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# Data Processing Agreement for Oracle Cloud Services

Version January 12, 2018

## 1. Scope, Order of Precedence and Term

1.1 This data processing agreement (the “Data Processing Agreement”) applies to Oracle’s Processing of Personal Data as part of Oracle’s provision of Oracle Cloud Services (“Cloud Services”). The Cloud Services are described in (i) the applicable order for Cloud Services, (ii) the applicable Agreement or other applicable master agreement by and between You and Oracle in which this Data Processing Agreement is referenced, and (iii) the Service Specifications (i, ii and iii collectively the “Cloud Services Agreement”).

1.2 Unless otherwise expressly stated in the order, this version of the Data Processing Agreement is incorporated into and subject to the terms of the Cloud Services Agreement, and shall be effective and remain in force for the Service Period of the Cloud Services.

1.3 Except as expressly stated otherwise in this Data Processing Agreement or the order, in the event of any conflict between the terms of the Cloud Services Agreement, including any policies or schedules referenced therein, and the terms of this Data Processing Agreement, the relevant terms of this Data Processing Agreement shall take precedence.

## 2. Definitions

2.1 “Applicable Data Protection Law” means (i) Directive 95/46/EC of October 24, 1995, as amended, on the protection of individuals with regard to the Processing of Personal Data and on the free movement of such data (‘Directive’) until such time that it is replaced by Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, applicable as of May 25, 2018; and (ii) any other data privacy or data protection law or regulation that applies to the Processing of Personal Data under this Data Processing Agreement;

2.2 “You” means the customer entity that has executed the order;

2.3 “Data Subject”, “Data Protection Impact Assessments”, “Data Protection Officer”, “Process/Processing”, “Supervisory Authority”, “Controller”, “Processor” and “Binding Corporate Rules” (or any of the equivalent terms) have the meaning set forth under Applicable Data Protection Law;

2.4 “EU Model Clauses” means the standard contractual clauses annexed to the EU Commission Decision 2010/87/EU of 5 February 2010 for the Transfer of Personal Data to Processors established in Third Countries under the Directive 95/46/EC, or any successor standard contractual clauses that may be adopted pursuant to an EU Commission decision;

2.5 “Argentinean Model Clauses” means the Model Agreement of International Transfer of Personal Data for the case of Personal Data Assignment (*Contrato modelo de transferencia internacional de datos personales con motivo de la cesión de datos personales*), approved by the National Directorate for

Personal Data Protection on 2 November 2016;

2.6 “Oracle” means the Oracle Affiliate that has executed the order;

2.7 “Oracle Affiliate(s)” means the subsidiar(y)(ies) of Oracle Corporation that may assist in the performance of the Cloud Services as set forth in Section 3.3;

2.8 “Personal Data” means any information relating to a Data Subject that Oracle may Process on Your behalf as part of the Cloud Services;

2.9 “Third Party Subprocessor” means a third party subcontractor, other than an Oracle Affiliate, engaged by Oracle and which may Process Personal Data as set forth in Section 3.3.

Other capitalized terms have the definitions provided for them in the Cloud Services Agreement or as otherwise specified below.

### **3. Controller and Processor of Personal Data and Purpose of Processing**

3.1 You are and will at all times remain the Controller of the Personal Data Processed by Oracle under the Cloud Services Agreement. You are responsible for compliance with Your obligations as a Controller under Applicable Data Protection Law, in particular for justification of any transmission of Personal Data to Oracle (including providing any required notices and obtaining any required consents and/or authorizations, or otherwise securing an appropriate legal basis under Applicable Data Protection Law), and for Your decisions and actions concerning the Processing of such Personal Data.

3.2 Oracle is and will at all times remain a Processor with regard to the Personal Data provided by You to Oracle under the Cloud Services Agreement. Oracle is responsible for compliance with its obligations under this Data Processing Agreement and for compliance with its obligations as a Processor under Applicable Data Protections Law.

3.3 Oracle and any persons acting under the authority of Oracle, including any Oracle Affiliates and Third Party Subprocessors as set forth in Section 8, will Process Personal Data solely for the purpose of (i) providing the Cloud Services in accordance with the Cloud Services Agreement and this Data Processing Agreement (ii) complying with Your documented written instructions in accordance with Section 5, or (iii) complying with Oracle’s regulatory obligations in accordance with Section 13.

### **4. Categories of Personal Data and Data Subjects**

4.1 In order to perform the Cloud Services and depending on the Cloud Services You have ordered, Oracle may Process some or all of the following categories of Personal Data: personal contact information such as name, home address, home telephone or mobile number, fax number, email address, and passwords; information concerning family, lifestyle and social circumstances including age, date of birth, marital status, number of children and name(s) of spouse and/or children; employment details including employer name, job title and function, employment history, salary and other benefits, job performance and other capabilities, education/qualification, identification numbers, social security details and business contact details; financial details; goods and services provided; unique IDs collected from mobile devices, network carriers or data providers, IP addresses, and online behavior and interest data.

4.2 Categories of Data Subjects whose Personal Data may be Processed in order to perform the Cloud Services may include, among others, Your representatives and end users, such as Your employees, job applicants, contractors, collaborators, partners, suppliers, customers and clients.

4.3 Additional categories of Personal Data and/or Data Subjects may be described in the Cloud Services Agreement. Unless otherwise specified in Your order (including in the Service Specifications), Your Content may not include any sensitive or special personal data that imposes specific data security or data protection obligations on Oracle in addition to or different from those specified in the Service Specifications.

## **5. Your Instructions**

5.1 Oracle will Process Personal Data on Your written instructions as specified in the Cloud Services Agreement and this Data Processing Agreement, including instructions regarding data transfers as set forth in Section 7.

5.2 You may provide additional instructions in writing to Oracle with regard to Processing of Personal Data in accordance with Applicable Data Protection Law. Oracle will comply with all such instructions to the extent necessary for Oracle to (i) comply with its Processor obligations under Applicable Data Protection Law; or (ii) assist You to comply with Your Controller obligations under Applicable Data Protection Law relevant to Your use of the Cloud Services, including assistance with notifying Personal Data breaches as set forth in Section 11, Data Subject requests as set forth in Section 6, and Data Protection Impact Assessments (DPIAs).

5.3 To the extent required by Applicable Data Protection Law, Oracle will immediately inform You if, in its opinion, Your instruction infringes Applicable Data Protection Law. You acknowledge and agree that Oracle is not responsible for performing legal research and/or for providing legal advice to You.

5.4 Without prejudice to Oracle's obligations under this Section 5, the parties will negotiate in good faith with respect to any charges or fees that may be incurred by Oracle to comply with instructions with regard to the Processing of Personal Data that require the use of resources different from or in addition to those required for the provision of the Cloud Services.

## **6. Rights of Data Subjects**

6.1 Oracle will grant You electronic access to Your Cloud Services environment that holds Personal Data to enable You to respond to requests from Data Subjects to exercise their rights under Applicable Data Protection Law, including requests to access, delete or erase, restrict, rectify, receive and transmit, block access to or object to Processing of specific Personal Data or sets of Personal Data.

6.2 To the extent such electronic access is not available to You, You can submit a "service request" via My Oracle Support, or other applicable primary support tool provided for the Services), and provide detailed written instructions to Oracle (including the Personal Data necessary to identify the Data Subject) on how to assist with such Data Subject requests in relation to Personal Data held in Your Cloud Services environment. Oracle will promptly follow such instructions. If applicable, the parties will negotiate in good faith with respect to any charges or fees that may be incurred by Oracle to comply with instructions that require the use of resources different from or in addition to those required for the provision of the Cloud Services.

6.3 If Oracle directly receives any Data Subject requests regarding Personal Data, it will promptly pass on such requests to You without responding to the Data Subject if the Data Subject identifies You as the Data Controller. If the Data Subject does not identify You, Oracle will instruct the Data Subject to contact the entity responsible for collecting their Personal Data.

## **7. Personal Data Transfers**

7.1 Personal Data held in Your Cloud Services environment will be hosted in the data center region specified in the Cloud Services Agreement or otherwise selected by You. Oracle will not migrate Your Cloud Services environment to a different data center region without Your prior written authorization.

7.2 Without prejudice to Section 7.1, Oracle may access and Process Personal Data on a global basis as necessary to perform the Cloud Services, including for IT security purposes, maintenance and performance of the Cloud Services and related infrastructure, Cloud Services technical support and Cloud Service change management.

7.3 To the extent such global access involves a transfer of Personal Data originating from the European Economic Area (“EEA”) or Switzerland to Oracle Affiliates or Third Party Subprocessors located in countries outside the EEA or Switzerland that have not received a binding adequacy decision by the European Commission or by a competent national EEA data protection authority, such transfers are subject to (i) the terms of the EU Model Clauses incorporated into this Data Processing Agreement by reference; or (ii) other binding and appropriate transfer mechanisms that provide an adequate level of protection in compliance with Applicable Data Protection Law, such as approved Binding Corporate Rules for Processors. For the purposes of the EU Model Clauses, You and Oracle agree that (i) You will act as the data exporter on Your own behalf and on behalf of any of Your entities, (ii) Oracle will act on its own behalf and/or on behalf of the relevant Oracle Affiliates as the data importers, (iii) any Third Party Subprocessors will act as ‘subcontractors’ pursuant to Clause 11 of the EU Model Clauses.

7.4 To the extent such global access involves a transfer of Personal Data originating from Argentina to Oracle Affiliates or Third Party Subprocessors located in countries outside Argentina that have not received a binding adequacy decision by the National Directorate for Personal Data Protection, such transfers are subject to (i) the terms of the Argentinean Model Clauses incorporated into this Data Processing Agreement by reference; or (ii) other binding and appropriate transfer mechanisms that provide an adequate level of protection in compliance with Applicable Data Protection Law.

7.5 Transfers of Personal Data originating from other locations globally to Oracle Affiliates or Third Party Subprocessors are subject to (i) for Oracle Affiliates, the terms of the Oracle Intra-Company Data Processing and Transfer Agreement entered into between Oracle Corporation and the Oracle Affiliates, which requires all transfers of Personal Data to be made in compliance with all applicable Oracle security and data privacy policies and standards; and (ii) for Third Party Subprocessors, the terms of the relevant Oracle Third Party Subprocessor agreement incorporating security and data privacy requirements consistent with the relevant requirements of this Data Processing Agreement.

7.6 The terms of this Data Processing Agreement shall be read in conjunction with the EU Model Clauses, the Argentinean Model Clauses and other applicable transfer mechanisms pursuant to this Section 7.

## **8. Oracle Affiliates and Third Party Subprocessors**

8.1 Subject to the terms and restrictions specified in Sections 3.3, 7 and 8, You agree that Oracle may engage Oracle Affiliates and Third Party Subprocessors to assist in the performance of the Cloud Services.

8.2 Oracle maintains lists of Oracle Affiliates and Third Party Subprocessors that may Process Personal Data. These lists are available to You via My Oracle Support, Document ID 2121811.1 (or other applicable primary support tool provided for the Services). If You would like to receive notice of any intended changes to these lists, You can sign up per the instructions on Document ID 2288528.1.

8.3 Within fourteen (14) calendar days of Oracle providing such notice to You, You may object to the intended involvement of a Third Party Subprocessor or Oracle Affiliate in the performance of the Cloud Services, providing objective justifiable grounds related to the ability of such Third Party Subprocessor or Oracle Affiliate to adequately protect Personal Data in accordance with this Data Processing Agreement or Applicable Data Protection Law in writing by submitting a “service request” via My Oracle Support, or other applicable primary support tool provided for the Services. In the event Your objection is justified, You and Oracle will work together in good faith to find a mutually acceptable resolution to address such objection, including but not limited to reviewing additional documentation supporting the Third Party Subprocessors’ or Oracle Affiliate’s compliance with this Data Processing Agreement or Applicable Data Protection Law, or delivering the Cloud Services without the involvement of such Third Party Subprocessor. To the extent You and Oracle do not reach a mutually acceptable resolution within a reasonable timeframe, You shall have the right to terminate the relevant Cloud Services (i) upon serving prior notice in accordance with the terms of the Cloud Services Agreement; (ii) without liability to You and Oracle and (iii) without relieving You from Your payment obligations under the Cloud Services Agreement up to the date of termination. If the termination in accordance with this Section 8.3 only pertains to a portion of Cloud Services under an order, You will enter into an amendment or replacement order to reflect such partial termination.

8.4 The Oracle Affiliates and Third Party Subprocessors are required to abide by the same level of data protection and security as Oracle under this Data Processing Agreement as applicable to their Processing of Personal Data. You may request that Oracle audit a Third Party Subprocessor or provide confirmation that such an audit has occurred (or, where available, obtain or assist customer in obtaining a third-party audit report concerning the Third Party Subprocessor’s operations) to verify compliance with such obligations. You will also be entitled, upon written request, to receive copies of the relevant privacy and security terms of Oracle’s agreement with any Third Party Subprocessors and Oracle Affiliates that may Process Personal Data.

8.5 Oracle remains responsible at all times for the performance of the Oracle Affiliates’ and Third Party Subprocessors’ obligations in compliance with the terms of this Data Processing Agreement and Applicable Data Protection Law.

## **9. Technical and Organizational Measures, and Confidentiality of Processing**

9.1 Oracle has implemented and will maintain appropriate technical and organizational security measures for the Processing of Personal Data. These measures take into account the nature, scope and purposes of Processing as specified in this Data Processing Agreement, and are intended to protect Personal Data against the risks inherent to the Processing of Personal Data in the performance of the Cloud Services, in particular risks from accidental or unlawful destruction, loss, alteration, unauthorized

disclosure of, or access to Personal Data transmitted, stored or otherwise Processed.

9.2 In particular, Oracle has implemented the physical access, system access, data access, transmission and encryption, input, data backup, data segregation and security oversight, enforcement and other security controls and measures specified in the Service Specifications. You are advised to carefully review the applicable Service Specifications to understand which specific security measures and practices apply to the particular Cloud Services ordered by You, and to ensure that these measures and practices are appropriate for the Processing of Personal Data pursuant to this Data Processing Agreement.

9.3 All Oracle and Oracle Affiliate staff, as well as any Third Party Subprocessors that may have access to Personal Data are subject to appropriate confidentiality arrangements.

## **10. OMITTED INTENTIONALLY**

### **11. Incident Management and Personal Data Breach Notification**

11.1 Oracle promptly evaluates and responds to incidents that create suspicion of or indicate unauthorized access to or Processing of Personal Data (“Incident”). All Oracle and Oracle Affiliates staff that have access to or Process Personal Data are instructed on responding to Incidents, including prompt internal reporting, escalation procedures, and chain of custody practices to secure relevant evidence. Oracle’s agreements with Third Party Subprocessors contain similar Incident reporting obligations.

11.2 In order to address an Incident, Oracle defines escalation paths and response teams involving internal functions such as Information Security and Legal. The goal of Oracle’s Incident response will be to restore the confidentiality, integrity, and availability of the Cloud Services environment and the Personal Data that may be contained therein, and to establish root causes and remediation steps. Depending on the nature and scope of the Incident, Oracle may also involve and work with You and outside law enforcement to respond to the Incident.

11.3 To the extent Oracle becomes aware and determines that an Incident qualifies as a breach of security leading to the misappropriation or accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed on Oracle systems or the Cloud Services environment that compromises the security, confidentiality or integrity of such Personal Data (“Personal Data Breach”), Oracle will inform You of such Personal Data Breach without undue delay but at the latest within 24 hours.

11.4 Oracle will take reasonable measures designed to identify the root cause(s) of the Personal Data Breach, mitigate any possible adverse effects and prevent a recurrence. As information regarding the Personal Data Breach is collected or otherwise reasonably becomes available to Oracle and to the extent permitted by law, Oracle will provide You with (i) a description of the nature and reasonably anticipated consequences of the Personal Data Breach; (ii) the measures taken to mitigate any possible adverse effects and prevent a recurrence; (iii) where possible, the categories of Personal Data and Data Subjects including an approximate number of Personal Data records and Data Subjects that were the subject of the Personal Data Breach; and (iv) other information concerning the Personal Data Breach reasonably known or available to Oracle that You may be required to disclose to a Supervisory Authority or affected Data Subject(s).

11.5 Unless otherwise required under Applicable Data Protection Law, the parties agree to coordinate in good faith on developing the content of any related public statements or any required notices for the affected Data Subjects and/or notices to the relevant Supervisory Authorities.

## **12. Return and Deletion of Personal Data upon Termination of Cloud Services**

12.1 Following termination of the Cloud Services, Oracle will return or otherwise make available for retrieval Your Personal Data then available in Your Cloud Services environment, unless otherwise expressly stated in the Service Specifications. For Cloud Services for which no data retrieval functionality is provided by Oracle as part of the Cloud Services, You are advised to take appropriate action to back up or otherwise store separately any Personal Data while the production Cloud Services environment is still active prior to termination.

12.2 Upon termination of the Cloud Services or upon expiry of the retrieval period following termination of the Cloud Services (if available), Oracle will promptly delete all copies of Personal Data from the Cloud Services environment by rendering such Personal Data unrecoverable, except as may be required by law. Oracle's data deletion practices are described in more detail in the Service Specifications.

## **13. Legally Required Disclosure Requests**

13.1 If Oracle receives any subpoena, judicial, administrative or arbitral order of an executive or administrative agency, regulatory agency, or other governmental authority which relates to the Processing of Personal Data ("Disclosure Request"), it will promptly pass on such Disclosure Request to You without responding to it, unless otherwise required by applicable law (including to provide an acknowledgement of receipt to the authority that made the Disclosure Request).

13.2 At Your request, Oracle will provide You with reasonable information in its possession that may be responsive to the Disclosure Request and any assistance reasonably required for You to respond to the Disclosure Request in a timely manner.

## **14. Data Protection Officer**

14.1 Oracle has appointed a Global Data Protection Officer. Further details on how to contact Oracle's Global Data Protection Officer are available [here](#).

14.2 If You have appointed a Data Protection Officer, You may request Oracle to include the contact details of Your Data Protection Officer in the order, or may subsequently communicate the relevant contact details to Oracle by submitting a "service request" via My Oracle Support.