

MASTER CONSTRUCTION AGREEMENT

OWNER: NYU LANGONE HOSPITALS
550 First Avenue
New York, New York 10016

CONTRACTOR:

DATE:

MASTER CONSTRUCTION AGREEMENT

MASTER CONSTRUCTION AGREEMENT ("Master Agreement") dated as of [], by and between **NYU Langone Hospitals**, a New York not-for-profit corporation with offices located at 550 First Avenue, New York, New York 10016 (the "Owner"), and [], a [] with offices located at [] (the "Contractor").

W I T N E S S E T H :

WHEREAS, the Owner may select the Contractor from time to time to perform construction work in connection with improvements to the Owner's facilities, and the Contractor is willing to perform such work; and

WHEREAS, the Owner and the Contractor desire to set forth the terms and conditions for performance of such work.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the Owner and the Contractor agree as follows:

1. Project Work Orders. This Master Agreement establishes terms and conditions for performance of work by the Contractor pursuant to project-specific work orders that may be executed by the parties, in the form attached hereto as Exhibit A (each a "Work Order"), for individual projects (each a "Project"). The Work Order is the only valid authorization for the Contractor to perform work relating to any Project, and the Owner shall not be obligated to pay for any work of the Contractor without a fully-executed Work Order. In the event of a conflict or inconsistency between the provisions of a Work Order and the provisions of this Master Agreement, the provisions of the Work Order shall govern, but only to the extent of such conflict or inconsistency. This Master Agreement provides no assurance that any Work Orders will be executed by the Owner with the Contractor, and execution of Work Orders remains within the Owner's absolute discretion. The Owner may conduct bidding and negotiations for any work, and may execute Work Orders or contracts with other contractors for any or all projects. The Owner and the Contractor agree that the Owner may execute a Work Order for a Project by issuing a Purchase Order attached in the form attached hereto as Exhibit D, that references a Work Order executed by the Contractor. A copy of the Work Order executed by the Contractor, together with said Purchase Order, will be deemed a fully executed Work Order under this Contract.

2. The Contract Documents. The Contract Documents for each Project shall consist of this Master Agreement, the General Conditions attached hereto as Exhibit B, the Safety Policies attached hereto as Exhibit C (and any reasonable revisions thereof and additions thereto), the applicable Work Order, the drawings, specifications and other documents listed in the Work Order, all modifications to the drawings and specifications and all Construction Change Directives and Change Orders issued after execution of the Work Order. Together, these form the Contract for each Project. References herein and in the General Conditions to the Contract and the Contract Documents refer to the Contract and Contract Documents for each Project. No change may be made to any of the Contract Documents except by a written Construction Change Directive or Change Order signed by a duly authorized representatives of

the Owner. Prior to beginning the Work for a Project, the Contractor shall visit the Owner's website (located at <http://nyulangone.org/vendor-information/environmental-health-safety-policies-for-vendors>) and note any revisions or additions made to the Safety Policies appearing in Exhibit C that are posted to the website. Thereafter, the Contractor shall periodically visit the website during the course of a Project and keep abreast of any revisions and additions made to the Safety Policies. At all times during the course of a Project, the Contractor shall comply with all revisions and additions made by the Owner to the Safety Policies, as such revisions and additions are posted to the website.

3. The Work. The Contractor shall fully execute the Work described in the Contract Documents for each Project, except as specifically indicated in the Contract Documents to be the responsibility of others.

4. Time for Completion. The Contractor shall complete the Work within the time stated in each Work Order ("Time for Completion"). The phases of the Work of each Project shall be determined and approved by the Owner prior to commencement of the Work. Time is of the essence of each Work Order.

5. The Architect. The Architect, if any, for each Project shall be identified in the Work Order for the Project. If an Architect is not identified in the Work Order, the administrative functions of the Architect, as set forth in the General Conditions, will be carried out by the Owner with respect to the Project.

6. Contract Sum. The Owner shall pay the Contractor for the performance of the Work, subject to additions and deductions by Construction Change Directive or Change Order, the Contract Sum stated in each Work Order. Allowances shall be included in Change Orders and Construction Change Directives for general conditions (including, without limitation, all clean-up and other support labor and all supervisory and project management labor), insurance, overhead and profit and shall not exceed the following percentages: (a) for Work performed by a Subcontractor, (i) ten percent (10%) of direct costs for all Subcontractor general conditions, insurance, overhead and profit and five percent (5%) of direct costs and the preceding mark-up for Subcontractor profit, and (ii) fifteen percent (15%) of Subcontractor amounts for all Contractor general conditions, insurance, overhead and profit; and (b) for self-performed Work by the Contractor, ten percent (10%) of direct costs for all Contractor general conditions, insurance, overhead and profit and five percent (5%) of direct costs and the preceding mark-up for Contractor profit.

7. Payments.

A. The Contractor shall submit monthly certified Applications for Payment using AIA Forms G702 and G703, on or before the 5th day of each month during performance of the Work.

B. On or before the 25th day of each month during performance of the Work, or as otherwise agreed by the parties, the Contractor shall participate in a "pencil review" meeting with the Owner, the Architect and others in which the Contractor shall present a draft Application for Payment on account of Work performed during the current month and the participants shall walk through the Project to assess the percentages of Work in place. Following the walk-through, the

participants shall determine the percentages of Work that may be included in the current month's Application for Payment. The Contractor shall prepare and execute an Application for Payment within five (5) days thereafter for certification by the Architect (unless the Owner is fulfilling the role of the Architect during construction) and shall obtain the Architect's certification prior to submitting the Application to the Owner.

C. Based upon Applications for Payment submitted by the Contractor and Certificates for Payment issued by the Architect (if applicable), the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided herein and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or as otherwise agreed by the parties. The Owner shall have twelve (12) business days after receiving an Application for Payment to approve the Application and shall make payment of the approved amount to the Contractor no later than thirty (30) calendar days thereafter. If the Owner disapproves an Application for Payment or portion thereof, the Owner shall prepare and promptly issue to the Contractor a written statement describing those items that are not approved. When the grounds for disapproval of an amount are removed, the Contractor may include such amount in a subsequent monthly Application for Payment.

D. Each Application for Payment shall be based on the schedule of values approved by the Owner. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or the Owner may require. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment. Each Application for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

E. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (i) Take that portion of the Contract Sum properly allocable to the completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;
- (ii) Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);
- (iii) Subtract the aggregate of previous payments previously certified; and

- (iv) Subtract the amounts, if any, for which the Architect (or the Owner) has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

F. The progress payment amount determined in accordance with paragraph B of this Section 7 shall be further modified under the following circumstances:

- (i) Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect or the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- (ii) Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

G. Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

H. Final payment, consisting of the entire unpaid balance of the Contract Sum for a Project, shall be made by the Owner to the Contractor when (i) the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment; and (ii) a final Certificate for Payment has been issued by the Architect (or the Owner). The Owner shall have twelve (12) business days to approve the Contractor's final Application for Payment and shall make final payment of the approved amount to the Contractor shall be made no later than thirty (30) calendar days thereafter.

I. The Contractor shall email Applications for Payment and Certificates for Payment to the Owner at redf.ps@nyumc.org and shall reference the project information management ("PIM") name and number appearing at the top of each Work Order and the purchase order number issued by the Owner to the Contractor.

8. Dispute Resolution. The method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

9. Termination or Suspension. The Contract for any Project may be terminated by the Owner or the Contractor as provided in Articles 2 and 14 of the General Conditions. The Work of any Project may be suspended by the Owner as provided in Article 14 of the General Conditions.

10. No Exclusion. The Contractor and each person signing on behalf of the Contractor represents and warrants that the Contractor and each parent and/or affiliate of the Contractor has not been suspended, disqualified, debarred or otherwise excluded from or declared ineligible to bid or perform work for any governmental agency or otherwise prohibited from participation in any federal or state program, including Medicare or Medicaid (collectively, "Program"), and to the best of its knowledge, there are no pending civil anti-trust or criminal

investigations or pending or threatened debarments or exclusions of Contractor from any Program. Contractor covenants to notify Owner in writing as soon as practicable if Contractor is the subject of any civil anti-trust or criminal investigation, or is excluded, barred or suspended from participation in any Program and to refrain from employing or contracting for purposes of providing any work or services to Owner with any individual or entity known by Contractor to be sanctioned, suspended or excluded from participation in any Program. The Contractor shall include the provisions of this "No Exclusion" Article in each subcontract agreement (of any tier) that the Contractor enters into under this Agreement and shall cause such subcontractors and their subcontractors of any tier to so include such provisions. Each of the representations and warranties made in this "No Exclusion" Article is a material representation of fact by the Contractor upon which Owner has relied as an essential inducement to enter into this Agreement. In addition to any other remedies available to the Owner, the Owner may terminate this Agreement for cause in the event that any representation or warranty made in this Article is untrue at the time of entering into this Agreement or becomes untrue at any time during the term of this Agreement.

11. Miscellaneous Provisions.

A. Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

B. The Owner's representative for purposes of this Master Agreement and for each Project (unless otherwise stated in a Work Order), shall be Paul Schwabacher. The Contractor's representative for purposes of this Master Agreement and for each Project (unless otherwise stated in a Work Order), shall be []. Neither the Owner's nor the Contractor's representative shall be changed without ten (10) days' written notice to the other party.

C. All notices, demands, consents, requests or other communications required or permitted to be given pursuant to this Agreement or any Work Order shall be in writing and will be deemed validly delivered if delivered in person or sent by registered or certified mail, return receipt requested, or by courier service providing proof of delivery addressed to the parties as follows:

OWNER: Paul Schwabacher, PE
Senior Vice President
Facilities Management
NYU Langone Health
339 East 28th Street, 1st Floor
New York, New York 10016

with a copy to:

Annette B. Johnson, Esq.
NYU Langone Hospitals
Office of Legal Counsel
530 First Avenue HCC-15
New York, New York 10016

CONTRACTOR: []

or at such other address as either party may have furnished in writing to the other party as a place for the delivery of notice pursuant to this Master Agreement or any Work Order. Notice to each party shall be addressed as set forth in this Article 11C even if the party's representative under Article 11B has been changed (either for purposes of this Agreement or for purposes of a specific Project), unless the party also has changed the address for notice as set forth in this Article 11C. In the event that a party's representative as set forth in Article 11B has been changed and the party's address for notice under this Article 11C has not been changed, notice to the party under this Article 11C also shall be copied to the party's representative at the representative's last known address.

D. The Contractor acknowledges and agrees that if, at the time of Work Order award, the Contractor has not selected all of its Subcontractors for a Project and the Contractor thereafter proposes a Subcontractor that is not on the List of Approved Subcontractors, then, the Contractor shall use a Subcontractor that is from the Owner's pre-approved list of Subcontractors (as kept on file with the Owner) without increase to the Contract Sum.

12. Insurance and Bonds. The Contractor shall purchase and maintain insurance as set forth in Article 11 of the General Conditions. The Contractor and Subcontractor insurance policies required therein or in any Work Order may not contain third-party-over action exclusions or similar endorsements or limitations. The Owner may request proof of compliance with this prohibition at any time. In such event, the Contractor shall submit such proof in a form acceptable to the Owner within seven (7) days after the Owner's request. The Contractor shall provide payment and performance bonds for a Project if so provided in the Work Order for the Project. The Contractor shall send certificates of insurance reflecting the coverages and amounts provided for in Article 11 of the General Conditions to the Owner via insurance.vendor.cert@nyu.edu.

13. Signage and Wayfinding. If the Work includes work pertaining to signage and wayfinding, then the Contractor shall follow the Owner's Wayfinding and Communications Standards Manual, which is available for download at: <http://nyulangone.org/vendor-information/design-guidelines>.

14. Labor Harmony. The Contractor shall be responsible for avoiding jurisdictional and other Project Site-specific labor disputes involving the labor employed at the Project Site by the Contractor, Subcontractors and sub-contractors of any tier. The Contractor shall not be responsible for industry-wide labor disputes.

15. Use of Names. The Contractor shall not use the names, logos or marks of any NYU Langone Health related entity, unit, division, or part thereof ("NYULH") in any form of publicity without the prior approval of NYU Langone Health's Department of Real Estate Development and Facilities and the Office of Communications and Marketing; provided, however, that the Contractor may include NYULH on its client list without prior written approval.

16. Unifier

A. The Owner is implementing on-line construction management systems for its construction projects, referred to herein as the “Unifier Systems” (or “Unifier”) and based on and utilizing proprietary programs and other services of the Unifier Systems developer. When the Owner is ready to do so, the Owner will provide a license to the Contractor to access and use the Unifier Systems and such license will be subject to the terms and conditions set forth in Exhibit E (the “Unifier Terms and Conditions”). The Contractor accepts and agrees to comply with and be bound by the Unifier Terms and Conditions applicable to "You" as set forth in Exhibit E and to be responsible for compliance with such Terms and Conditions by employees and other representatives of the Contractor using the Unifier Systems.

B. The Contractor shall use the Unifier Systems for purposes of furnishing and receiving information and documentation under the Agreement, as and to the extent authorized and directed by the Owner. Such purposes may include, without limitation, the transmission of bids, proposals, Work Orders, Change Orders, invoices, contractual notices and other information and documentation required under the Agreement. The Contractor agrees that its use of the Unifier Systems will be limited to such purposes. The Contractor shall not use the Unifier Systems to access information or documentation regarding any other matters or for any other unauthorized purpose. The Owner may terminate or limit the Contractor’s use of the Unifier Systems at any time on written notice to the Contractor.

C. Through its use of the Unifier Systems, the Contractor may have access to information or documentation of the Owner or the provider of the Unifier Systems that is confidential. In addition to any other obligation of confidentiality or non-disclosure, the Contractor agrees not to disclose such confidential information to any third party except as authorized by the Owner.

D. The Contractor shall defend and indemnify the Owner and hold the Owner harmless from and against any and all claims, damages, costs and expenses (including attorneys’ fees) arising out of any breach of the Unifier Terms and Conditions by the Contractor or any of the Contractor’s employees, agents or other representatives.

E. This Amendment and any other Amendment, Work Order, Change Order or other document requiring signature by either party under the Agreement may be signed by scanned signature of the party.

F. The Owner, in its sole and absolute discretion and after providing the Contractor with a license to use the Unifier Systems, may elect to execute Amendments, Work Orders, Change Orders and other documents requiring the Owner’s signature under this Agreement by means of approval of the document in Unifier, which approval shall be accessible to the Contractor through authorized use of the Unifier Systems. If and to the extent of the Owner’s election, such approval by the Owner shall be deemed the equivalent of the Owner’s signature, a Unifier report of such approval by the Owner will constitute evidence of signature by the Owner on the document and the Contractor is authorized to download and copy such reports. The Owner shall notify the Contractor of such election in writing and may terminate such election at any time by written notice to the Contractor.

17. Term. This Master Agreement shall have a term expiring on [], unless extended and shall apply to all Work Orders executed during such term and all Projects covered by such Work Orders. The term of this Master Agreement may be extended by written amendment signed by both parties. The Contract formed by each executed Work Order shall survive the expiration of the term of this Master Agreement.

OWNER:

NYU LANGONE HOSPITALS

By: _____

Name: _____

Title: _____

CONTRACTOR:

[]

By: _____

Name: _____

Title: _____

EXHIBIT A

WORK ORDER FORM

NYU LANGONE HOSPITALS

MASTER CONSTRUCTION AGREEMENT WORK ORDER

Project and Project Site:

PIM Name and Number:

Master Construction Agreement Dated:

Owner's Representative:

Contractor's Name and Address:

Contractor's Representative:

Architect's Name and Address:

Drawings and Specifications:

Other Description of Work:

Interim Life Safety Plan, Evacuation Plan, Infection Control Risk Mitigation Plan and Phasing Plans:

Contract Sum:

Exclusions:

Division of Work (schedule of values):

Approved Subcontractors:

Start Date:

Time for Completion:

Bonding Requirements (if any):

Funding Source Requirements (if any):

Special Terms:

This Work Order is governed by the terms and conditions of the Master Construction Agreement between the Owner and the Contractor referenced above. The Contractor shall perform the Work described above and complete the Work within the Time for Completion stated above. TIME IS OF THE ESSENCE. The Owner shall pay the Contractor the Contract Price set forth above for the performance and completion of the Work in accordance with the Contract Documents.

OWNER:

NYU LANGONE HOSPITALS

By: _____

Name: _____

Title: _____

CONTRACTOR:

By: _____

Name: _____

Title: _____

FEMA Addendum #1 - Construction

As certain funding for the Project may be provided by or through the Federal Emergency Management Agency ("FEMA"), the Contractor further agrees as follows:

Non-Discrimination. During the performance of the Work, the Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations 41 CFR chapter 60.

Access to Books and Records. The Contractor agrees that any federal agency providing funding for the Contractor's Work, including FEMA and the Comptroller General of the United States, shall have access to the Contractor's books and records relating to the hourly compensation and Reimbursable Expenses for review, audit and reproduction.

Compliance With Laws. The Contractor agrees to comply with the Contract Work Hours and Safety Standards Act Sections 103 and 107 (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5); Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; and Environmental Protection Agency regulations (40 CFR part 15).

Copeland Anti-Kickback Act. The Contractor agrees to comply with all applicable provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).

Certifications. The Contractor agrees to prepare and deliver to the Owner certifications of the Contractor's ongoing compliance with the foregoing provisions as may reasonably be requested by the Owner in writing during the term of the Agreement.

* * *

EXHIBIT B

GENERAL CONDITIONS

EXHIBIT C
SAFETY POLICIES

EXHIBIT D

PURCHASE ORDER FORM

EXHIBIT E

UNIFIER TERMS AND CONDITIONS

ORACLE CLOUD SERVICES

TERMS AND CONDITIONS APPLICABLE TO NYULH USERS

THE FOLLOWING TERMS AND CONDITIONS APPLY TO THE PROVISION OF CLOUD SERVICES AND PROFESSIONAL SERVICES BY ORACLE AMERICA, INC. ("ORACLE") FOR USE ON NYU LANGONE HEALTH ("NYULH") PROJECTS PURSUANT TO AN ORDER AND AGREEMENT BETWEEN ORACLE AND NYU HOSPITALS CENTER. THESE CLOUD SERVICES AND PROFESSIONAL SERVICES SUPPORT A CONSTRUCTION MANAGEMENT SYSTEM FOR NYULH KNOWN AS "UNIFIER". SUBJECT TO YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS, YOU WILL BE LICENSED TO ACCESS AND USE THESE SERVICES IN CONNECTION WITH NYULH PROJECTS AS DIRECTED BY NYU LANGONE HOSPITALS OR NEW YORK UNIVERSITY SCHOOL OF MEDICINE ("NYUSOM").

BY ACCEPTING THESE TERMS AND CONDITIONS, YOU AGREE TO FOLLOW AND BE BOUND BY THESE TERMS AND CONDITIONS. IF YOU ACCEPT THESE TERMS AND CONDITIONS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THESE TERMS AND CONDITIONS SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, YOU MAY NOT USE THE SERVICES REFERENCED IN THESE TERMS AND CONDITIONS.

THESE TERMS AND CONDITIONS DO NOT CREATE ANY CONTRACTUAL OBLIGATION RUNNING FROM ORACLE TO YOU.

1. DEFINITIONS

1.1 "**Ancillary Program**" means any software agent or tool owned or licensed by Oracle that Oracle makes available to You for download as part of the Cloud Services for purposes of facilitating Your access to, operation of and/or use with, the Services Environment. The term "Ancillary Program" does not include Separately Licensed Third Party Technology.

1.2 "**Cloud Services**" means, collectively, the Oracle cloud services (e.g., Oracle software as a service offerings and related Oracle Programs) You are authorized by Owner to use.

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

1.4 **"Owner"** means individually and collectively NYU Langone Hospitals and New York University School of Medicine, an administrative unit of New York University.

1.5 **"Professional Services"** means, collectively, the consulting and other professional Services which Owner has ordered from Oracle. The term "Professional Services" does not include Cloud Services.

1.6 **"Program Documentation"** refers to the program user manuals for the Oracle Programs referenced within the Service Specifications for Cloud Services, as well as any help windows and readme files for such Oracle Programs that are accessible from within the Services. The Program Documentation describes technical and functional aspects of the Oracle Programs.

1.7 **"Separate Terms"** refers to separate license terms that are specified in the Program Documentation, Service Specifications, readme or notice files and that apply to Separately Licensed Third Party Technology.

1.8 **"Separately Licensed Third Party Technology"** refers to third party technology that is licensed under separate terms and not under these Terms and Conditions.

1.9 **"Service Specifications"** means the descriptions on www.oracle.com/contracts, or such other address specified by Oracle, that are applicable to the Services under Owner's order, 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.

1.10 **"Services"** means, collectively, both the Cloud Services and Professional Services that Owner has ordered from Oracle.

1.11 **"Services Environment"** refers to the combination of hardware and software components owned, licensed or managed by Oracle to which You are granted access by Owner.

1.12 **"Services Period"** refers to the period of time for which Owner has ordered Cloud Services.

1.13 **"Third Party Content"** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material, in any format, that are obtained from third party sources outside of Oracle and made available to You through, within or in conjunction with Your use of, the Cloud Services. Examples of Third Party Contract include data feeds from social network services, rss feeds from blog posts and data libraries and dictionaries. Third Party Content does not include Separately Licensed Third Party Technology.

1.14 **"Users"** means Your employees and other representatives authorized by Owner to use the Cloud Services in accordance with these Terms and Conditions.

1.15 **"You"** and **"Your"** refers to the individual or entity that has accepted these terms and conditions.

1.16 **"Your Applications"** means all software programs, including any source code for such programs, that You or Your Users provide and load onto, or create using, any Oracle "platform-as-a-service" or "infrastructure-as-a-service" Cloud Services. Services under these Terms and Conditions, including Oracle Programs and Services Environments, Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term "Your Applications".

1.17 **"Your Content"** means all text, files, images, graphics, illustrations, information, data, audio, video, photographs, personal data and other content and material (other than Your Applications, in any format, provided by You or Your Users that reside in, or run on or through, the Services Environment.

2. TERM

These Terms and Conditions are valid for the Services Period including any extension thereof.

3. RIGHTS GRANTED

3.1 For the period specified by Owner, and except as otherwise set forth in these Terms and Conditions or in any writing issued to You by Owner, You have the non-exclusive, non-assignable, royalty free limited right to access and use the Services for the purposes identified by Owner.

3.2 You do not acquire under these Terms and Conditions any right or license to use the Services, including the Oracle Programs and Services Environment, in excess of the scope and/or duration of the Services identified by Owner in writing to You. Upon the end of such duration, Your right to access and use the Services will terminate.

3.3 To enable Oracle to provide You with the Services, You grant Oracle the right to use, process and transmit, in accordance with these Terms and Conditions, Your Content for the duration of the Services Period plus any post-termination period during which Oracle provides Owner with access to retrieve and export files of Your Content and Your Applications. If Your Applications include third party programs, You acknowledge that Oracle may allow providers of those third party programs to access the Services Environment, including Your Content and Your Applications, as required for the interoperability of such third party programs with the Services. Oracle will not be responsible for any use, disclosure, modification or deletion of Your Content or Your Applications resulting from any such access by third party program providers or for the interoperability of such third party programs with the Services.

3.4 The Services may contain or require the use of Separately Licensed Third Party Technology. You are responsible for complying with the Separate Terms specified by Oracle that govern Owner's use of Separately Licensed Third Party Technology. Oracle may provide

certain notices to You in the Service Specifications, Program Documentation, readme or notice files in connection with such Separately Licensed Third Party Technology. The third party owner, author or provider of such Separately Licensed Third Party Technology retains all ownership and intellectual property rights in and to such Separately Licensed Third Party Technology.

3.5 As part of certain Cloud Services offerings, Oracle may provide You with access to Third Party Content within the Services Environment. The type and scope of any Third Party Content is defined in the Service Specifications applicable to Owner's order with Oracle. The third party owner, author or provider of such Third Party Content retains all ownership and intellectual property rights in and to that content, and Your rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author or provider.

4. OWNERSHIP AND RESTRICTIONS

4.1 You retain ownership and intellectual property rights in and to Your Content and Your Applications, except to the extent that You have granted such rights to Owner. Oracle or its licensors retain all ownership and intellectual property rights to the Services, including Oracle Programs and Ancillary Programs, and derivative works thereof, and to anything developed or delivered by or on behalf of Oracle.

4.2 You may not, or cause or permit others to:

(a) remove or modify any program markings or any notice of Oracle's or its licensors' proprietary rights;

(b) make the programs or materials resulting from the Services (excluding Your Content and Your Applications) available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Service Owner acquired);

(c) modify, make derivative works of, disassemble, decompile or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to Oracle;

(d) perform or disclose any benchmark or performance tests of the Services, including the Oracle Programs, without Oracle's prior written consent;

(e) perform or disclose any of the following security testing of the Services Environment or associated infrastructure without Oracle's prior written consent: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing or penetration testing; and

(f) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use or otherwise commercially exploit or make the Services, Oracle Programs, Ancillary Programs, Services, Environments or materials available, to any third party, other than as expressly permitted under the terms provided by Owner.

4.3 The rights granted to You under these Terms and Conditions are also conditioned on the following:

(a) except as expressly provided herein or otherwise in writing by Owner to You, no part of the Services may be copied, reproduced, distributed, republished, downloaded, posted or transmitted in any form or by any means, including, but not limited to electronic, mechanical, photocopying, recording or other means; and

(b) You make every reasonable effort to prevent unauthorized third parties from accessing the Services.

5. USE OF THE SERVICES

5.1 You are responsible for identifying and authenticating all Users having access to the Services on Your behalf, for approving such access, for controlling against unauthorized access by such Users and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating Your and Your Users' usernames, passwords and accounts with Oracle, You accept responsibility for the timely and proper termination of User records in Your local (intranet) identity infrastructure or on Your local computers. Oracle and Owner are not responsible for any harm caused by Your Users, including individuals who were not authorized to have access to the Services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Your local identity management infrastructure or Your local computers. You are responsible for all activities that occur under Your and Your Users' usernames, passwords or accounts or as a result of Your or Your Users' access to the Services, and agree to notify Oracle and Owner immediately of any unauthorized use.

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

quality, integrity, legality, reliability, appropriateness and ownership of all of Your Content and Your Applications. You agree to defend and indemnify Oracle and Owner against any claim arising out of a violation of Your obligations under this Section or any other provision of these Terms and Conditions.

5.3 You are required to accept all patches, bug fixes, updates, maintenance and service packs (collectively "Patches") necessary for the proper function and security of the Services, including for the Oracle Programs, as such Patches are generally released by Oracle as described in the Service Specifications. Except for emergency or security related maintenance activities, Oracle will coordinate with You the scheduling of application of Patches, where possible, based on Oracle's next available standard maintenance window.

6. SERVICES PERIOD; END OF SERVICES

6.1 Upon the end of the period identified by Owner, You no longer have rights to access or use the Services, including the associated Oracle Programs and Services Environments.

6.2 Oracle may temporarily suspend Your password, account and access to or use of the Services if You or Your Users violate any provision within the "Rights Granted", "Ownership and Restrictions", "Use of the Services or "Export" sections of these Terms and Conditions, or if in Oracle's or Owner's reasonable judgment, the Services or any component thereof are about to suffer a significant threat to security or functionality. Oracle will provide advance notice to Owner of any such suspension in Oracle's reasonable discretion based on the nature of the circumstances giving rise to the suspension, and Owner will endeavor to transmit such notice to You. Oracle will use reasonable efforts to re-establish the affected Services promptly after Oracle determines, in its reasonable discretion, that the situation giving rise to the suspension has been cured; however, during any suspension period, Oracle will make available to You Your Content and Your Applications as existing in the Services Environment on the date of suspension. Oracle may terminate the Services if any of the foregoing causes of suspension is not cured within thirty (30) days after Oracle's initial notice thereof.

7. NONDISCLOSURE

7.1 By virtue of these Terms and Conditions, Oracle, Owner and You (collectively, the "parties") may have access to information that is confidential to one another ("Confidential Information"). You and Owner agree to disclose only information that is required for the performance of obligations under these Terms and Conditions. Confidential Information shall be limited to these Terms and Conditions, Your Content and Your Applications residing in the Services Environment and all information clearly identified as confidential at the time of disclosure.

7.2 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 another party; (b) was in another party's lawful possession prior to the disclosure and has not been obtained by such 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; or (d) is independently developed by the other party.

7.3 You and Owner agree not to disclose another party's Confidential Information to any third party other than as set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Oracle will hold Your Confidential Information that resides within the Services Environment in confidence for as long as such information resides in the Services Environment. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under these Terms and Conditions. Oracle will protect the confidentiality of Your Content or Your Applications residing in the Services Environment in accordance with the Oracle applicable security practices. In addition, Your Personal Data will be treated in accordance with the terms of Section 8 below. Nothing shall prevent a party from disclosing any of these Terms and Conditions in any legal proceeding arising from or in connection with these Terms and Conditions or from disclosing the Confidential Information to a governmental entity as required by law.

7.4 Oracle has agreed to similar provisions in its Agreement with Owner, but these Terms and Conditions do not create a contractual obligation running from Oracle to You.

8. DATA PROTECTION

8.1 In performing the Services, Oracle will comply with the *Oracle Services Policy*, which is available at <http://oracle.com/html/Services-privacy-policy.html> and incorporated herein by reference. The *Oracle Services Policy* is subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of protection provided for Your Personal Data provided as part of Your Content during the Services Period.

8.2 Oracle's *Data Processing Agreement for Oracle Cloud Services* (the "Data Processing Agreement"), which is available at <http://www.oracle.com/dataprocessingagreement> and incorporated herein by reference, describes the parties' respective roles for the processing and control of Personal Data that You provide to Oracle as part of the Cloud Services. Oracle will act as a data processor, and will act on Your instruction concerning the treatment of Your Personal Data residing in the Services Environment, as specified in these Terms and Conditions, the Data Processing Agreement and Owner's order with Oracle. You agree to provide any notices and obtain any consents related to Your use of the Services and Oracle's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of Personal Data.

8.3 The Services Specifications applicable to Owner's order with Oracle define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services Environment, and describe other aspects of system management applicable to the Services. You are responsible for any security vulnerabilities, arising from Your Content and

Your Applications, including any viruses, Trojan horses, worms or other programming routines contained in Your Content or Your Applications that could limit or harm the functionality of a computer or that could damage, intercept or expropriate data.

9. LIMITATION OF LIABILITY

NEITHER YOU NOR OWNER SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA OR DATA USE ARISING OUT OF USE OF THE CLOUD SERVICES. THIS LIMITATION ON LIABILITY DOES NOT APPLY BEYOND SUCH USE.

10. THIRD PARTY WEB SITES, CONTENT, PRODUCTS AND SERVICES

10.1 The Services may enable You to link to, transmit Your Content to, or otherwise access, other Web sites, content, products, services and information of third parties. Oracle does not control and is not responsible for such Web sites or any such content, products, services and information accessible from or provided through the Services, and You bear all risks associated with access to and use of such Web sites and third party content, products, services and information.

10.2 Any Third Party Content made accessible by Oracle in or through the Services Environment is provided on an "as-is" and "as available" basis without any warranty of any kind. Third Party Content may be indecent, offensive, inaccurate, infringing or otherwise objectionable or unlawful, and You acknowledge that Oracle is not responsible for and under no obligation to control, monitor or correct Third Party Content; provided, however, Oracle reserves the right to take remedial action if any such content violates applicable restrictions under Section 5.2 of these Terms and Conditions, including the removal of, or disablement of access to, such content.

10.3 You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with third parties such as Facebook™, YouTube™ and Twitter™, etc. (each, a "Third Party Service") depend on the continuing availability of such third parties' respective application programming interfaces (APIs) for use with the Services. Oracle may update, change or modify the Services as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by Oracle in its sole discretion, Oracle may cease providing access to the affected Third Party Content or Third Party Services without any liability to You. Any changes to Third Party Content, Third Party Services or APIs, including their availability or unavailability, during the Services Period does not affect Your obligations under these Terms and Conditions, and You will not be entitled to any compensation due to any such changes.

11. SERVICES TOOLS AND ANCILLARY PROGRAMS

11.1 Oracle may use tools, scripts, software and utilities (collectively, the "Tools") to monitor and administer the Services and to help resolve service requests. The Tools will not collect or store any of Your Content or Your Applications residing in the Services Environment, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Your Content and Your Applications) may also be used to assist in managing Oracle's product and service portfolio, to help address deficiencies in its product and service offerings and for license and Service management.

11.2 As part of the Cloud Services, Oracle may provide You with on-line access to download certain Ancillary Programs for use with the Services. If Oracle does not specify Separate Terms for any such Ancillary Programs, You shall have a non-transferable, non-exclusive, non-assignable, limited right to use such Ancillary Programs solely to facilitate Your access to, operation of and/or use of the Services Environment, subject to the terms of these Terms and Conditions and Owner's order with Oracle. Your right to use such Ancillary Programs will terminate upon the earlier of Oracle's notice (which may be through posting on <https://support.oracle.com> or such other URL designated by Oracle) of the end of the Cloud Services associated with the Ancillary Programs, or the date on which the license to use the Ancillary Programs ends under the Separate Terms specified for such programs.

12. SERVICE ANALYSES

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

13. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. You agree that such export laws govern Your use of the Services (including technical data) and any Services deliverables provided, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, software programs and/or materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical or biological weapons proliferation, or development of missile technology.

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