be issued in compliance with Chapter 2251, Texas Government Code. All payments for products and/or services purchased under the Contract and any applicable provision of acceptance of such products and/or services as set forth in the Contract or the applicable Order Form shall be made by the Customer to the Order Fulfiller. For Customers that are not subject to Chapter 2251, Texas Government Code, Customer and Order Fulfiller will agree to acceptable terms.
- 2) Invoices must be timely and accurate. Each invoice must match Customer's Purchase Order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's Purchase Order number or other pertinent information for verification of receipt of the product or services by the Customer. Invoices for programs are issued as of the program commencement date. Invoices for hardware are issued as of the hardware commencement date. Technical support services, Managed Cloud Services and Cloud Services are invoiced quarterly in arrears, and Technical Cloud Services and other services are invoiced monthly in arrears and as may be further specified on the relevant Order Form. Travel expenses are invoiced monthly as they are incurred. Oracle University Learning Credits may be invoiced and paid in accordance with state procedures for training or subscription agreements. . Invoices may also include any written changes to the ordered hardware made by the Customer prior to shipment and agreed to by Vendor in accordance with Appendix A, Section 8.H, as well as any changes made by Vendor in the form of a product substitution or

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modification to ordered hardware that does not cause a material adverse effect in overall hardware performance. Additionally, the invoices will include any expedited shipping and handling charges (in accordance with Appendix A, Section 8.D), and any pre-approved travel expenses (in accordance with Appendix A, Section 8.F). The Order Fulfiller is permitted to issue multiple invoices for a single Order Form. [Customers may pay for Oracle University Learning Credits in advance.]

- 3) The administrative fee as set forth in Section 5 of the Contract shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**MM. Appendix A, Section 9., Contract Administration, A. Contract Managers** is hereby restated in its entirety as follows:

DIR and the Vendor will each provide a Contract Manager to support the Contract. Information regarding the Contract Manager will be posted on the Internet website designated for the Contract.

**1) State Contract Manager**

DIR shall provide a Contract Manager whose duties shall include but not be limited to: (i) advising DIR and Vendor of Vendor's compliance with the terms and conditions of the Contract, (ii) periodic verification of product pricing, and (iii) verification of monthly reports submitted by Vendor.

**2) Vendor Contract Manager**

Vendor shall designate a contact person or persons as the Contract Manager to manage Vendor's administrative responsibilities under the Contract. Such Contract Manager will be the point of contact to facilitate matters including but not limited to the following (i) supporting the management of the Contract, (ii) facilitating dispute resolution between a Reseller and a Customer, and (iii) advising DIR of Reseller performance under the terms and conditions of the Contract. DIR reserves the right to require a change in Vendor's then-current Contract Administrator(s) if the assigned Contract Administrator(s) is not or are not, in the reasonable opinion of DIR, adequately serving the needs of the State.

**NN. Appendix A, Section 9.B, Reporting and Administrative Fees** is hereby restated in its entirety as follows:

**1) Reporting Responsibility**

a) Vendor shall be responsible for reporting all products and services purchased through Order Fulfillers under the Contract. Vendor shall file the monthly reports, subcontract reports, and pay the administrative fees in accordance with the due dates specified in this section.

b) DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to compliance checks of Vendor's applicable records pertaining directly to Vendor's performance of services or delivery of products under the Contract at no cost provided that such request for verification under this section is made no more than once per month.

**2) Detailed Monthly Report**

Vendor shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under the Contract for the previous calendar month period. Reports shall be submitted to the DIR ICT Cooperative Contracts E-Mail Box at [ict.sales@dir.texas.gov](mailto:ict.sales@dir.texas.gov). Reports are due on the fifteenth (15th) calendar day after the close of the previous month period; provided that if the 15th calendar day falls on a non-business day, then the reports shall be due on the next business day. It is the responsibility of Vendor to collect and compile all sales under the Contract from participating Order Fulfillers and submit one (1) monthly report. The monthly report shall include, per transaction: the detailed invoices for the reporting period, Customer name, invoice date, invoice number, description, quantity, MSRP or List Price (if available), extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the estimated administrative fee due for the reporting period, and other information as reasonably required by DIR for all similarly situated vendors; provided, however, that DIR shall provide Vendor adequate advance notice and time to review and include such information in the reports. Each report must contain all information listed above per transaction or the report will be rejected and returned to the Vendor for correction in accordance with this Section. Notwithstanding the foregoing, should a Reseller be delinquent in providing information to Vendor for inclusion in the related month's report and such report has been submitted to DIR by Vendor, Vendor may include such information in the subsequent month's report rather than correcting or updating the corresponding month's report, and Vendor shall not be deemed to have delivered a late or inaccurate report.

**3) Historically Underutilized Businesses Subcontract Reports**

- a) Upon request by Customer or DIR, Vendor shall electronically provide each Customer with Vendor's relevant Historically Underutilized Business Subcontracting Report, pursuant to the Contract, as required by Chapter 2161, Texas Government Code. Reports shall also be submitted to DIR.
- b) Reports shall be due in accordance with the applicable provisions of the Texas Administrative Code, Title 34, Part 1, Chapter 20, Section 20.14.

**4) DIR Administrative Fee**

- a) An administrative fee shall be paid by Vendor to DIR to defray the DIR costs of negotiating, executing, and administering the Contract. The maximum administrative fee is set by the Texas Legislature in the biennial General Appropriations Act. Payment of the administrative fee shall be due on the twentieth (20th) calendar day after the close of the previous month period, provided that if the twentieth (20th) calendar day falls on a non-business day, then the administrative fee shall be due on the next business day. DIR may change the amount of the administrative fee upon thirty (30) days written notice to Vendor without the need for a formal contract amendment.
- b) Vendor shall reference the DIR Contract number, reporting period, and administrative fee amount on any remittance instruments.

**5) Accurate and Timely Submission of Reports**

a) The reports and administrative fees shall be accurate and timely and submitted in accordance with the due dates specified in this Section. Vendor shall correct any inaccurate reports or administrative fee payments within five (5) business days upon written notification by DIR. Vendor shall deliver any late reports or late administrative fee payments within five (5) business days upon written notification by DIR. If Vendor is unable to correct inaccurate reports or administrative fee payments or deliver late reports and fee payments within five (5) business days, Vendor must contact DIR and provide a corrective plan of action, including the timeline for completion of correction. The corrective plan of action shall be subject to DIR approval.

b) Should Vendor fail to correct inaccurate reports or cure the delay in timely delivery of reports and payments within the corrective plan of action timeline, DIR reserves the right to require an independent third party audit of the Vendor's records as specified in C.3 of this Section at Vendor's expense. Vendor and DIR will attempt to mutually select and agree on the auditor; however, if they cannot do so within 30 days, then DIR will make the selection. If Vendor is found to be responsible for financially inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

Failure to timely submit three (3) reports or administrative fee payments within any rolling twelve (12) month period may, at DIR's discretion, result in the addition of late fees of \$100/day for each day the report or payment is due (up to \$1000/month) or suspension or termination of Vendor's Contract.

**OO. Appendix A, Section 9.C, Records and Audits** is hereby restated in its entirety as follows:

1) Acceptance of funds under the Contract by Vendor and/or Order Fulfiller acts as acceptance of the authority of the State Auditor's Office, or any successor agency or designee, to conduct an audit or investigation in connection with those funds. Vendor further agrees to cooperate fully with the State Auditor's Office or its successor or designee in the conduct of the audit or investigation, including providing all records requested. Vendor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Vendor or directly by Order Fulfillers and the requirement to cooperate is included in any subcontract or Order Fulfiller contract it awards pertaining to the Contract. Under the direction of the Legislative Audit Committee, a Vendor that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit.

2) Vendor and Order Fulfillers shall maintain adequate records to establish compliance with the Contract until the later of a period of four (4) years after termination of the Contract or until full, final and unappealable resolution of all Compliance Check or litigation issues that arise under the Contract. Such records shall include per transaction: the Order Fulfiller's company name if applicable, Customer name, invoice date, invoice number, description, part number, manufacturer, quantity, MSRP or list price, unit price, extended price, Customer Purchase Order number, contact name, Customer's complete billing address, the calculations

supporting each administrative fee owed DIR under the Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

3) Vendor and/or Order Fulfillers shall provide all paper and electronic records, books, documents, accounting procedures, practices, and any other items relevant to the performance of the Contract to the DIR Internal Audit department or DIR Contract Management staff, including the compliance checks designated by the DIR Internal Audit department, DIR Contract Management staff, the State Auditor's Office, and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting (provided that such designee is not a competitor of Vendor), Compliance Checking and/or copying such books and records. Vendor and/or Order Fulfillers shall provide copies and printouts requested by DIR without charge. DIR shall provide Vendor and/or Order Fulfillers ten (10) business days' notice prior to inspecting, Compliance Checking, and/or copying Vendor's and/or Order Fulfiller's records. Vendor's and/or Order Fulfillers records, whether paper or electronic, shall be made available during regular office hours. Vendor and/or Order Fulfiller personnel familiar with the Vendor's and/or Order Fulfiller's books and records shall be available to the DIR Internal Audit department, or DIR Contract Management staff and designees as needed. If Vendor is found to be responsible for inaccurate reports, DIR may invoice for the reasonable costs of the audit, which Vendor must pay within thirty (30) calendar days of receipt.

4) For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Order Fulfillers through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Vendor can demonstrate to DIR's reasonable satisfaction that Vendor's calculation of DIR's administrative fee is correct.

**PP. Appendix A, Section 10., Vendor Responsibilities, A. Indemnification, 1) Independent Contractor, 2) Acts or Omissions, 3) Infringements and 4) Property Damage,** is hereby restated in their entirety as follows:

**1) INDEPENDENT CONTRACTOR**

VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, IT IS FURNISHING PRODUCTS AND SERVICES IN THE CAPACITY OF AN INDEPENDENT CONTRACTOR AND THAT VENDOR IS NOT AN EMPLOYEE OF THE CUSTOMER OR THE STATE OF TEXAS.

**2) Acts or Omissions**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES, FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT

WITHOUT FIRST OBTAINING CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**3) Infringements**

**a)** VENDOR SHALL INDEMNIFY AND HOLD HARMLESS THE STATE OF TEXAS AND CUSTOMERS, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES, FROM ANY AND ALL THIRD PARTY CLAIMS, WHICH PERTAIN TO ORACLE- BRANDED PRODUCTS AND SERVICES, INVOLVING INFRINGEMENT OF UNITED STATES PATENTS, COPYRIGHTS, TRADE AND SERVICE MARKS, AND ANY OTHER INTELLECTUAL OR INTANGIBLE PROPERTY RIGHTS IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES, VENDOR-NEGOTIATED SETTLEMENT AMOUNTS, AND COURT-AWARDED DAMAGES. THE DEFENSE SHALL BE COORDINATED BY VENDOR, WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

**b)** If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense: (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing;

**c)** Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service in combination with product or services not provided under the Contract; (ii) use of the product or service for a purpose or in a manner for which the product or service was not designed, as provided for in the user documentation or the Service Specifications (as defined in Appendix M (Schedule C-Cloud Services-Public Sector), as applicable; (iii) any modification made to the product without Vendor's written approval; (iv) any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (v) any intellectual property right owned by or licensed to Customer; (vi) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement; or (vii) if the Customer uses a version of product or service which has been superseded via a patch, update, upgrade, fix or similar method or process and the Customer is not using such newer version of the product or service.

**d)** Vendor will transfer to Customer any third party intellectual property infringement indemnification for non-Oracle Branded Products, Software, and Services delivered under the Contract and transferable to Customer.

e) This section provides the parties' exclusive remedy for any infringement claims or damages.

f) The parties hereby clarify that with respect to Cloud Services, Vendor will not indemnify Customer to the extent that an infringement claim is based on Third Party Content (as defined in Appendix M (Schedule C – Cloud Services – Public Sector)) or any material from a third party portal or other external source that is accessible to Customer within or from the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, etc.). Vendor will not indemnify Customer for infringement caused by such Customer's actions against any third party if the Cloud Services as delivered to such Customer and used in accordance with the terms of this Contract would not otherwise infringe any third party intellectual property rights. With respect to Cloud Services, the infringement indemnification does not include Separately Licensed Third Party Technology (as defined in Appendix M (Schedule G – General Terms – Public Sector)). 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 Contract, Vendor will indemnify Customer for infringement claims for Separately Licensed Third Party Technology to the same extent as Vendor is required to provide infringement indemnification under the terms of this Contract.

#### **4) PROPERTY DAMAGE**

Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL THIRD PARTY CLAIMS PERTAINING TO BODILY INJURY AND/OR TANGIBLE PERSONAL PROPERTY DAMAGE DUE TO THE NEGLIGENCE, MISCONDUCT, OR INTENTIONALLY WRONGFUL ACT OR OMISSION ON THE PART OF THE VENDOR, ITS EMPLOYEES, AGENTS, REPRESENTATIVES, OR SUBCONTRACTORS WHILE PERFORMING OR PARTICIPATING IN SERVICES UNDER AN ORDER FORM AT THE CUSTOMER'S SITE, IF SUCH ACTIONS OR OMISSIONS WERE NOT PROXIMATELY CAUSED BY THE ACTION OR OMISSION OF THE CUSTOMER, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES, VENDOR-NEGOTIATED SETTLEMENT AMOUNTS, AND COURT-AWARDED DAMAGES. THE DEFENSE SHALL BE COORDINATED BY VENDOR, WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. AS USED IN THIS SECTION, THE TERM "TANGIBLE PERSONAL PROPERTY" SHALL NOT INCLUDE SOFTWARE, DOCUMENTATION, DATA OR DATA FILES. VENDOR SHALL HAVE NO LIABILITY FOR ANY CLAIM OF BODILY INJURY AND/OR TANGIBLE PERSONAL PROPERTY DAMAGE ARISING FROM USE OF SOFTWARE OR HARDWARE, UNLESS THE INJURY OR DAMAGE WAS CAUSED BY VENDOR'S HARDWARE OR SOFTWARE FAILING TO PERFORM ACCORDING TO ITS DOCUMENTATION OR SPECIFICATIONS AS DESCRIBED IN, AND WITH REMEDIES SPECIFIED IN, VENDOR'S ATTACHED WARRANTY PROVISIONS AND PRODUCT/SERVICE SPECIFICATIONS. THIS



SECTION STATES THE PARTIES' ENTIRE LIABILITY AND EXCLUSIVE REMEDY FOR BODILY INJURY AND PROPERTY DAMAGE.

**QQ. Appendix A, Section 10.C, Vendor Certifications,** is hereby restated in their entirety as follows:

Vendor certifies, as of the effective date of this Contract and to the best of its knowledge that:

- (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the Contract;
- (ii) it is not currently delinquent in the payment of any franchise tax owed the State and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges the Contract may be terminated and payment withheld if this certification is inaccurate;
- (iii) it has not violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage;
- (iv) it has not received payment from DIR or any of its employees for participating in the preparation of the Contract;
- (v) under Section 2155.004, Texas Government Code, it is not ineligible to receive the specified contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate;
- (vi) there are no suits or proceedings pending or threatened against or affecting it, which if determined adversely to them will have a material adverse effect on the ability to fulfill its obligations under the Contract;
- (vii) it is not suspended or debarred from doing business with the federal government as listed in the *System for Award Management (SAM)* maintained by the General Services Administration;
- (viii) it is not listed in the prohibited vendors list authorized by Executive Order #13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*", published by the United States Department of the Treasury, Office of Foreign Assets Control;
- (ix) to the extent applicable to this scope of this Contract, it is in compliance with Subchapter Y, Chapter 361, Health and Safety Code related to the Computer Equipment Recycling Program and its rules, 30 TAC Chapter 328;
- (x) it agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the State of Texas;
- (xi) it is in compliance Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency;
- (xii) it certifies for itself and its subcontractors that it has identified all current or former, within the last five years, employees of the State of Texas assigned to work on the Contract 20% or more of their time and has disclosed them to DIR and has disclosed or does not knowingly employ any relative of a current or former state employee within two degrees of consanguinity, and, if these facts change during the course of the Contract, it shall disclose for itself and on behalf of subcontractors the fact of the change, the nature of the change and, unless prohibited by law, the name and other

- pertinent information about the employment of current and former employees and their relatives within two degrees of consanguinity. If the preceding is prevented by law, Vendor shall provide the citation to the law to DIR;
- (xiii) it represents and warrants that the provision of products and services or other performance under the Contract will not constitute an actual or potential conflict of interest and certifies that it will not reasonably create the appearance of impropriety, and, if these facts change during the course of the Contract, it certifies that it shall disclose the actual or potential conflict of interest and any circumstances that create the appearance of impropriety;
  - (xiv) Under Section 2155.006 and Section 2261.053, Texas Government Code, it is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate;
  - (xv) it has complied with the Section 556.0055, Texas Government Code, restriction on lobbying expenditures;
  - (xvi) it represents and warrants that the Customer's payment and the Vendor's receipt of appropriated or other funds under this Contract are not prohibited by Sections 556.005 or Section 556.008, Texas Government Code;
  - (xvii) to the extent applicable to this scope of this contract, it is authorized to sell and provide warranty support for all products and services listed in Appendix C of this contract;
  - (xviii) it represents and warrants that in accordance with Section 2270.002 of the Texas Government Code, by signature hereon, Vendor does not boycott Israel and will not boycott Israel during the term of this contract.

The foregoing certifications, representations and warranties apply only as to Vendor and any of Vendor's acquired companies from and after the date of acquisition. In addition, Vendor acknowledges the applicability of §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of the Contract. During the term of the Contract, Vendor shall, for itself and on behalf of its subcontractors, promptly disclose to DIR all changes that occur to the foregoing certifications, representations and warranties. Vendor will use commercially reasonable efforts to cooperate in the development and execution of resulting documentation necessary to maintain an accurate record of the certifications, representations and warranties.

In addition, Vendor understands and agrees that if Vendor responds to certain Customer pricing requests or Statements of Work, then, in order to Contract with the Customer, Vendor may be required to comply with additional terms and conditions or certifications that an individual customer may require due to state and federal law (e.g., privacy and security requirements).

**RR. Appendix A, Section 10.D, Ability to Conduct Business in Texas**, is hereby restated in its entirety as follows:

Vendor is authorized and validly existing under the laws of its state of organization, and shall be authorized to do business in the State of Texas in accordance with Texas Business Organizations Code, Title 1, Chapter 9.

**SS. Appendix A, Section 10.E, Equal Opportunity Compliance**, is hereby restated in its entirety as follows:

Vendor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Vendor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Vendor under the Contract. If Vendor is found to be not in compliance with these requirements during the term of the Contract, Vendor agrees to take appropriate steps to correct these deficiencies. Upon reasonable request, Vendor will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as necessary information on the composition of its principals and staff, including minorities and women in management or other positions with discretionary or decision-making authority.

**TT. Appendix A, Section 10.F, Use of Subcontractors**, is hereby restated in its entirety as follows:

If Vendor uses any subcontractors in the performance of this Contract, Vendor must make a good faith effort in the submission of its Subcontracting Plan in accordance with the State's Policy on Utilization of Historically Underutilized Businesses (HUB). A revised Subcontracting Plan approved by DIR's HUB Office shall be required before Vendor can engage additional subcontractors in the performance of this Contract. Vendor shall remain solely responsible for the performance of its obligations under the Contract.

**UU. Appendix A, Section 10.G, Responsibility for Actions**, is hereby restated in its entirety as follows:

**1)** Vendor is solely responsible for its actions and those of its agents, employees, or subcontractors, and agrees that neither Vendor nor any of the foregoing has any authority to act or speak on behalf of DIR or the State.

**2)** Vendor covenants to fully cooperate with DIR to update and amend the Contract to accurately disclose employment of current or former State employees and their relatives and/or the status of conflicts of interest. If the preceding is prevented by law, Vendor must provide the fact of the change, the nature of the change, and the citation to the law preventing further disclosure to DIR.

**VV. Appendix A, Section 10.H, Confidentiality**, is hereby restated in its entirety as follows:

**1)** Vendor acknowledges that DIR and Customers that are governmental bodies as defined by Texas Government Code, Section 552.003 are subject to the Texas Public Information Act. Vendor also acknowledges that DIR and Customers that are governmental bodies will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act. DIR and Customers agree to provide Vendor reasonable notice prior to

disclosing any Vendor Confidential Information in response to a valid request made pursuant to the Texas Public Information Act.

**2)** By virtue of the Contract and orders submitted under the Contract, DIR, the Customer and Vendor may have access to information that is confidential to one another (“Confidential Information”). Each of the parties agrees to disclose only Confidential Information that is required for the performance of obligations under the Contract or any Order Form (and corresponding Purchase Order). Confidential Information shall be limited to all information clearly identified as confidential at the time of disclosure. A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; (d) is independently developed by the other party or (e) is required to be disclosed pursuant to the Texas Public Information Act. Except as set forth in the immediately following sentence, the parties agree to hold each other’s Confidential Information in confidence for a period of three years from the date of disclosure. Regarding any Cloud Services purchased by a Customer, with respect to such Customer Your Content (as defined in Appendix M) and Your Applications (as defined in Appendix M) residing in the applicable Services Environment (as defined in Appendix M) will be considered Confidential Information, and Vendor will (i) hold such Confidential Information in confidence for as long as it resides in the Services Environment and (ii) protect the confidentiality of such Confidential Information in accordance with the Vendor security practices defined in the Service Specifications (as defined in Appendix M) applicable to such Customer’s order. Also, each of the parties agrees to disclose Confidential Information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent any party from disclosing the terms or pricing under the Contract or orders submitted under the Contract in any legal proceeding arising from or in connection with the Contract or disclosing the Confidential Information to a federal or state governmental entity as required by law.

**WW. Appendix A, Section 10.I, Security of Premises, Equipment, Data and Personnel**, is hereby restated in its entirety as follows:

When performing on-site installation services and/or packaged services for a Customer under an Order Form, Vendor and/or Order Filler may, from time to time during the performance of the Contract, have access to the personnel, premises, equipment, and other property, including data, files and /or materials that Vendor did not create as a deliverable under an Order Form (collectively referred to as “Data”) belonging to the Customer. When performing on-site services, Vendor and/or Reseller shall follow Customer’s instructions to preserve the safety, security, and the integrity of the personnel, premises, equipment, Data and other property of the Customer, in accordance with the reasonable instructions of the Customer which will be provided to Vendor in advance in writing to the extent practicable. Vendor and/or Reseller shall be responsible for damage to Customer's equipment, workplace, and its contents (but excluding software, documentation, Data or data files) when such damage is caused by the negligent or intentionally wrongful actions or omissions of its employees or subcontractors if such actions or omissions were not proximately caused by the action or omission of the Customer or any third party. If a Vendor and/or Reseller fails to comply with

Customer's security requirements (provided that the Customer provides the security requirements to Vendor in advance and as provided above in this Section, then Customer may immediately terminate its Purchase Order and related Order Form.

**XX. Appendix A, Section 10.J, Background and/or Criminal History Investigation** is hereby restated in its entirety as follows:

Prior to commencement of any services, background and/or criminal history investigation of the Vendor and/or Order Fulfiller's employees and subcontractors who will be providing services to the Customer under the Contract may be performed by certain Customers having legislative authority to require such investigations. Should any employee or subcontractor of the Vendor and/or Order Fulfiller who will be providing services to the Customer under the Contract not be acceptable to the Customer as a result of the background and/or criminal history check, then Customer may immediately terminate its Purchase Order and related Order Form or request replacement of the employee or subcontractor in question. In the event that Customer conducts a background check on Vendor and/or Order Fulfiller personnel under the Contract, the terms of such background check will be outlined in the applicable Order Form.

**YY. Appendix A, Section 10.K, Limitation of Liability,** is hereby restated in its entirety as follows:

1) For any claim or cause of action arising under or related to the Contract or any Order Form (and corresponding Purchase Order: (a) to the extent not prohibited by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for any indirect, incidental, punitive, special, or consequential damages, even if it is advised of the possibility of such damages, or any loss of profits, revenue, data or data use; and (b) except with respect to the exclusive infringement indemnification provided for in Appendix A, Section 10.A.3, Vendor's maximum liability for damages of any kind arising out of or related to the Contract or any Order Form (and corresponding Purchase Order), whether in contract or tort, or otherwise, to the Customer shall be limited to the total amount paid to the Order Fulfiller by such Customer under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action, and if such damages result from Customer's use of programs, hardware or services, such liability shall be limited to the fees paid by such Customer to Order Fulfiller for the deficient program, hardware or services giving rise to the liability.

2) Notwithstanding clause (1)(a) in the immediately preceding paragraph in this section 10.K, for any claim or cause of action arising out of the misappropriation of a Customer's nonpublic personal information residing in such Customer's Services Environment (as defined in Appendix M) that results solely from Vendor's breach of its security practices incorporated into such Customer's applicable order of Cloud Services (as defined in Appendix M), Vendor's aggregate liability for damages of any kind under the Contract shall be limited to four (4) times the total amounts actually paid to Vendor for the Cloud Services under the order that is subject of the claim in the 12-month period immediately preceding the event giving rise to such claim; Vendor's aggregate liability under the Contract shall not exceed \$3,000,000.

3) For any claim or cause of action arising exclusively from Platform-as-a-Service and/or Infrastructure-as-a-Service Cloud Services under this Contract: (a) to the extent not prohibited by the Constitution and the laws of the State of Texas, none of the parties shall be liable to the other for indirect, incidental, punitive, special, or consequential damages, even if it is advised of the possibility of such damages, or any loss of profits, revenue, data or data use; and (b) Vendor's aggregate liability for damages of any kind under the Contract other than for claims for third party patent, trademark or copyright infringement ("IP Claims") shall be limited to the lesser of: (y) thirty-six times the average monthly amount paid to Vendor under the Contract during the twelve months immediately preceding the accrual of the claim or cause of action; or (z) \$20,000,000. Vendor's aggregate liability under the Contract for IP Claims shall not exceed \$15,000,000. CUSTOMERS SHOULD EVALUATE THEIR RISK FOR EACH PURCHASE: IF NEEDED, CUSTOMERS MAY NEGOTIATE HIGHER LIMITATIONS OF LIABILITY.

**ZZ. Appendix A, Section 10.M, Prohibited Conduct,** is hereby restated in its entirety as follows:

Vendor represents and warrants that, to the best of its knowledge as of the date of this certification, Vendor has not communicated its response to the Request for Offer directly or indirectly to any competitor or any other person engaged in such line of business during the procurement for the Contract.

**AAA. Appendix A, Section 10.N, Required Insurance Coverage,** is hereby restated in its entirety as follows:

As a condition of this Contract with DIR, Vendor shall provide the listed insurance coverage within five (5) business days of execution of the Contract if the Vendor is awarded services which require that Vendor's employees perform work at any Customer premises and/or use employer vehicles to conduct work on behalf of Customers. In addition, when engaged by a Customer to provide services on Customer premises, the Vendor shall, at its own expense, secure and maintain the insurance coverage specified herein, and shall provide proof of such insurance coverage to the related Customer within five (5) business days following the execution of the Purchase Order. Vendor may not begin performance under the Contract and/or a Purchase Order until such proof of insurance coverage is provided to, and approved by, DIR and the Customer. All required insurance must be issued by companies that have an A rating and a Financial Size Category Class of VII from A.M. Best and are licensed in the State of Texas, and authorized to provide the corresponding coverage. The Customer and DIR will be named as Additional Insureds on all required coverage. Required coverage must remain in effect through the term of the Contract and each Purchase Order issued to Vendor there under. The minimum acceptable insurance provisions are as follows:

**1) Commercial General Liability**

Commercial General Liability must include \$1,000,000 per occurrence for Bodily Injury and Property Damage, with a separate aggregate limit of \$2,000,000; Medical Expense per person of \$5,000; Personal Injury and Advertising Liability of \$1,000,000; Products/Completed Operations Aggregate Limit of \$2,000,000; and Damage to Premises Rented: \$50,000. Agencies may require additional Umbrella/Excess Liability insurance. The policy shall contain the following provisions:

- a) Blanket contractual liability coverage for liability assumed under the Contract;
- b) Independent Contractor coverage;
- c) State of Texas, DIR and Customer listed as an additional insured;
- d) Waiver of Subrogation.

**2) Workers' Compensation Insurance**

Workers' Compensation Insurance and Employers' Liability coverage must include limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat) and minimum policy limits for Employers' Liability of \$1,000,000 bodily injury per accident, \$1,000,000 bodily injury disease per employee and \$1,000,000 per disease policy limit.

**3) Business Automobile Liability Insurance**

Business Automobile Liability Insurance must cover all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. The policy shall contain the following endorsements in favor of DIR and/or Customer:

- a) Waiver of Subrogation; and
- b) Additional Insured.

**BBB. Appendix A, Section 10.P, Immigration,** is hereby restated in its entirety as follows:

Vendor shall comply with all requirements related to federal immigration laws and regulations, including but not limited to, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") and the Immigration Act of 1990 (8 U.S.C.1101, et seq.) regarding employment verification and retention of verification forms for any U.S. based employee(s) who will perform any labor or services pursuant to an Order Form under this Contract.

The Vendor shall require its subcontractors to comply with the requirements of this Section and the Vendor is responsible for the compliance of its subcontractors. Nothing herein is intended to exclude compliance by Vendor and its subcontractors with all other relevant federal immigration statutes and regulations promulgated pursuant thereto.

**CCC. Appendix A, Section 10.R, Product and/or Service Substitutions,** is hereby restated in its entirety as follows:

Vendor may make product substitutions and modifications that do not cause a material adverse effect on overall product performance. Any changes to Vendor's services will not result in a material reduction in the level of services provided for supported programs or hardware during the period for which fees for such services have been paid.

**DDD. Appendix A, Section 10.S, Secure Erasure of Hard Disk Products and/or Services**, is deleted in its entirety.

Vendor agrees that all products and/or services equipped with hard disk drives (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the hard drive prior to final disposition of such products and/or services, either at the end of the Customer's Managed Services product's useful life or the end of the related Customer Managed Services Agreement for such products and/ services, in accordance with NIST 800-88, and in accordance with 1 TAC 202 to the extent 1 TAC 202 contains the same guidelines or requirements contained in NIST 800-88.

**EEE. Appendix A, Section 10.T, Deceptive Trade Practices; Unfair Business Practices**, is hereby restated in its entirety as follows:

**1)** Vendor represents and warrants that as of the effective date of this Contract and to the best of its knowledge, neither Vendor nor any of its Subcontractors has been (i) found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations as defined under Chapter 17, Texas Business & Commerce Code, or (ii) has outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

**2)** Vendor certifies that as of the effective date of this Contract and to the best of its knowledge it has no officers who have served as officers of other entities who (i) have been found liable in any administrative hearing, litigation or other proceeding of Deceptive Trade Practices violations or (ii) have outstanding allegations of any Deceptive Trade Practice pending in any administrative hearing, litigation or other proceeding.

**FFF. Appendix A, Section 10.U, Drug Free Workplace Policy** is hereby restated in its entirety as follows:

Vendor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 41 U.S.C. §8101-8106 and maintain a drug-free work environment.

**GGG. Appendix A, Section 10.V, Accessibility of Public Information**, is hereby restated in its entirety as follows:

**1)** Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, upon reasonable written request to Vendor, Vendor shall make any public information (as defined in Texas Government Code Section 552.002) in Vendor's possession which was created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in paper or electronic format that is accessible by the public to the State. For the avoidance of doubt, providing any such information under this Section shall not be deemed a violation of any confidentiality provision by Vendor under this Contract or any Order Form. Public information requests must be directed to the appropriate government employee in accordance with the statute.



2) Each State government entity may supplement the provision set forth in Subsection 10.V.1, above, with any applicable additional terms agreed upon by the parties and set forth in the relevant Order Form regarding the specific format by which the Vendor is required to make the information accessible by the public.

**HHH. Appendix A, Section 11., Contract Enforcement, A. Enforcement of Contract and Dispute Resolution** is hereby restated in its entirety as follows:

1) Vendor and DIR agree that a party's failure to require strict performance of any provision of the Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision.

2) To the extent required by law, or subsequently agreed to by Customer and Vendor, disputes arising between a Customer and the Vendor and not resolved in the normal course of business and not involving Vendor's intellectual property shall be resolved in accordance with the following dispute resolution process. DIR shall not be a party to any such dispute unless DIR, Customer, and Vendor agree in writing.

3) State agencies are required by rule (34 TAC §20.115) to report vendor performance through the Vendor Performance Tracking System (VPTS) on every purchase over \$25,000.

4) In the event of any dispute or disagreement between the parties arising out of or relating to this Contract or an Order Form (the "dispute"), the parties will endeavor to resolve the dispute in accordance with this section. Either party may invoke this section by providing the other party written notice of its decision to do so, including a description of the issues subject to the dispute. Each party will appoint a Vice President (or the equivalent) to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief, may begin until such Vice President (or the equivalent) concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. The parties shall refrain from exercising any termination right and shall continue to perform their respective obligations under this Contract and the applicable Order Form while the parties endeavor to resolve the dispute under this section, provided that, any party alleged to be in breach promptly makes good faith efforts to cure the breach and pursues the cure in good faith.

**III. Appendix A, Section 11.B, Termination**, is restated in its entirety as follows:

**1) Termination for Non-Appropriation**

**a) Termination for Non-Appropriation by Customer**

Customer may terminate Order Forms if funds sufficient to pay its obligations under the Contract are not appropriated: i) by the governing body on behalf of local governments; ii) by the Texas legislature on behalf of state agencies; or iii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided ten (10) calendar days written notice of intent to terminate. Notwithstanding the foregoing, if a Customer issues a Purchase Order and has accepted

delivery of the product or services, they are obligated to pay for the product or services. In the event of such termination, the Customer will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

**b) Termination for Non-Appropriation by DIR**

DIR, in its capacity as the administrator of the Contract, may terminate Contract if funds sufficient to pay its obligations, in its capacity as the administrator of the Contract, under the Contract are not appropriated: by the i) Texas legislature or ii) by budget execution authority provisioned to the Governor or the Legislative Budget Board as provided in Chapter 317, Texas Government Code. In the event of non-appropriation, Vendor and/or Order Fulfiller will be provided thirty (30) calendar days written notice of intent to terminate. In the event of such termination, DIR will not be considered to be in default or breach under this Contract, nor shall it be liable for any further payments ordinarily due under this Contract, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

**2) Absolute Right**

DIR shall have the absolute right to terminate the Contract without recourse in the event that: i) Vendor becomes listed on the prohibited vendors list authorized by Executive Order #13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control; ii) Vendor becomes suspended or debarred from doing business with the federal government as listed in the System for Award Management (SAM) maintained by the General Services Administration; or (iii) Vendor is found by DIR to be ineligible to hold this Contract under Subsection (b) of Section 2155.006, Texas Government Code. Vendor shall be provided written notice in accordance with Section 12.A, Notices, of intent to terminate.

**3) Termination for Convenience**

DIR or Vendor may terminate the Contract, in whole or in part, by giving the other party thirty (30) calendar days written notice. A Customer may terminate an Order Form and corresponding Purchase Order for technical support services by giving the other party thirty (30) calendar days written notice. If a Customer terminates an Order Form and corresponding Purchase Order for technical support services pursuant to this provision, the Customer shall pay for the amounts that have accrued for the products and services received prior to the termination of such Order Form and corresponding Purchase Order.

**4) Termination for Cause**

**a) Contract**

Either DIR or Vendor may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of the Contract, upon the following preconditions: first, the parties must comply with the requirements of Section 11.A.2 above in an attempt to resolve a dispute; second, after complying with Section 11.A.2 above, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said

default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Contract. Customers purchasing products or services under the Contract have no power to terminate the Contract for default.

**b) Order Form/Purchase Order**

Customer or Order Fulfiller may terminate an Order Form and corresponding Purchase Order upon the occurrence of a material breach of any term or condition: (i) of the Contract, or (ii) included in the Order Form in accordance with Section 4.B.2 above, upon the following preconditions: first, the parties must comply with the requirements of Chapter 2260, Texas Government Code, in an attempt to resolve a dispute; second, after complying with Chapter 2260, Texas Government Code, and the dispute remains unresolved, then the non-defaulting party shall give the defaulting party thirty (30) calendar days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate the Order Form and the corresponding Purchase Order. If a Customer terminates an Order Form and corresponding Purchase Order pursuant to this provision, the Customer shall pay for the amounts that have accrued for the products and services received prior to the termination of such Order Form and corresponding Purchase Order.

**5) Customer Rights Under Termination**

Except as provided in Section 11.B.6 below, in the event the Contract expires or is terminated for any reason in accordance with Section 11.B, a Customer shall retain its rights under the Contract and the Order Form and corresponding Purchase Order accepted by Order Fulfiller prior to the termination or expiration of the Contract. The Order Form and corresponding Purchase Order shall survive the expiration or termination of the Contract for its then effective term.

**6) Vendor or Reseller Rights Under Termination**

In the event a license is terminated by the Vendor under Section 7.C or Section 10.A above or an Order Form and a corresponding Purchase Order expires or is terminated by Vendor or Order Fulfiller pursuant to Section 11.B.4.b above, a Customer 1) shall pay within thirty (30) calendar days of such termination all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for (i) hardware and programs ordered and, if applicable under this Contract accepted, and/or (ii) services received under the Order Form and corresponding Purchase Order and 2) may not use the programs and/or services under Section 7.C or Section 10.A above or ordered under the terminated Order Form and corresponding Purchase Order.

**JJJ. Appendix A, Section 11.C, Force Majeure, is restated in its entirety as follows:**

DIR, Customer, or Order Fulfiller may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, electrical, Internet or telecommunication outage not caused by the obligated party, government restrictions (including the denial or cancellation of any export or other license), or court order or other event outside the reasonable control of the obligated

party, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take all reasonable steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties when commercially reasonable. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. If such Force Majeure event continues for more than 90 calendar days, either party may cancel unperformed services upon written notice. This section does not excuse any party's obligation to take reasonable steps to follow its normal disaster recovery procedures or the Customer's obligations to pay for programs and hardware delivered or services provided.

**KKK. Appendix A, Section 12, Notification**, is restated in its entirety as follows:

**A. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to the Contract shall be in writing and shall be validly given on: (i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. All notices under the Contract shall be sent to a party at the respective address indicated in Section 6 of the Contract or to such other address as such party shall have notified the other party in writing. Notwithstanding the foregoing, the parties hereby clarify that with respect to the provision of Cloud Services, certain notices may be provided in accordance with Section 17 of Appendix M (Schedule C—Cloud Services-Public Sector).

**B. Handling of Written Complaints**

In addition to other remedies contained in the Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Public Information Officer  
300 W. 15th Street, Suite 1300  
Austin, Texas 78701  
(512) 475-4759, facsimile

**(Remainder of page intentionally left blank)**

**DIR Contract No. DIR-TSO-4158**

**Vendor Contract No. US-GMA-1889764**

This Contract is executed to be effective as of the date of last signature.

**ORACLE AMERICA, INC.**

**Authorized By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**The State of Texas, acting by and through the Department of Information Resources**

**Authorized By:** \_\_\_\_\_

**Name:** Hershel Becker

**Title:** Chief Procurement Officer

**Date:** \_\_\_\_\_

**Office of General Counsel:** \_\_\_\_\_

**ORDERING DOCUMENT**

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

<b>Name</b>	City of Denton Technology Services	<b>Contact</b>	Cherie Reed
<b>Address</b>	215 E McKinney St  Denton TX 76201	<b>Phone Number</b>	+1 (940) 349-8200
		<b>Email Address</b>	<a href="mailto:cherie.reed@cityofdenton.com">cherie.reed@cityofdenton.com</a>

**New Subscription**

<b>Service Period: 12 months</b>					
<b>Cloud Services</b>	<b>Data Center Region</b>	<b>Quantity</b>	<b>Term</b>	<b>Unit Net Price</b>	<b>Net Fee</b>
B85800 - Oracle Human Capital Management Base Cloud Service - Hosted Employee	NORTH AMERICA	1600	12 mo	3.12	59,904.00
B84256 - Oracle Talent Acquisition Cloud Service - Hosted Employee	NORTH AMERICA	1600	12 mo	1.20	23,040.00
B88342 - Oracle Work Life Cloud Service - Hosted Named User	NORTH AMERICA	1600	12 mo	0.72	13,824.00
B67291 - Oracle Fusion Goal Management Cloud Service - Hosted Named User	NORTH AMERICA	1600	12 mo	0.48	9,216.00
B67293 - Oracle Fusion Performance Management Cloud Service - Hosted Named User	NORTH AMERICA	1600	12 mo	0.48	9,216.00
B67295 - Oracle Fusion Workforce Compensation Cloud Service - Hosted Named User	NORTH AMERICA	1600	12 mo	0.72	13,824.00
B85242 - Oracle Learning Cloud Service - Hosted Named User	NORTH AMERICA	1600	12 mo	0.48	9,216.00
B87181 - Oracle Integration Cloud Service for Oracle SaaS - Hosted Environment	NORTH AMERICA	1	12 mo	215.00	2,580.00
<b>Subtotal</b>					<b>140,820.00</b>

<b>Fee Description</b>	<b>Net Fee</b>
Cloud Services Fees	140,820.00

## A. AGREEMENT

### 1. Agreement:

This order incorporates by reference the terms of the Contract for Products and Related Services between the State of Texas acting through the Department of Information Resources ("DIR") and Oracle America, Inc. ("Oracle"), effective July 30, 2018 (DIR Contract No. DIR-TSO-4158; Oracle Contract No. US-GMA-1889764) and all amendments and addenda thereto (the "Agreement"). The defined terms in the Agreement shall have the same meaning in this order unless otherwise specified herein.

## B. DESCRIPTION AND FEES FOR ORDERED SERVICES

All fees on this ordering document are in US Dollars.

### 1. Terms of Use:

All products and services listed on this Ordering Document are provided by Oracle under, and subject to, the terms of this Ordering Document, including the Agreement and all Oracle documents referenced in this Ordering Document. You indicate Your agreement to the terms of this Ordering Document, including the Agreement, by signing this Ordering Document, and You represent that You have the authority to bind the Customer to whom this Ordering Document is addressed above to the terms of this Ordering Document and the Agreement. As applicable, Oracle processes a customer's order after receipt of a purchase order. Any terms and conditions on Your purchase order are void and have no legal effect. For Cloud Services, You may not reduce the quantity of services purchased hereunder (e.g., user or record counts, storage, etc.), in whole or in part, during the Services Period set forth above. The Services Period for the Cloud Services commences on the date stated in the Ordering Document, or, if none is provided in the Ordering Document, the day that Oracle sends to Your administrator the e-mail welcoming You to the Oracle Cloud that instructs You on how to create Your Cloud login and configure the Cloud Services (the "Cloud Services Start Date"). You must maintain a current subscription to applicable Oracle Cloud Services for the duration of any Technical Cloud Services ordered under this Ordering Document.

### 2. Fees:

The Cloud Services Payment Frequency applies to all Cloud Services fees and taxes (if applicable), and the Technical Cloud Services Payment Frequency applies to all fees and taxes (if applicable) for Technical Cloud Services. All fees payable to Oracle are due in accordance with Appendix A, Section 8.J of DIR Contract No. DIR-TSO-4158. Once placed, Your order is non-cancelable and the sums paid nonrefundable, except as otherwise provided herein or in the Agreement. If applicable to You, You will 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. Also, You will reimburse Oracle for reasonable pre-approved expenses related to providing any Technical Cloud Services in accordance with Appendix A, Section 8.F of the Agreement. Unless, specifically stated otherwise, fees for Services listed in an order are exclusive of taxes (if applicable) and expenses.

**Cloud Services Payment Frequency:** Your payment frequency is quarterly in arrears.

**Technical Cloud Services Payment Frequency:**

Unless otherwise specified in services descriptions applicable to the Technical Cloud Services You have ordered, or in an exhibit specifying the Technical Cloud Services You have ordered, the fees for Technical Cloud Services and any applicable taxes shall be invoiced monthly in arrears. You are responsible for payment of pre-approved expenses, if any, in accordance with Appendix A, Section 8.F of DIR Contract No. DIR-TSO-4158. Expenses will be invoiced monthly as they are incurred and are due in accordance with Appendix A, Section 8.J of DIR Contract No. DIR-TSO-4158.

### 3. Renewal of Cloud Services:

Notwithstanding any statement to the contrary in the Services Specifications, the parties expressly agree that the Cloud Services acquired under this Ordering Document will not Auto-Renew. At the end of the Services Period, the Cloud Services acquired under this Ordering Document may be renewed for an additional Services Period, subject to Your placement of a renewal order and payment of fees for such Cloud Services. For the first two years of the first renewal Services Period of Cloud Services, the annual fee for each Cloud Service ordered will not increase by more than 4% of the Unit Net Price for such service in the immediately preceding year. The Cloud Services may not be renewed as described in the preceding sentence if: (i) Oracle is no longer making such Cloud Services generally available to commercial customers, or (ii) You are seeking to cancel or reduce the number of user licenses of the Cloud Services set forth in this Ordering Document.

### 4. Price Hold for Cloud Services:

During the Services Period, You may order additional quantities of the Cloud Services acquired under this Ordering Document at the Unit Net Price specified above. This price hold does not apply to Eloqua Marketing Platform Cloud Service, to any renewals or extensions of the Cloud Services ordered under this Ordering Document, to Cloud Services ordered pursuant to a separate Oracle discount or promotion, or to any Cloud Services other than those listed in the initial purchase under this Ordering Document.

## 5. Data Center Region

Oracle agrees that during the Service Period specified in this ordering document, the Cloud Services environment holding Customer data will reside in data centers located in the continental United States. Oracle may access Customer Data on a global basis to the extent necessary to perform the Cloud Services, including maintenance and Cloud Services technical support.

**6. Offer Validity:** This order is valid through October 31, 2018 and shall become binding upon execution by You and acceptance by Oracle.

## C. SERVICE SPECIFICATIONS

### 1. Service Specifications:

The Service Specifications that govern the Services ordered consist of the documents listed below, which are incorporated into this Ordering Document. The Service Specifications are subject to change at Oracle's discretion; however, Oracle changes to the Service Specifications will not result in a material reduction in the level of performance, security, functionality or availability of the applicable Services provided to You for the duration of the Services Period. The terms of the Service Specifications, including any subject matter addressed in the Service Specifications, will replace any inconsistent term, similar subject matter or scope of service delivery in the Agreement; however, unless expressly stated otherwise in this Ordering Document, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in this Ordering Document, Agreement or Service Specifications but in no event shall any documents take precedence over DIR Contract No. DIR-TSO-4158. For the purposes of this Ordering Document, references to the term "Customer" in any document within the Service Specifications shall mean "You" as defined in this Ordering Document.

#### . Service Descriptions and Metrics

Oracle service descriptions and metrics govern Cloud Services and Technical Cloud Services. You may access the version of these descriptions and metrics that apply to the Cloud Services and Technical Cloud Services that You have ordered at [www.oracle.com/contracts](http://www.oracle.com/contracts).

#### . Cloud Hosting and Delivery Services Policies

Cloud Hosting and Delivery Services Policies describe and govern Cloud Services. You may access the version of these policies that apply to the Cloud Services that You have ordered at [www.oracle.com/contracts](http://www.oracle.com/contracts).

#### . Program Documentation

Program Documentation refers to the program user manuals for the Oracle Programs for Cloud Services, as well as any help windows and read me files for such Oracle Programs that are accessible from within the service. The Program Documentation describes technical and functional aspects of the Oracle Programs. You may access the documentation online at [www.oracle.com/contracts](http://www.oracle.com/contracts).

## A. OTHER

### 1. Terms:

The following terms, as used in this Ordering Document or the Agreement and whether or not capitalized, shall have the same meaning as the applicable defined term: "Agreement" and "Contract"; "Customer", "Client" and "You"; "Program Documentation" and "Documentation"; "Ordering Document" and "Order Form"; "Services Term" and "Services Period"; "Your Data" and "Your Content".

### 2. Data Processing Agreement:

Oracle's *Data Processing Agreement for Oracle Cloud Services* (the "Data Processing Agreement"), which is available at <http://www.oracle.com/dataprocessingagreement>, is incorporated as Appendix N of DIR Contract No. DIR-TSO-4158 and describes the parties' respective roles for the processing and control of Personal Data (as that term is defined in the Data Processing Agreement) that Customer provides to Oracle as part of the Cloud Services under this order. Oracle will act as a data processor and will comply with all applicable data protection laws to the extent such laws by their terms impose obligations directly on Oracle as a data processor in connection with the services specified in this ordering document. Oracle will act on Customer's instruction concerning the treatment of Customer's Personal Data residing in the Cloud Services Environment, as specified in the Agreement, the Data Processing Agreement and this order. Customer remains solely responsible for Customer's regulatory compliance in connection with Customer's use of the Cloud Services and will comply



with all applicable laws in connection with the performance of obligations or exercise of rights under this ordering document and the Agreement. Customer agrees to provide any notices and obtain any consents related to Customer's use of the Cloud Services and Oracle's provision of the Cloud Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

**3. Assignment of this Ordering Document**

Notwithstanding anything to the contrary in the agreement or this Ordering Document, You may not assign this Ordering Document or give or transfer the Services, or an interest in them, to another individual or entity. If You desire that Services be acquired by another entity, such other entity may order services under a separate contract. You may not grant a security interest in any of the Services. Notwithstanding the foregoing, upon advance written notice to Oracle, You may assign Your rights to the Services under this Ordering Document to another governmental agency as designated by the Texas Legislature (i) that is a successor in interest to You that performs Your statutory obligations, or (ii) as necessary to satisfy a regulatory requirement imposed upon You by a governing body with the appropriate authority; provided that (w) such assignee entity agrees in writing to the terms and conditions of the agreement and the Ordering Document, (x) You provide Oracle will all consents necessary for the assignee to access Your Content, Your Applications, and any other of Your materials in Oracle's possession, (y) the assignment does not result in any change in Oracle's rights and obligations under this Ordering Document (including with respect to the Services), or expand, modify or otherwise alter any use or component of the Services or Services Environments provided under this Ordering Document, and (z) following the assignment, You shall immediately discontinue use of the Services acquired under this Ordering Document.

**4. Option Years**

For clarification purposes, you shall have an option to renew your subscription for the same services listed in the table above at the same usage limits for two (2) additional 12-month renewal periods, each an "Option Year" for the fees specified in the table above. Professional Services are not included in the Option Years.

You must provide Oracle a minimum of 30 days notice prior to the expiration of a service term of your intent to exercise an option below and execute an order for the new option period prior to the expiration date of the existing service period. The Cloud Services listed above may not be renewed at the option year pricing listed above if: (i) Oracle is no longer making such Cloud Services generally available to customers, or (ii) You are seeking to cancel or reduce the number of user licenses of the Cloud Services set forth in this Ordering Document.

City of Denton Technology Services		Oracle America, Inc.	
Signature	<small>DocuSigned by:</small> <i>Todd Hileman</i>	Signature	<small>DocuSigned by:</small> <i>Tony Trevino</i>
Name	<small>B776C711BA0D454...</small> Todd Hileman	Name	<small>D09B5B34093647A...</small> Tony Trevino
Title	City Manager	Title	Manager, Deal Manager
Signature Date	10/12/2018	Signature Date	21-Sep-2018   8:07 AM PDT

**BILL TO / SHIP TO INFORMATION**

Bill To		Ship To	
<b>Customer Name</b>	City of Denton Technology Services	<b>Customer Name</b>	City of Denton Technology Services
<b>Customer Address</b>	215 E McKinney St Denton TX 76201	<b>Customer Address</b>	215 E McKinney St Denton TX 76201
<b>Contact Name</b>	Cherie Reed	<b>Contact Name</b>	Cherie Reed
<b>Contact Phone</b>	+1 (940) 349-8200	<b>Contact Phone</b>	+1 (940) 349-8200
<b>Contact Email</b>	cherie.reed@cityofdenton.com	<b>Contact Email</b>	cherie.reed@cityofdenton.com

**House Bill 89 - Government Code 2270  
VERIFICATION**

I,           Tony Trevino          , the undersigned  
representative of

Oracle America, Inc.

(hereafter referred to as Oracle), being **an adult over the age of eighteen (18) years of age, verify as an authorized representative of Oracle, on behalf of Oracle, that the company named-above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:**

- 1. Does not boycott Israel currently; and**
- 2. Will not boycott Israel during the term of the contract to which this Verification is attached as Exhibit B.**

*Pursuant to Section 2270.001, Texas Government Code:*

- 3. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.*

Tony Trevino

Name of Company Representative (Print)

DocuSigned by:  
  
D09B5B34093647A...  
Signature of Company Representative

21-Sep-2018 | 8: 07 AM PDT

Date \_\_\_\_\_

\_\_\_\_\_



Exhibit D

**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ**  
**For vendor or other person doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

**2 Check this box if you are filing an update to a previously filed questionnaire.**

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information in this section is being disclosed.**

This

A.  **Name of Officer**

section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4 I have no Conflict of Interest to disclose.**

**5**

DocuSigned by:  
  
 Signature of vendor doing business with the governmental entity

21-Sep-2018 | 8:07 AM PDT  
 Date

## Certificate Of Completion

Envelope Id: A5FBB2E8676C4081BB7F03E7678D3ED2	Status: Completed
Subject: Please DocuSign: City Council File 6876 Human Capital Management Software - Oracle	
Source Envelope:	
Document Pages: 53	Signatures: 5
Certificate Pages: 6	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Suzzen Stroman
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	suzzen.stroman@cityofdenton.com
	IP Address: 129.120.6.150


## Record Tracking

Status: Original	Holder: Suzzen Stroman	Location: DocuSign
9/25/2018 4:25:31 PM	suzzen.stroman@cityofdenton.com	

## Signer Events

Signer Events	Signature	Timestamp
Suzzen Stroman suzzen.stroman@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>Completed</b>  Using IP Address: 129.120.6.150	Sent: 9/25/2018 4:43:27 PM Viewed: 9/25/2018 4:43:40 PM Signed: 9/25/2018 4:43:44 PM

John Litwin john.litwin@oracle.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>Completed</b>  Using IP Address: 107.202.15.193	Sent: 9/25/2018 4:43:46 PM Viewed: 9/26/2018 11:41:00 AM Signed: 9/26/2018 11:42:20 AM
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Melissa Kraft Melissa.Kraft@cityofdenton.com Chief Technology Officer City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	 <p>DocuSigned by: Melissa Kraft 8407288232BE40E...</p>	Sent: 9/25/2018 4:43:46 PM Viewed: 9/25/2018 5:06:35 PM Signed: 9/25/2018 5:06:58 PM
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Mack Reinwand mack.reinwand@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	 <p>DocuSigned by: Mack Reinwand 7F9D328BF0204E5...</p>	Sent: 9/26/2018 11:42:25 AM Viewed: 9/26/2018 12:43:39 PM Signed: 9/26/2018 12:46:36 PM
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Tabitha Millsop tabitha.millsop@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b>	<b>Completed</b>  Using IP Address: 129.120.6.150	Sent: 9/26/2018 12:46:39 PM Viewed: 10/12/2018 8:32:45 AM Signed: 10/12/2018 8:33:06 AM
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Signer Events	Signature	Timestamp
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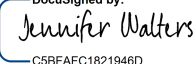
Todd Hileman  
 Todd.Hileman@cityofdenton.com  
 City Manager  
 City of Denton  
 Security Level: Email, Account Authentication (None)

DocuSigned by:  
  
 B776C711BA0D454...  
 Signature Adoption: Pre-selected Style  
 Using IP Address: 174.206.0.205  
 Signed using mobile

Sent: 10/12/2018 8:33:09 AM  
 Viewed: 10/12/2018 9:16:22 AM  
 Signed: 10/12/2018 9:16:37 AM

**Electronic Record and Signature Disclosure:**  
 Accepted: 7/25/2017 11:02:14 AM  
 ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21

Jennifer Walters  
 jennifer.walters@cityofdenton.com  
 City Secretary  
 City of Denton  
 Security Level: Email, Account Authentication (None)

DocuSigned by:  
  
 C5BFAC1821946D...  
 Signature Adoption: Pre-selected Style  
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In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Sherri Thurman  
 sherri.thurman@cityofdenton.com  
 City of Denton  
 Security Level: Email, Account Authentication (None)

**COPIED**

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**Electronic Record and Signature Disclosure:**  
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Jane Richardson  
 jane.richardson@cityofdenton.com  
 Assistant City Secretary  
 City of Denton  
 Security Level: Email, Account Authentication (None)

**COPIED**

Sent: 10/12/2018 8:33:08 AM  
 Viewed: 10/16/2018 1:06:10 PM

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Jennifer Bridges  
 jennifer.bridges@cityofdenton.com  
 Procurement Assistant  
 City of Denton  
 Security Level: Email, Account Authentication (None)

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**Electronic Record and Signature Disclosure:**  
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Carbon Copy Events	Status	Timestamp
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Cherie Reed  
Cherie.Reed@cityofdenton.com  
Enterprise Applications Manager  
City Of Denton  
Security Level: Email, Account Authentication (None)  
**Electronic Record and Signature Disclosure:**  
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Sent: 10/12/2018 2:49:13 PM

Stephanie Padgett  
stephanie.padgett@cityofdenton.com  
TS Administrative Assistant  
City of Denton  
Security Level: Email, Account Authentication (None)  
**Electronic Record and Signature Disclosure:**  
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Viewed: 10/12/2018 2:55:11 PM

Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	10/12/2018 2:49:14 PM
Certified Delivered	Security Checked	10/12/2018 2:49:14 PM
Signing Complete	Security Checked	10/12/2018 2:49:14 PM
Completed	Security Checked	10/12/2018 2:49:14 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

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If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

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**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.