



ORACLE MASTER PARTNER AGREEMENT TERMS AND CONDITIONS FOR ELOQUA

THESE MASTER PARTNER TERMS AND CONDITIONS FOR ORACLE'S ELOQUA CLOUD SERVICES ARE INCORPORATED BY REFERENCE INTO THE PARTNER ORDERING DOCUMENT EXECUTED BY THE COMPANY IDENTIFIED AS THE "PARTNER" THEREIN ("PARTNER" OR "YOU") AND ORACLE AMERICA, INC., OR IF PARTNER'S PRINCIPAL ADDRESS IS IN CANADA, ORACLE CANADA ULC ("ORACLE"), AND TOGETHER WITH PARTNER, THE ("PARTIES"). THESE MASTER PARTNER TERMS AND CONDITIONS AND THE PARTNER ORDERING DOCUMENT COLLECTIVELY THE ("PARTNER AGREEMENT") FORM A BINDING AND EXECUTED WRITTEN PARTNER AGREEMENT BETWEEN PARTNER AND ORACLE, EFFECTIVE AS OF THE FIRST DATE OF MUTUAL EXECUTION BY PARTNER AND ORACLE OF THE PARTNER ORDERING DOCUMENT (THE "EFFECTIVE DATE"). THE PARTIES AGREE TO THE FOLLOWING:

1. DEFINITIONS. The following terms, when used in this Partner Agreement, shall have the following meanings:

1.1 "Cloud Services" means, collectively, the Oracle Eloqua cloud services (e.g., Oracle software as a service offerings and related Oracle Programs) defined in the Services Specifications and listed in the Partner Ordering Document entered into by and between You and Oracle. The term "Cloud Services" does not include Professional Services.

1.2 "Intellectual Property" means patents, copyrights, trademarks, trade names, trade secrets, moral rights, and all other intellectual property rights of any kind.

1.3 "Oracle Programs" means the software products owned or licensed by Oracle to which Oracle grants You access as part of the Cloud Services, including Program Documentation, and any program updates provided as part of the Cloud Services. The "Oracle Programs" does not include Separately Licensed Third Party Technology.

1.4 "Password" means the identification and password to the Cloud Services provided by Oracle to Partner.

1.5 "Partner Ordering Document" means the document detailing Partner's membership level in the Program along with other licenses grants, fees and supplemental terms associated with such membership.

1.6 "Program Documentation" means 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 Cloud Services. The Program Documentation describes technical and functional aspects of the Oracle Programs. You may access the documentation at www.oracle.com/contracts, or such other address specified by Oracle. Oracle may update, modify or otherwise change the Program Documentation in its sole discretion without notice.

1.7 "Separately Licensed Third Party Technology" refers to third party technology that is licensed under Separate Terms and not under the terms of this Partner Agreement.

1.8 "Services Specifications" means the descriptions on www.oracle.com/contracts, or such other address specified by Oracle, that are applicable to the Cloud Services under the Partner Ordering Documents, including any Program Documentation, Oracle Cloud Hosting and Delivery Policies (e.g. support and security policies), and other descriptions referenced or incorporated in such descriptions.

2. APPOINTMENTS AND LICENSE; CERTAIN RESTRICTIONS; OWNERSHIP; SECURITY

2.1 Appointments. Subject to the terms and conditions of this Partner Agreement and the Partner Ordering Document, Oracle hereby appoints You as a non-exclusive member of the Oracle partner program for Eloqua Cloud Services ("Program"). Your membership level (including without limitation approved territories, use and access rights and/or other licenses associated with Your Program membership level) shall be set forth in the Partner Ordering Document entered into by and between You and Oracle.

2.2 Restrictions. You shall not, and shall not permit or assist any third party to: (i) modify, translate, create derivative works based on, reverse engineer, disassemble or otherwise attempt to discover the underlying structure, source code, ideas or algorithms of, or remove any proprietary notices contained in, the Cloud Services or Program Documentation; (ii) create any link to the Cloud Services or frame or mirror any content contained or accessible from the Cloud Services; (iii) except as otherwise expressly provided herein, distribute, (sub)license, (re)sell, use on a timeshare or service bureau basis or otherwise commercially exploit the Cloud Services; (iv) use the Cloud Services in a manner that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable local, state, federal or foreign law, treaty, regulation or convention ("Law"); (v) access or use the Cloud Services without an authorized Password; (vi) use a Password that is intended for You to demonstrate the Cloud Services internally to provide the Cloud Services (or any other services); (vii) provide to third parties any evaluation version of the Cloud Services without Oracle's prior written consent; (viii) allow any third party that offers or provides services that are competitive to or with Oracle's products and/or services to use or access the Cloud Services; or (ix) use the Cloud Services in violation of Oracle's Cloud Services Agreement located at www.oracle.com/contracts, or such other address specified by Oracle.

2.3 Ownership.

- a. **Oracle IP.** Oracle retains and shall have sole and exclusive ownership of all right, title, and interest (including all Intellectual Property) in and to (i) the Cloud Services, Oracle Programs and the Program Documentation (including all derivative works of or modifications or improvements to, or suggestions, comments or other feedback related to, any of the foregoing) and (ii) all software, deliverables, documentation, specifications, materials, algorithms, reports, methods and other ideas and items provided, conceived or developed pursuant to this Partner Agreement and/or any statement of work related to this Partner Agreement between the parties, whether created solely by either Party or jointly by the Parties (including with their subcontractors or other personnel) (clauses (i) and (ii), collectively, "Oracle IP"). If You obtain any right, title or interest in or to any Oracle IP, You hereby assigns to Oracle all right, title and interest in and to the Oracle IP and shall cooperate with Oracle as reasonably necessary in order to give full effect to such assignment. You represent that have in place with all its personnel (including all personnel of agents and/or subcontractors) such Partner Agreements permitting You to comply with this Section 2.3.
- b. **Oracle Software.** You shall not integrate, embed or otherwise include any of Your pre-existing or third party software, materials or other technology into any Oracle IP without Oracle's prior written approval. To the extent any Oracle IP depends on, integrates with, has embedded, or otherwise includes Your or third party software, material or other technology (collectively, "**Supplemental Technology**"), You hereby grants to Oracle a perpetual, non-terminable, irrevocable, transferable, worldwide, fully paid-u, royalty-free, sublicensable (through multiple tiers), nonexclusive license to make, have made, use, sell, offer for sale, import, copy, maintain, modify, enhance, display, perform, distribute, create derivative works of and otherwise exploit such Supplemental Technology solely in connection with the Oracle IP.

2.4 Reservation of Rights. Oracle reserves the right to discontinue developing, licensing, distributing, supporting or otherwise making available the Cloud Services at any time upon reasonable written notice to You, provided that the Cloud Services maintains the functionality for the Cloud Services that exists as of the Effective Date of this Partner Agreement. Oracle reserves all rights not expressly granted herein, including the right to sell Cloud Services to, and provide marketing services through the use of, the Cloud Services directly to any third parties worldwide.

2.5 Cloud Hosting and Delivery Services Policies. Cloud Hosting and Delivery Services Policies describe and govern Cloud Services. You may access these policies that apply to the Cloud Services that You have ordered at www.oracle.com/contracts, or such other address specified by Oracle. Oracle may update, modify or otherwise change the Cloud Hosting and Delivery Services Policies in its sole discretion without notice.

3. TRADEMARKS; MARKETING

Trademarks. All goodwill arising out of any use of Oracle's trademarks shall inure solely to the benefit of Oracle. You shall use Oracle's trademarks solely (i) in conformity with any written guidelines or policies provided by Oracle from time to time (the "**Guidelines**"), (ii) except as expressly provided herein, subject to Oracle's prior written approval, which will not be unreasonably withheld, and (iii) in a manner that reflects favorably upon Oracle and the Cloud Services. You shall promptly discontinue any use of any trademark which Oracle determines to be inappropriate or unacceptable.

4. PROVISION OF THE CLOUD SERVICES

4.1 Partner Conduct and Guidelines. You shall be responsible for the collection, accuracy, currency, quality, legality, completeness and use of information and data that it uses in connection with the Cloud Services and for the content of all

communications while using the Cloud Services. You are responsible for all activities that occur with respect to the Your account. You shall in all respects act professionally and in a manner that reflects favorably upon the goodwill and reputation of Oracle, and You shall not make any statements or engage in any acts that may be detrimental to or disparaging of Oracle or the Cloud Services.

4.2 Compliance with Laws. You represent and warrant that You have taken appropriate technical and organizational precautions to protect such information from loss, misuse unauthorized access, disclosure, alteration and/or destruction. In addition, You shall at all times engage in ethical business practices and comply with all Law applicable to You in connection with the use of the Cloud Services, including the CAN-SPAM Act of 2003 (U.S.A.), the Personal Information Protection and Electronic Documents Act (PIPEDA) (Canada), the EU Data Protection Directive and other Laws related to privacy, publicity, data protection, electronic communications and anti-spamming.

4.3 Capability. You shall develop and maintain sufficient knowledge of the marketing industry, the Cloud Services and competitive offerings (including specifications, features and functions) to be able to effectively market, promote and demonstrate the Cloud Services and provide the Cloud Services.

4.4 Problems. You shall promptly notify Oracle in writing of any problems encountered with the Cloud Services and any resolutions arrived at for those problems and any claim or proceeding involving the Cloud Services that comes to Your attention.

4.5 Suspension / Termination of Service. If Your account is thirty (30) days or more overdue, You breach any term or condition of this Partner Agreement, or Oracle reasonably believes a breach is threatened by You (including non-payment of fees), in addition to any other rights and remedies hereunder, Oracle shall, in its sole discretion, have the right to suspend and/or terminate Your access to the Cloud Services without liability to Oracle until such account is paid in full or You effect a cure of any such breach, as applicable.

5. FEES

5.1 Fees. You shall pay to Oracle all of the fees specified in the Partner Ordering Document and mutually executed Partner Ordering Documents within thirty (30) days after Oracle's delivery of an invoice therefor. Except as otherwise provided in the Partner Ordering Document all (i) fees are quoted in United States currency, (ii) fees are not dependent upon actual usage of the Cloud Services, (iii) payment obligations are non-cancellable, and (iv) fees are non-refundable, non-creditable and there shall be no right of set-off therefore. You shall be responsible for, and all amounts payable by You to Oracle hereunder are exclusive of, any and all sales, use and other taxes or duties, however designated (collectively, "**Taxes**"), other than Oracle's income taxes, and if Oracle pays any such taxes on behalf of the You, then You shall reimburse Oracle promptly for such payment. You will not withhold any Taxes from any amounts due Oracle.

5.2 Records and Audits. During the Term and for a period of three years thereafter, Oracle shall have the right, through its designated representatives, to audit, during normal business hours, Your records to verify compliance with the payment and other obligations set forth herein. No audit shall be made more than twice in every twelve (12) month period.

6. CONFIDENTIALITY

6.1 Confidential Information. For purposes hereof, "**Confidential Information**" means, subject to the exceptions set forth in the following sentence, any information or data disclosed by either Party (the "**Disclosing Party**") that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other Party (the "**Receiving Party**"), that (i) reports and/or information related to or regarding a Disclosing Party's business plans, strategies, technology, customers, prospective customers, billing records, products, and services shall be deemed Confidential Information of the Disclosing Party, (ii) the Program Documentation and any other information relating to the Cloud Services shall be deemed Confidential Information of Oracle and (iii) the terms and conditions of this Partner Agreement shall be deemed the Confidential Information of both Parties, in each case even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in the following sentence. Information will not be deemed Confidential Information hereunder if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Partner Agreement by the Receiving Party; or (d) is independently developed by the Receiving Party.

6.2 Confidentiality Obligations. The Receiving Party agrees not to use the Confidential Information of the Disclosing Party for any purposes except as necessary to fulfill its obligations or exercise its rights under this Partner Agreement. The Receiving Party agrees not to disclose the Confidential Information of the Disclosing Party to any person or entity, except for (i) its employees and consultants who are required to have access to the Confidential Information in connection with the exercise of its rights and performance of its obligations under this Partner Agreement, (ii) actual or potential investors, acquirers and lenders, and (iii) professional advisers; provided that such employees and consultants, investors, acquirers and lenders are bound by written Partner Agreements or, in the case of professional advisers, such advisers are bound by ethical duties and with respect to clauses (ii) and (iii), such disclosure is limited solely to the terms of this Partner Agreement, in each case respecting such Confidential Information in accordance with the terms of this Section 8. The Receiving Party agrees that it shall treat the Disclosing Party's Confidential Information with the same degree of care as it accords to its own similar Confidential Information, provided that in no event shall the Receiving Party exercise less than reasonable care. The Receiving Party agrees to promptly advise the Disclosing Party in writing of any misappropriation or misuse by any person of the Disclosing Party's Confidential Information of which the Receiving Party may become aware. Upon termination or expiration of this Partner Agreement or upon the Disclosing Party's request, any materials or Confidential Information of Disclosing Party which are furnished to the Receiving Party, and all copies thereof will, at the Disclosing Party's option, either be: (a) promptly returned to the Disclosing Party; or (b) destroyed by the Receiving Party (with the Receiving Party providing written certification of such destruction). If the Receiving Party is compelled by Law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7. REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

7.1 Functionality Warranty. Subject to Your compliance with the terms and conditions hereof, Oracle warrants to You that the Cloud Services will perform in substantial conformity with the then-current version of the Program Documentation.

7.2 Compliance Warranty. You shall comply with Oracle's Partner Code of Conduct located at <http://www.oracle.com/partners/en/how-to-do-business/opn-agreements-and-policies/019520.pdf>.

7.3 Warranty Disclaimer and Exclusions.

- a. ORACLE DOES NOT GUARANTEE THAT (A) THE CLOUD SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ORACLE WILL CORRECT ALL SERVICES ERRORS, (B) THE CLOUD SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY ORACLE, AND (C) THE CLOUD SERVICES WILL MEET YOUR REQUIREMENTS, SPECIFICATIONS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT ORACLE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ORACLE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE CLOUD SERVICES THAT ARISE FROM YOUR CONTENT, YOUR APPLICATIONS OR THIRD PARTY CONTENT. ORACLE DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE RELIABILITY, ACCURACY, COMPLETENESS, CORRECTNESS, OR USEFULNESS OF THIRD PARTY CONTENT, AND DISCLAIMS ALL LIABILITIES ARISING FROM OR RELATED TO THIRD PARTY CONTENT.
- b. You shall be solely responsible for, and Oracle shall have no obligation to honor, any promises, guarantees or warranties that You may provide to any other third party with respect to the Cloud Services, or Cloud Services which differ from or are inconsistent with those made by Oracle hereunder.
- c. FOR ANY BREACH OF THE WARRANTIES SET FORTH HEREIN, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT CLOUD SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO YOU THE FEES FOR THE TERMINATED SERVICES THAT YOU PRE-PAID TO ORACLE FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.
- d. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. INDEMNIFICATION

8.1 Indemnification by Oracle. Oracle shall indemnify, defend, protect and hold You, Your directors, officers, employees, affiliates, agents, and contractors, harmless at its expense from any losses, liabilities, damages, costs and expenses (inclusive of Your reasonable attorneys' fees) arising from any claim, suit or proceeding (each, a "**Claim**") brought against You by any third party to the extent such Claim is based upon a claim that the Cloud Services infringes such third party's Intellectual Property rights. If the Cloud Services constitutes or, in Oracle's sole opinion, might be held to constitute infringement as set forth above, Oracle may, at its option and sole discretion, (a) modify the Cloud Services so as to avoid infringement, (b) procure the right for You to continue to use the Cloud Services in connection with its provision of the You, or (c) terminate any Subscriptions and/or this You Agreement and refund You any fees prepaid by You for any portion of the terminated subscription term(s) for which the Cloud Services is no longer made available by Oracle. The foregoing indemnity shall not apply to any Claim based upon or arising from (i) any use of the Cloud Services or provision of the Cloud Services outside the scope of this Partner Agreement, (ii) any use of the Cloud Services; (iii) any use of the Cloud Services with equipment, hardware, software or services not supplied by Oracle or in a manner inconsistent with Oracle's instructions; or (iv) any combination of the Cloud Services with non-Oracle products or services not authorized by Oracle, but solely to the extent the alleged infringement is caused by such combination. This Section 8 represents the sole and exclusive remedy of You and the entire liability and obligation of Oracle with respect to infringement of any Intellectual Property relating to the Cloud Services, or any provision of the Cloud Services.

8.2 Indemnification by You. You shall indemnify, defend, protect, and hold Oracle, its directors, officers, employees, affiliates, agents, and contractors, harmless from any losses, liabilities, damages, costs and expenses (inclusive of Oracle's reasonable attorneys' fees) arising from any Claims resulting from (i) Your use of the Cloud Services or provision of the Cloud Services (including with respect to the promises, guarantees, representations, warranties or results described in Section 7.3(b)), except to the extent covered by Oracle's indemnification of You pursuant to Section 8.1, (ii) any breach of this Partner Agreement by You, or (iii) any negligence, misrepresentation, error or omission on the part of You or any subcontractor or other personnel of You.

8.3 Procedure. Each Party's indemnity obligations are subject to the following: (i) the aggrieved Party will promptly notify the indemnifier in writing of the Claim; (ii) the indemnifier will have sole responsibility for and control of the defense and all related settlement negotiations with respect to the Claim (provided that the indemnifier may not settle or defend any Claim unless it unconditionally releases the aggrieved Party of all liability); and (iii) the aggrieved Party will cooperate fully to the extent necessary, and execute all documents necessary for the defense of such Claim.

8.4 LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL ORACLE OR ITS LICENSORS BE LIABLE TO YOU FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, PROFITS, DATA, SALES, REVENUE OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, IN EACH CASE EVEN IF A REPRESENTATIVE OF ORACLE HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8.1, ORACLE SHALL NOT BE LIABLE FOR ANY DIRECT DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE FEES FOR SUBSCRIPTIONS PURSUANT TO MUTUALLY EXECUTED PARTNER ORDERING DOCUMENTS THAT ORACLE HAS RECEIVED FROM YOU UNDER THIS PARTNER AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE THE APPLICABLE CLAIM AROSE. ORACLE'S LICENSORS DISCLAIM ALL LIABILITY TO YOU, WHETHER DIRECT OR INDIRECT, INCIDENTAL OR CONSEQUENTIAL (INCLUDING LOST PROFITS), ARISING IN CONNECTION WITH THIS PARTNER AGREEMENT.

9. TERM; TERMINATION

9.1 Term; Existing Subscriptions. This Partner Agreement shall continue in force for a term of one (1) year from the Effective Date, unless terminated earlier under the provisions of this Section 11 (the "**Term**").

9.2 Early Termination. Either Party may terminate this Partner Agreement for any reason or no reason upon thirty (30) days prior written notice to the other Party. Verify this is included at renewal. Oracle may additionally terminate this Partner Agreement at Oracle's discretion immediately on written notice if: (i) You make any unauthorized use or disclosure of Oracle's Confidential Information or Oracle's trademarks, or breaches any applicable Law; or (ii) if You are acquired (whether by merger, sale of assets or other change of control) by an entity which Oracle considers a competitive threat.

9.3 No Liability for Termination. In the event of expiration or termination of this Partner Agreement, each Party shall not be liable to the other Party, solely because of such expiration or termination, for compensation, reimbursement damages or payments on account of the loss of prospective profits or revenue or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of the other Party.

9.4 Effects of Termination. Upon any expiration or termination of this Partner Agreement: You shall return all Oracle IP, Program Documentation, Confidential Information and other materials provided hereunder within thirty (30) days.

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

10. GENERAL

10.1 Entire Agreement; Interpretation. This Partner Agreement (which consists of the Partner Ordering Document, these Master Partner Terms and Conditions and all Partner Ordering Documents accepted by Oracle) constitutes the entire Partner Agreement and sets forth the entire understanding between the Parties with respect to the Cloud Services, and supersedes all prior Partner Agreements and discussions with respect thereto. In the event of an inconsistency among these Master Partner Terms and Conditions, the Partner Ordering Document or any mutually executed Partner Ordering Documents, the following shall be the order of priority: (1) a mutually executed Partner Ordering Documents; and (2) these Master Partner Terms and Conditions. This Partner Agreement will control over any different or additional terms of Your purchase order or other non-Oracle ordering document, and no terms included in any You purchase order or other non-Oracle ordering document will apply. Headings contained in this Partner Agreement are inserted for convenience of reference only and will not in any way define or affect the meaning or interpretation of any provision of this Partner Agreement. For purposes hereof, "including" means "including without limitation". The Cloud Services and Program Documentation is licensed, and not sold, notwithstanding references herein to "sales" or "resales" (or their correlatives).

10.2 Publicity. Neither Party will make any separate public announcement regarding this Partner Agreement or the terms hereof without the prior written consent of the other Party. Notwithstanding the foregoing, during the Term, Oracle may (i) use Your name and trademarks in any general listing of partners of Oracle, including on any Oracle website in Oracle's sole discretion, (ii) use Your name in connection with proposals to third parties, and (iii) otherwise refer to You in print or electronic form for marketing, reference and other business purposes.

10.3 Relationship. The parties to this Partner Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

10.4 No Assignment. This Partner Agreement and any rights or obligations hereunder may not be assigned, sublicensed or otherwise transferred by the Parties without the prior written consent of the non-assigning Party, except that Oracle may assign this Partner Agreement without the consent of You to a corporation or other business entity succeeding to all or substantially all of the assets or business of Oracle to which this Partner Agreement relates, whether by merger or purchase.

10.5 Amendment and Waiver. No modification of, amendment or addition to this Partner Agreement is valid or binding unless set forth in writing and fully executed by both Parties hereto. Any waiver of any right or remedy under this Partner Agreement must be in writing and signed by each Party. No delay in exercising any right or remedy will operate as a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be construed as a waiver of any right or remedy on any future occasion.

10.6 Severability. If any provision of this Partner Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision will be modified to the extent necessary to render it enforceable, or will be severed from this Partner Agreement, and all other provisions of this Partner Agreement will remain in full force and effect.

10.7 Governing Law, Jurisdiction. This Partner Agreement is governed by the substantive and procedural laws of the State of California and Customer and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to this Partner Agreement. The Uniform Computer Information Transactions Act does not apply to this Partner Agreement or to orders placed under it.

10.8 Notices. Any notice required under this Partner Agreement shall be provided to the other party in writing. If Customer has a dispute with Oracle or if Customer wishes to provide a notice under the Indemnification section of this Partner

Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood Shores, CA 94065. Attention: General Counsel, Legal Department.

10.9 Force Majeure. Neither Party to this Partner Agreement will be liable to the other for any failure or delay in performance by circumstances beyond its control, including but not limited to, acts of God, fire, labor difficulties, governmental action or terrorism, provided that (i) the Party seeking to rely on such circumstances gives written notice of such circumstances to the other Party hereto and uses reasonable efforts to overcome such circumstances and (ii) this Section 10.9 shall not apply to any failure to make payments when due.

10.10 Facsimile Transmission/Counterparts/Electronic Signatures. This Partner Agreement will be deemed executed upon mutual execution of the Partner Ordering Document, which may be executed and delivered by facsimile or email, and upon receipt such transmission will be deemed delivery of an original, and which may be executed in several counterparts each of which when executed will be deemed to be an original, and such counterparts will each constitute one and the same instrument. The Parties consent to electronic signatures for the purpose of executing this Partner Agreement by e-mail or other electronic means, subject to compliance with any applicable laws, rules or regulations. Any such documents that are delivered electronically and accepted are deemed to be "in writing" to the same extent and with the same effect as if the Partner Agreement had been signed manually. In no event will electronic execution expand such assent to include any terms other than those explicitly set forth in this Partner Agreement.