PeopleSoft in the Oracle Cloud Managed Services Agreement

THIS DOCUMENT IS A **GENERAL SERVICES AGREEMENT** AND **STATEMENT OF WORK** ("SOW" OR "AGREEMENT") NUMBER LFUCG 2018/002, ENTERED INTO PURSUANT TO RFP #13-3016 REQUEST FOR PROPOSAL FOR INFORMATION TECHNOLOGY CONSULTING AND TECHNICAL SERVICES ("THE RFP"), BY AND BETWEEN METAFORMERS, INC. ("METAFORMERS"), AND THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("CLIENT"). THIS STATEMENT OF WORK IS DATED AS OF 02/11/2018. THE FOLLOWING TERMS AND CONDITIONS SHALL GOVERN WHENEVER METAFORMERS FURNISHES ASSISTANCE TO CLIENT.

1. Purpose of Managed Services.
Metaformers will provide CLIENT with Managed Services to:
    a.   Lift and Shift PeopleSoft Upgrade Project (PUP) Environments from CLIENTs on premise data center to the Oracle cloud.
    b.   Manage said environments per section 4 for CLIENT

2. Approach.
Metaformers will work with the CLIENT team to prepare environments for migration. Once migrated the PUP team will move the upgraded environment to PRODUCTION on the agreement of the Executive Steering Committee (ESC).

3. Schedule/Term
Start Date: 03/01/2018
End Date: 02/28/2021

2 additional Option Years for Managed Services are offered to Client.

4. Deliverable Specifications
4.1   In-Scope
All services defined in this SOW apply only to the environments and systems listed. METAFORMERS will address alterations to the scope of this SOW through the Change Management Process defined herein.

METAFORMERS will provide the services included within section 4 Deliverable Specifications as part of the Core Services. Core Services provided are considered billable services in accordance with section 5 Compensation.

Core Services include:
- System Monitoring, problem resolution and patch application to include: Database, Operating System, Middleware and PeopleSoft Application
- Nightly Backups
- Disaster recovery planning and simulations
- Service Desk Operation during core business hours
- Application of PUMs
- Active monitoring of communications (vpM) between CLIENT and Oracle Cloud
- Migration of Projects, validated by CLIENT, between test environments and test environments to PRODUCTION.

Other Services that are in-scope, including event-related services and services requested by the CLIENT are as shown below and as more fully described throughout section 4 Deliverable Specifications:
- Disaster Recovery Execution
- PeopleSoft Development Services
- Non-Business Hours Support through call-out services
- Functional analysis and testing of the application, including testing for PUM's and PeopleTools updates
- Application Performance Tuning
- Issue resolution of communications between CLIENT and Oracle Cloud
- Lift and Shift of environments from LFUCG to Oracle Cloud
- Creation of additional environments / PeopleSoft databases
- Restore/Refresh of databases

Other Services will be requested by the DES Director or Designee, through logging a MetaTrack request for service. Designee's will be assigned by the DES Director, or as delegated, in writing to the Metaformers Account Manager, or as delegated.

4.2   Transition Services

METAFORMERS will plan and execute transition activities to establish the ongoing managed services defined herein. METAFORMERS will document the processes that will govern the services throughout the life of the engagement. Transition services will precede all other services with a transition schedule being developed and mutually agreed to.

The deliverables created during the transition are:

Governance Plan: Documentation of the processes that will govern the provision of services for the engagement, such as management of assigned work, METAFORMERS services team procedures, escalation procedures, performance monitoring and reporting, request for services or reporting incidents, service level status, and other governance aspects.

Customer Environment Map: Documentation of the environments within scope, such as operating and development environments, operational and procedural standards, libraries, naming conventions, and release procedures.

Service Desk Process: A systematic process and tool for receiving, distributing, tracking, reporting, and closing problem and service requests.

4.3   Delivery Management Services

Throughout the term of the engagement, METAFORMERS will report progress and delivery of all services defined herein. METAFORMERS Account Manager will be the primary liaison with CLIENT for all engagement communications, issue resolution, escalation, risk mitigation, resource management, metrics management, and service change management. Delivery management will be governed by the services and metrics defined herein and the Governance Plan established during the transition services.

The delivery management materials to be provided throughout the engagement are:

- Monthly status reports, which will include:
  - Metric reports and reviews
  - Change Management Items initiated as part of the change management process.

4.4   Support and Maintenance Services

METAFORMERS will support and maintain the PeopleSoft applications as defined in this SOW. Support and Maintenance is comprised of the following services.

Service Desk

METAFORMERS will provide Service Desk support for the applications within scope, which is defined as:

- Installation of a systematic process for service requests and reporting incidents or   problems.
- Documentation of escalation procedures for both functional and hierarchal response, describing procedures and contact information for each level of escalation.
- Resolution of application inquiries, answer questions, research problems per request by DES. It is expected that DES and the LFUCG will maintain responsibility for first line support.
- Response to requests for training, user demonstration, and application information.

Service Desk Severity Levels

Severity 1 (Critical)	Severity 2 (High)	Severity 3 (Medium)	Severity 4 (Low)
Business Continuity			
The failure creates an operationally critical issue to the organization for which a workaround is not available. (e.g. Payroll processing)	The failure creates a significant issue to the organization; however, core operations are able to continue through a workaround or a business continuity process.	The failure creates an issue that invokes a workaround or an acceptable delay to operations.	The failure creates an issue is considered aesthetic in nature or has a minor impact on the ability of the organization to complete operations.
Escalation			
If not resolved within 1 business day escalation as a reported Severity-1 incident	If not resolved within five business days a follow-up response is required and the incident is reported as a long-running Severity-2 incident.	If not resolved in 30 days a follow-up response is required and the incident is reported as a long-running Severity-2 incident.	Not Applicable
Communication			
Updates to requester every four business hours during outage with final notification sent when service restored	Updates to requester upon initiating work and once each five business days while work is ongoing with final notification sent when ticket can be closed	Updates to requester upon initiating work and every ten business days while work is ongoing with final notification sent when ticket can be closed	Final notification sent when ticket can be closed

Service Desk Response[1] Times

Priority	Description	Response time (Business Hours)	Core Support schedule
Production			
Critical	System unavailable or payroll process impacted	1 hr	10 hrs/day X Monday - Friday except Holidays. 0800hrs-1800hrs ET
High	Service Impacted or degraded but with no workaround available	8hrs	10 hrs/day X Monday - Friday except Holidays. 0800hrs-1800hrs ET
Medium	Service Impacted or degraded but with workaround available	24hrs	10 hrs/day X Monday - Friday except Holidays. 0900hrs-1700hrs ET
Low	Informational OR Enhancement OR Cosmetic	40 hrs	8 hrs/day X Monday - Friday except Holidays. 0900hrs-1700hrs ET
Non-Production			
High	Service Impacted or degraded but with no workaround available	16 hrs	10 hrs/day X Monday - Friday except Holidays. 0800hrs-1800hrs ET
Medium	Service Impacted or degraded but with workaround available	32hrs	10 hrs/day X Monday - Friday except Holidays. 0900hrs-1700hrs ET
Low	Informational OR Enhancement OR Cosmetic	48hrs	8 hrs/day X Monday - Friday except Holidays. 0900hrs-1700hrs ET

Production Support

METAFORMERS will provide Production support, which is defined as:

- o Assist in the identification of production system faults
- o Restoration of an outage of the application in response to an incident or problem
- o Change, release and control of PUM, patches, fixes, tools upgrades, regulatory & compliance updates, and approved changes. PUM updates are expected to be completed approximately every 6 months according to a schedule defined with the client.
- o Assist in resolution of system performance, management and database optimization

---

[1] A Response is defined as a communication engagement by METAFORMERS to CLIENT. This may include: Telephone calls, text messages, email exchanges, or Service Desk case updates.

Maintenance and Development Support

METAFORMERS will provide Maintenance and Development support, which is defined as:

- o Backlog management, and corrective, adaptive or perfective maintenance
- o Data management activities in support of development testing
- o Migration of application releases into production environments
- o Estimation of projects pertaining to in-scope environments

Application Management Services (AMS)

METAFORMERS will install and maintain non-production, DR, and production environments as listed in this SOW. AMS consists of application software, database software, assist with network and communication infrastructure and operating software (Patch Advisory) necessary to support the defined functions of each environment. METAFORMERS will assist in the configuration and management of the Infrastructure provided to CLIENT and the management of the third-party data center Provider.

As part of AMS, METAFORMERS will provide:

Growth: METAFORMERS will assist and advise on application scalability to accommodate anticipated system, transaction and storage growth as mutually agreed to with CLIENT. Additional needs will be communicated to CLIENT and METAFORMERS will work with the infrastructure vendor to allocate to the supported applications as specified in the Oracle Public Sector Cloud Services Agreement.

User Authentication: METAFORMERS will support enablement of external authentication in PeopleSoft Production through LDAP Integration for Production. CLIENT will work with METAFORMERS and taking responsibilities to managing CLIENT Active Directory.

METAFORMERS shall rely upon CLIENT's authentication environment. METAFORMERS will support enablement of external authentication in Production and one non-Production environment. METAFORMERS will support LDAP Integration for all PeopleSoft environments listed in this agreement.

Developer Access: Prior written approval (satisfied by email) from CLIENT is required for user access of any METAFORMERS personnel in any environment (Production or non-Production) and shall be restricted and segregated as appropriate. METAFORMERS shall provide user access for designated CLIENT and 3rd party contract personnel identified by CLIENT for system, database, and application administration via Terminal Server Services in all non-Production environments. The access shall provide designated users access to schema database objects order to perform daily activities in support of non-Production environments. The number of named users and concurrent users supported by the environments is listed in the SOW. Developer access in Production will be restricted and will be reserved for designated METAFORMERS personnel.

Networking and Encryption: As specified in the Oracle Public Sector Cloud Services Agreement.

Connectivity: As specified in the Oracle Public Sector Cloud Services Agreement.

Interfaces: The AMS shall support the interfaces. Neither party, CLIENT or METAFORMERS, will have the right to perform PeopleSoft Production databases or configurations update directly. Any exceptions should be pre-approved in writing by CLIENT and based on CLIENT PeopleSoft Change Control Protocols.

The AMS shall support the interfaces as identified during the PUP or thereafter and as mutually agreed to by METAFORMERS and CLIENT. No CLIENT initiated direct interfaces will be allowed to perform direct inserts or updates to any database tables.

System Maintenance: For Hardware, O/S, and Database, as specified in the Oracle Public Sector Cloud Services Agreement, METAFORMERS, shall: assist with operating system security in accordance with the Agreement; assist with maintenance of operating systems; provide CLIENT with written notice and general information about changes to be made to the infrastructure during routine maintenance; monitor infrastructure performance; isolate performance issues; implement and test fixes to performance issues regarding the hardware and operating system; plan, implement and manage capacity; identify need for, and analyze impact of, infrastructure patches; apply infrastructure patches; test patches and the interaction of such patches to the components to which they are applied; timely notify CLIENT of the completion of applying the patches; review hardware maintenance plans; schedule and execute hardware maintenance; test components that have received OS/DB maintenance; monitor maintenance plan for its effectiveness; perform standard reboots and other regular maintenance of the hardware.

Security Certificates: METAFORMERS shall acquire security certificates (SSL or equivalent) if requested by CLIENT. Upon their acquisition, the certificates shall become the property of CLIENT.   Cost of certificates will be billed to CLIENT.

Security Services: METAFORMERS shall work with and assist CLIENT to identify and implement security requirement additions/changes, such as those mandated by state and federal privacy requirements. METAFORMERS will assist with the commercially reasonable efforts to meet new security requirements, with any non-compliance areas mutually agreed to by METAFORMERS and CLIENT. METAFORMERS shall work with CLIENT to mitigate any identified issues to meet defined requirements for continuous monitoring.

Exposed Systems: Systems which are exposed to the Internet shall have Domain Names (DNS) names within the CLIENT domain and its sub-domains. CLIENT shall assign DNS host names.

Provisioning New Environments: METAFORMERS will provision new non-production environments upon receipt of an authorized request from CLIENT. This effort will be invoiced per agreement.

Restoring/Copying Existing Non-Production Environments: METAFORMERS shall restore or copy existing non-production environments upon receipt of an authorized request from CLIENT.

4.5 Disaster Recovery

METAFORMERS shall have and maintain a disaster recovery plan as applicable to the Managed Services (collectively "Disaster Recovery Plan") to provide Full Recovery based on the terms in the Oracle Public Sector Cloud Services Agreement.

Definition of Disaster

A "Disaster" is an unplanned event that causes a material or complete loss of access to and use of the System, where such loss of access and use is likely to continue for a period greater than twelve (24) hours and for which CLIENT and METAFORMERS in its sole discretion has have declared that a Disaster has occurred.

Disaster Recovery Procedures and Reporting

As part of the Disaster Recovery Plan, METAFORMERS shall establish and develop disaster recovery, restore procedures and reporting functions. Such procedures shall be fully established, paired with complementary CLIENT based business continuity procedures and successfully tested with acceptable, reportable and measureable outcomes.

Disaster Recovery Rehearsals

Once per calendar year, METAFORMERS shall conduct a disaster recovery rehearsal to confirm that the production infrastructure can be restored in accordance with the Disaster Recovery Plan. CLIENT shall have the right to observe and directly participate in such rehearsals. If a disaster recovery rehearsal reveals that there are deficiencies in restoring the infrastructure in accordance with the Disaster Recovery Plan, METAFORMERS shall conduct an additional rehearsal within three months to confirm that the deficiencies have been corrected. Such additional rehearsals shall not count toward the not more than twice per twelve-month period that CLIENT may request for rehearsals.

Initial Response to Possible Disaster

Within one hours after an event that may qualify as a Disaster, the Parties shall communicate to determine the nature and cause of the event and whether the event should be declared a Disaster, and for METAFORMERS to put the Disaster Recovery Plan into effect to attain Full Recovery of the Services (the "Disaster Recovery Services").

Disaster Recovery Services

Upon the reasonable determination by CLIENT that an incident qualifies as a Disaster, METAFORMERS shall follow the procedures set forth in the Disaster Recovery Plan to restore the Production infrastructure at the primary Data Center or a secondary Data Center. Once it has been agreed upon to move to the Disaster Recover site, that the Production will remain at the Disaster Recovery site until determined otherwise by CLIENT in its sole discretion. For at least 5 business days.

Recovery Point Objective (RPO) will be for a period of 24 hours and Return to Operation (RTO) will be for a period of 24 hours.

4.6 Out-Of-Scope

Work not specifically listed above as In-Scope or not included in this SOW is considered Out-of-Scope. METAFORMERS will address alterations to the scope of this SOW through the Service Change Management Process defined herein.

4.7 Acceptance Management

Completed deliverables and services will be communicated by METAFORMERS in the Monthly Status Reports. If CLIENT determines that a deliverable or service is incomplete or otherwise unacceptable, CLIENT will document all deficiencies and communicate them to METAFORMERS within five (5) business days of receipt of the Status Report.

METAFORMERS will promptly address the deficiencies to CLIENT's reasonable satisfaction or mutually agree with CLIENT to alternative actions.

Acceptance by CLIENT of the deliverable or service is the responsibility of the below approver. CLIENT may designate alternate approvers.

PRIMARY

Role: Director of Enterprise Solutions

ALTERNATE

Role: DES Designee

4.8 Service Schedules

The schedule for the services to be provided within scope of this SOW.

4.9 Service Change Management

The following service change management process will be used to manage material alterations to the baseline scope, schedule, and cost of the services or changes to any other aspect of the engagement. METAFORMERS will not perform out of scope work or services without an approved Service Change Request.

Change Request Process
- A Notification of intended changes will be communicated in writing via a Change Request (CR) form and provide justification for the change and the impact to the project's scope, schedule, and cost
- The CLIENT approver will approve or reject the change request within five (5) business days from the receipt of the CR form
- If the CLIENT approver does not approve or reject the change request within five (5) business days from the receipt of the CR form and does not communicate a timeframe in which a decision will be made, the requested change will be considered deferred:
- The CR status will be logged, tracked and managed as a 'deferred' request.
- Work will progress without incorporating the requested change into the work plan.

- o Where an approval or rejection decision is necessary for the managed services engagement to progress, the change request decision will be escalated as a project issue.
- o METAFORMERS shall coordinate any changes in hardware, network, software, configuration, or services with CLIENT. CLIENT may defer the change based on impact to business operations.
- o METAFORMERS and CLIENT shall work in good faith to resolve disputes regarding the 'in scope' or 'out of scope' classification of work.

Change Request Approvals
The following persons are responsible for obtaining signature approval of change requests for the project:

CLIENT Role: Director of Enterprise Solutions

METAFORMERS Role: Vice President of Operations

5. Compensation
Client will be billed on a Monthly basis with Net 30 terms.

METAFORMERS has relied on the accuracy and completeness of the information, existing processes, and system tools provided by CLIENT to price the scope of this work. Incomplete, inaccurate or erroneous information may cause a change in contract price and/or schedule. If it is necessary to alter this SOW, METAFORMERS will inform CLIENT via the Change Management process defined herein. CLIENT will reimburse METAFORMERS for any reasonable travel and project-related expenses incurred by METAFORMERS pursuant to this Agreement. METAFORMERS will submit any such expenses to CLIENT in writing for approval and bill CLIENT in accordance with the expense reimbursement set forth by the CLIENT.

5.1 Pricing Details
All authorized work performed under this SOW is billable. Invoicing will be per the terms of the Agreement.   Monthly fees will be invoiced in arrears, at the end of each month, and will commence with the first month of Transition service. The monthly recurring fee for any partial month service will be prorated for the number of days of service.

Description	Monthly Costs	Annual Costs
One Time Migration Fee		$75,000 (one time cost)
Oracle Hosting (12 environments) Production Instances of: HCM, Financials and Portal. 4 Development Instances each of: HCM, Financial 1 Development instance of Portal	$20,000 per month	$240,000

Description	Monthly Costs	Annual Costs
1 Warm DR site		
Monthly Managed Service Monthly Base Services Fee for Core Services Demand for additional hours, above and beyond the 80 scheduled hours, will be billable as additional service fees.	80 hours per month @ $13,377 per month (See Additional Service Fees below)	$160,525
Creation of New Environments	$5,000 per environment	
Additional Service Fees Additional service fees apply for (a) any hours over the 80 scheduled hours included in the Monthly Managed Services and for (b) Other Services.	**Ad-hoc hourly rates** $150.00 Offsite $175.00 Onsite (minimum of 20 hours) After hours call-out – minimum of 3 hrs off-site rate charged.	Additional hours, per month, may also be purchased in packages of: 25 hrs – 2% discount 100 hrs – 4% discount

6. Client Obligations and Project Assumptions

Oracle Public sector cloud services agreement terms are documented in Appendix A.

6.1 Technical Environment

The technical environment that METAFORMERS will depend on to perform the work described in this SOW includes PeopleSoft and 3rd party applications for prod and no-prod environments including; Web Servers, Application Servers, Database Servers, and DR.

CLIENT is responsible for Oracle PeopleSoft software and database licenses. Licensing for In-Scope Applications including those added by approved Service Change Request.

6.2 Delays and Extensions

METAFORMERS has a limited ability to mitigate the impact of delays caused by CLIENT or by events outside of METAFORMERS reasonable control. METAFORMERS rates, prices, and schedules do not include a contingency for the cost and schedule impacts of such delays.

METAFORMERS will notify CLIENT promptly upon discovery of any delay caused by CLIENT or caused by events outside of a party's reasonable control. METAFORMERS will work with CLIENT to mitigate the cost and schedule impacts. METAFORMERS will submit a service change request for required cost and schedule adjustments. METAFORMERS reserves the right to submit a further service change request to address the cumulative impacts of subsequent delays.

Metaformers's performance will depend on close cooperation and collaboration with LFUCG. To provide quality services and deliverables, Metaformers's proposal and pricing is based on its understanding that LFUCG will throughout the Term of the contract (a) make promptly available

to Metaformers professional, management executives and staff LFUCG knowledgeable about the project and SOW for the purpose of answering Metaformers's questions; (b) cooperate fully with Metaformers by providing it in a timely manner with applicable information and resources; (c) designate a person to act as LFUCG's representative with respect to the contract with complete authority to transmit instructions, receive information, and interpret and define LFUCG's policies and decisions with respect to the contract; (d) promptly (within 2 days at the most) respond to Metaformers's request for approval of, or comments on, Metaformers's work product; (e) promptly (within 2 days at the most) respond to Metaformers's request for direction how to proceed with Metaformers's performance under the contract.

LFUCG also acknowledges that Metaformers' performance may depend on the cooperation and performance of LFUCG's third party supply and services. A delay in cooperation and/or performance by a LFUCG third party supply and services provider may cause a delay in Metaformers' performance under the Agreement. Unless a delay in cooperation and/or performance by a LFUCG third party supply and services provider was directly caused by Metaformers, LFUCG agrees that Metaformers will not deemed in violation or breach of this Agreement from a delay or delays caused by a LFUCG third party supply and services provider.

6.3 Client Roles and Responsibilities
If, during the execution of this engagement, roles and responsibilities defined herein cannot be fulfilled by CLIENT, METAFORMERS will negotiate budget, schedule, or scope changes to address the deficiency.

Role	Role Description
DES Director	o Acts as a single point of contact for CLIENT for this Managed Services engagement o Coordinates and directs day-to-day activities for CLIENT team members supporting this Managed Services engagement o Evaluates METAFORMERS Deliverables
DES Team	o Provides functional support for the application users o Provides functional configuration management of the application o Provides analysis and issue resolution for system issues o Develops reports, resolves defects, retrofits customizations o Provides testing, including the development of test scripts, to support updates, PUMs, or other events that require a business process test of the application. o Maintains application security. o Provides subject matter expertize and support for interfaces with vendors, including any testing or retrofits that may be required.
Executive Steering Committee	o Approves all business-related decisions o Cooperatively manages the CLIENT - METAFORMERS relationship regarding hosting and managed services o Is the first point of escalation for the CLIENT stakeholders on any matter of concern regarding the delivery of the services
Subject Matter Experts	o As needed to provide complete and accurate current-state

Role	Role Description
(SME)	architectural information. Identified SMEs will be responsible for assisting METAFORMERS with access to resources, responding to METAFORMERS questions (either one-on-one or in facilitated sessions)
Policies	o CLIENT will provide METAFORMERS with a copy of any of its policies, standards and regulations to be applied for these services o METAFORMERS will comply with such policies, standards and regulations and mutually agree with CLIENT on any aspects that are not applicable or are outside of METAFORMERS scope of work
Licenses	o CLIENT will continue to maintain all necessary software licenses and will keep all software maintenance agreements active during the entire term of this SOW for the software applications identified in Appendix A as CLIENT's responsibility o CLIENT is responsible for ensuring all software licensors agree that the licenses can be managed offsite by METAFORMERS. Notwithstanding the foregoing, METAFORMERS agrees to (i) only use such software for providing Services to CLIENT pursuant to this SOW (ii) at all times comply with any restrictions or other requirements imposed on the use of software by CLIENT's third party software vendors, provided CLIENT informs METAFORMERS of the restrictions or other requirements.

6.4 Data Protection

METAFORMERS Responsibilities:
As specified in the Oracle Public Sector Cloud Services Agreement (Appendix A).

METAFORMERS is not responsible for (a) failure of CLIENT to implement the required and appropriate protections for its facilities, systems, data, materials, and Confidential Information in CLIENT's environment (if such implementations are not METAFORMERS responsibility under this Agreement), or (b) the acts or omissions of CLIENT, (including its officers, directors, agents, and employees), including liability for any security breach or unauthorized access to data or information caused in any way by CLIENT.

CLIENT Responsibilities:

Within CLIENT's environment, CLIENT is responsible for all physical, administrative, technical, procedural, network, and electronic data protection and other safeguards as are necessary for the protection, security, and confidentiality of any CLIENT Confidential Information and Personal Information, as required by CLIENT's operations and applicable law for its facilities, operations, policies, and data, including without limitation, providing appropriate notices and systems of records required under Applicable Laws (collectively, "CLIENT's Security Procedures"). CLIENT is responsible for compliance with all legal requirements with respect to CLIENT's environment.

6.4.1 Personal Information

The parties acknowledge that in providing the Services, METAFORMERS may obtain or have access to, or otherwise store, process or transmit Personal Information in CLIENT's environment and/or in the non-production, production and disaster recovery (DR) environments in a Data Center. As used herein, "Personal Information" means any information alone or in combination that can identify or be used to identify CLIENT's employees, agents, officers, contractors, customers, students, suppliers, grantors, grantees, potential and prospective customers and/or other persons, which information may include without limitation name, mailing address, email address, phone number, other contact information, credit card or debit card number, other financial account information, social security number, driver's license or non-driver identification card number, mother's maiden name, date of birth, passwords, biometrics, electronic serial number, personal identification number or code and/or any other account information and/or account activity information or other information or data that can be used for identity theft (even that which is not personally identifiable) and other sensitive information regarding such persons.

Notwithstanding anything to the contrary, all Personal Information is and shall remain the sole and exclusive property of CLIENT, and shall be deemed CLIENT's Confidential Information.

6.4.2 Applicable Laws

METAFORMERS agrees that it will comply with its obligations under all Applicable Privacy and Data Security Laws (as defined below) in relation to Personal Information that is obtained from CLIENT, its users, or otherwise through the performance of Services, except as provided below for temporary environments. The term "Applicable Privacy and Data Security Laws" means all privacy, security and data protection laws, rules and regulations of any applicable jurisdiction applicable to privacy, security and protection of Personal Information, including the collection, processing, storage and disclosure of Personal Information, including the Kentucky Open Records Act, KRS 61.870 to 61.884.

6.4.3   Data Breach

As specified in the Oracle Public Sector Cloud Services Agreement.

6.4.4 Indemnity & Insurance

In addition to the Indemnification & Insurance provisions of the RFP, METAFORMERS shall indemnify, defend and hold harmless CLIENT (including its directors ,officers, agents, representatives, employees and subcontractors) from and against any and all Liabilities to the extent that such Liabilities arise out of, result from or are based upon any third party assertions of or are due to a Data Breach to the extent that the Data Breach and Liabilities arising from the Data Breach: (i) were caused by METAFORMERS or its contractors while such data was in METAFORMERS or its contractor's possession or control in a production environment in a Data Center or METAFORMERS environment, (ii) arose from the failure by METAFORMERS or its contractors to follow Customer' s Security Procedures or METAFORMERS Security Procedures utilized at the time of such Data Breach (iii) not caused soley by CLIENT or its third party suppliers or providers; provided, however, that CLIENTdoes the

following: (a) notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law); (b) gives the Provider sole control of the defense and any settlement negotiations, to the extent not prohibited by law; and (c) gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

6.5 Termination

Upon notification by CLIENT of termination of this SOW per the Agreement, METAFORMERS will provide support to transition the managed services operations i.e., retransition services, to CLIENT or to another identified provider.   Retransition services, which shall include the complete transfer or any and all CLIENT data and work product hosted by METAFORMERS pursuant to this SOW, will be treated as a special project and mutually agreed to between METAFORMERS and CLIENT via the Change Management process defined herein, provided that METAFORMERS agrees that it shall not charge CLIENT more for these retransition services than its standard charges offered to other customers for a similar scope of services provider.

Notwithstanding the foregoing, if a project change order is not executed for retransition services, METAFORMERS agrees, in accordance with CLIENT's instructions, to take all actions reasonably necessary upon termination of this SOW to facilitate the prompt transfer to CLIENT of all data and applications being managed or hosted by METAFORMERS pursuant to this SOW and CLIENT shall reimburse METAFORMERS for its reasonable documented costs of providing such assistance.

Early Termination

CLIENT may terminate this SOW upon (30) days' prior written notice, stating its intention to terminate and the date upon which such termination shall be effective. METAFORMERS will continue to provide full-time services during the notice period. The early termination of this SOW is subject to an early termination charge equal to 50% of the monthly recurring fees multiplied by the number of months remaining in the Statement of Work. The parties acknowledge that the above described Early Termination Fee is METAFORMERS sole and exclusive remedy for CLIENT's early termination of this SOW. The early termination charge shall not apply to termination for repeated SLA failures as described in Section 6.6.3 of this Agreement.

Notwithstanding any other provision of this Agreement, CLIENT shall not be obligated to operate under the terms herein unless and until CLIENT'S legislative body appropriates funds for this Agreement to cover each fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. CLIENT shall notify METAFORMERS in writing of any such non-appropriation of funds at the earliest possible date and METAFORMERS shall be given the first opportunity to resume performance under the Agreement in the event that funds are appropriated. The early termination charge shall not apply to termination for the non-appropriation of funds.

If this SOW is terminated, METAFORMERS shall provide the necessary retransition services set forth in Section 6.5 of this Agreement to allow CLIENT to affect a transition to another Provider.

6.6 SLA Failures Exclusions

The following exclusions apply to the determination of any SLA Failure:

There must be at least twenty (20) measures of a service failure in the reporting period. The service failure represents the non-compliance of the Service Desk to response times.

METAFORMERS will note the low volume of measures for a service and explain the cause of a SLA Failure in the status report for the period in which the low volume occurs.

6.6.1 Excused SLA Failures

METAFORMERS will be excused from meeting any SLA which is and adversely affected by any of the following conditions or events, but only for the duration of the time-period that any such conditions or events are in effect. All excused SLA failures defined in this Section must be documented and provided to CLIENT:

- Those caused by CLIENT's failures to meet CLIENT responsibilities set forth in this SOW.
- Those caused by any deterioration or impact that is attributable to batch processes or reports executed by CLIENT that are abnormal, not identified in the production batch schedule, or executed outside the production batch schedule.
- Those caused by failures or fluctuations in electrical or telecommunications equipment or lines or other equipment beyond the Line of Demarcation, including any network issue.
- Those caused by a Force Majeure event.
- Those caused by a declared Disaster until Full Recovery is achieved.
- Those caused by a security event requiring shutdown of components or access to preserve the integrity of the systems and/or the data
- Failures deemed by CLIENT to have little or no operational impact

6.6.2 Root Cause Analysis

METAFORMERS shall commence performing a root-cause analysis to identify the cause of a SLA Failure within one (1) business day of the occurrence of such failure involving a Severity' Level 1 Support Ticket, and within three (3) business days of the occurrence of all other SLA Failures. If the cause of such failure is within METAFORMERS control, METAFORMERS shall take corrective action to cure the SLA Failure. If the cause of such failure is not within METAFORMERS control, METAFORMERS shall meet with CLIENT to discuss a corrective plan of action mutually acceptable to the parties. METAFORMERS will provide a written report identifying the root cause and subsequent actions taken to resolve the SLA Failure.

6.6.3 Repeated SLA Failures

If the services experience repeated SLA Failures, CLIENT shall so notify METAFORMERS in writing, specifying in reasonable detail the nature of the Failures. METAFORMERS shall have thirty (30) calendar days from receipt of that notice to correct the Failures. If the Failures are not cured within that time period, CLIENT may terminate the SOW by providing METAFORMERS with written notice of termination for

Repeated SLA Failures. Termination for Repeated SLA Failures is excused from Early Termination Fees.

The following shall constitute events of SLA Failure on the part of METAFORMERS:

Failure by METAFORMERS for any three (3) consecutive months to meet any of the defined service levels in the Production Environment.

6.7. Warranty, Disclaimers and Exclusive Remedies. Subject to the RFP, as specified in the Oracle Public Sector Cloud Services Agreement (Appendix A).

6.8 Limitation of Liability. Subject to the RFP, including the indemnity, as specified in the Oracle Public Sector Cloud Services Agreement (Appendix A).

6.9 Force Majeure. As specified in the Oracle Public Sector Cloud Services Agreement (Appendix A).

7.0 Other Terms

7.1 For service provided by METAFORMERS or Oracle under this Agreement, and where stated in this Agreement that the terms are as specified in the Oracle Public Sector Cloud Services Agreement (Appendix A), but subject to the RFP, METAFORMERS shall be liable to CLIENT only and to the same extent as Oracle is liable under the Oracle Public Sector Cloud Services Agreement (Appendix A).

8. General Terms
8.1 Relationship Between the Parties
METAFORMERS acknowledges and agrees that its employees or agents are not employees of CLIENT for any purpose whatsoever. METAFORMERS shall be considered an independent contractor at all times during the performance of services specified hereunder.

8.2 Conflicts
In the event of any conflict between this Agreement, RFP # 13-2016 (the "RFP"), and METAFORMERS' Response to the RFP (the "Response"), both of which are incorporated herein by reference as if fully stated, the specific terms of this Agreement shall supersede the general terms of the RFP followed by the Response.

8.3 Captions
Captions contained in this Agreement are for convenient reference and do not constitute part of this Agreement.

8.4. Assignment
METAFORMERS may not assign this Agreement to any other person or entity without the express prior written consent of CLIENT.

8.5 Severability
If any of the provisions of this Agreement are declared to be invalid, such provisions shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect.

8.6 Counterparts
This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.7 Governing Law
This Agreement will be governed by the laws of the Commonwealth of Kentucky, exclusive of its conflict of laws provisions.

Signatures

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Metaformers, Inc.   Lexington-Fayette Urban
                                                     County Government

By: _____   By: _____
        (Signature)   (Signature)

_____   _____
 (Printed Name and Title)   (Printed Name and Title)

Date: _____   Date:_____

Appendix A -

Oracle Public Sector Cloud Services Agreement Terms

MetaOra CSA-PS v0118

ORACLE PUBLIC SECTOR CLOUD SERVICES AGREEMENT TERMS

MetaOra CSA-PS v0118

THESE ORACLE CLOUD SERVICES AGREEMENT TERMS APPLY TO THE ORACLE CLOUD SERVICES THAT YOU ORDER. THESE ORACLE CLOUD SERVICES AGREEMENT TERMS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN AN ORDER OR ANY ORDERING DOCUMENTATION.

USE OF THE SERVICES

1.1   Oracle will make the Oracle services listed in Your order (the "Services") available to You pursuant to this Agreement and Your order. Except as otherwise stated in this Agreement or Your order, You have the non- exclusive, worldwide, limited right to use the Services during the period defined in Your order, unless earlier terminated in accordance with this Agreement or the order (the "Services Period"), solely for Your internal business operations. You may allow Your Users to use the Services for this purpose, and You are responsible for their compliance with this Agreement and Your order.

1.2   The Service Specifications describe and govern the Services. During the Services Period, Oracle may update the Services and Service Specifications to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Content. Oracle updates to the Services or Service Specifications will not materially reduce the level of performance, functionality, security or availability of the Services during the Services Period of Your order.

1.3   You may not, and may not cause or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking, availability or performance testing of the Services; or (c) perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, remote access or penetration tests of the Services (the "Acceptable Use Policy"). In addition to other rights that Oracle has in this Agreement and Your order, Oracle has the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.

• **OWNERSHIP RIGHTS AND RESTRICTIONS**

2.1   You or Your licensors retain all ownership and intellectual property rights in and to Your Content. Oracle or its licensors retain all ownership and intellectual property rights in and to the Services, derivative works thereof, and anything developed or delivered by or on behalf of us under this Agreement.

2.2   You may have access to Third Party Content through use of the Services. Unless otherwise stated in Your order, all ownership and intellectual property rights in and to Third Party Content and the use of such content is governed by separate third party terms between You and the third party.

2.3   You grant us the right to host, use, process, display and transmit Your Content to

provide the Services pursuant to and in accordance with this Agreement and Your order. You have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Your Content, and for obtaining all rights related to Your Content required by Oracle to perform the Services.

2.4   You may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish or copy any part of the Services (including data structures or similar materials produced by programs); (b) access or use the Services to build or support, directly or indirectly, products or services competitive to Oracle; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by this Agreement or Your order.

3. NONDISCLOSURE

3.1   By virtue of this Agreement, the parties may disclose information that is confidential ("Confidential Information"). To the extent permitted by law, Confidential Information shall be limited to Your Content residing in the Services, and all information clearly identified as confidential at the time of disclosure.

3.2   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 the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

3.3   Subject to applicable law, each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, Oracle will protect the confidentiality of Your Content residing in the Services for as long as such information resides in the Services. 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 this Agreement, and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law. Oracle will protect the confidentiality of Your Content residing in the Services in accordance with the Oracle security practices defined as part of the Service Specifications applicable to Your order. The parties acknowledge and agree that You and this Agreement are subject to applicable freedom of information or open records law. Should you receive a request under such law for Oracle's Confidential Information, You agree to give Oracle adequate prior notice of the request and before releasing Oracle's Confidential Information to a third party, in order to allow Oracle sufficient time to seek injunctive relief or other relief against such disclosure.

4. PROTECTION OF YOUR CONTENT

4.1   In performing the Services, Oracle will comply with the Oracle privacy policy applicable to the Services ordered. Oracle privacy policies are available at http://www.oracle.com/us/legal/privacy/overview/index.html.

4.2   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 how Oracle will process Personal Data that

You provide to us as part of Oracle's provision of the Services, unless stated otherwise in Your order. You agree to provide any notices and obtain any consents related to Your use of, and Oracle's provision of, the Services.

4.3   Oracle will protect Your Content as described in the Service Specifications, which define the administrative, physical, technical and other safeguards applied to Your Content residing in the Services and describe other aspects of system management applicable to the Services. Oracle and its affiliates may perform certain aspects of the Services (e.g., administration, maintenance, support, disaster recovery, data processing, etc.) from locations and/or through use of subcontractors, worldwide.

4.4   You are responsible for any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content, including any viruses, Trojan horses, worms or other harmful programming routines contained in Your Content, or from Your use of the Services in a manner that is inconsistent with the terms of this Agreement. You may disclose or transfer, or instruct us to disclose or transfer in writing, Your Content to a third party, and upon such disclosure or transfer Oracle is no longer responsible for the security or confidentiality of such content and applications outside of Oracle.

4.5   Unless otherwise specified in Your order (including in the Service Specifications), You may not provide us access to health, payment card or similarly sensitive personal information that imposes specific data security obligations on the processing of such data greater than those specified in the Service Specifications. If available, You may purchase services from us (e.g., Oracle Payment Card Industry Compliance Services) designed to address particular data protection requirements applicable to Your business or Your Content.

5.   WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

5.1   Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. Oracle warrants that during the Services Period, Oracle will perform the Services using commercially reasonable care and skill in all material respects as described in the Service Specifications. If the Services provided to You were not performed as warranted, You must promptly provide us with a written notice that describes the deficiency in the Services (including, as applicable, the service request number notifying us of the deficiency in the Services).

5.2   ORACLE DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT ORACLE WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. ORACLE IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT OR THIRD PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES.

5.3   FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND ORACLE WILL REFUND TO METAFORMERS, INC., AND METAFORMERS, INC. WILL IN TURN REFUND TO YOU THE FEES PAID FOR THE DEFICIENT SERVICES FOR THE PERIOD OF TIME DURING WHICH THE SERVICES WERE DEFICIENT.

5.4 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.

6. **LIMITATION OF LIABILITY**

6.1 IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES NOR ORACLE BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA, OR DATA USE, SALES, GOODWILL, OR REPUTATION.

6.2 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ORACLE AND ORACLE'S AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT TORT OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID TO ORACLE FOR THE SERVICES UNDER THE ORDER GIVING RISE TO THE LIABILITY IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY LESS ANY REFUNDS OR CREDITS RECEIVED UNDER SUCH ORDER.

7. INDEMNIFICATION

7.1 Subject to the terms of this Section 7 (Indemnification), if a third party makes a claim against either You or Oracle ("Recipient" which may refer to You or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, "Material") furnished by either You or Oracle ("Provider" which may refer to You or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will to the extent not prohibited by law, defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

d. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the   claim (or sooner if required by applicable law);

e. gives the Provider sole control of the defense and any settlement negotiations, to the extent not prohibited   by law; and

f. gives the Provider the information, authority and assistance the Provider needs to defend against or settle   the claim.

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

Metaformers, Inc., and Metaformers, Inc. will in turn refund to You any unused, prepaid fees for such Services.

7.3   The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. Oracle will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible or made available to You within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

7.4   This Section 7 provides the parties' exclusive remedy for any infringement claims or damages.

8. TERM AND TERMINATION

8.1   Services provided under this Agreement shall be provided for the Services Period defined in Your order. If You order Cloud Services that are designated in the Service Specifications or Your order as Services that will be automatically extended, such Services will not automatically be extended for an additional Services Period of the same duration. In order to extend the Services, You must provide Metaformers, Inc. with written notice no later than thirty (30) days prior to the end of the applicable Services Period of Your intent to renew such Cloud Services and You execute a contract modification (or a new contract) evidencing such extension. The preceding sentence shall not apply if Metaformers, Inc. provides You with written notice no later than ninety (90) days prior to the end of the applicable Services Period of its intention not to renew or extend such Cloud Services.

8.2   Oracle may suspend Your or Your Users' access to, or use of, the Services if Oracle believes that (a) there is a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services; (b) You or Your Users are accessing or using the Services to commit an illegal act; or (c) there is a violation of the Acceptable Use Policy. When reasonably practicable and lawfully permitted, Oracle will provide You with advance notice of any such suspension. Oracle will use reasonable efforts to re- establish the Services promptly after Oracle determines that the issue causing the suspension has been resolved. During any suspension period, Oracle will make Your Content (as it existed on the suspension date) available to You. Any suspension under this paragraph shall not excuse You from Your obligation to make payments under this Agreement.

8.3   If either of us breaches a material term of this Agreement or the order and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party
may terminate the order under which the breach occurred. If Metaformers, Inc. terminates the order as specified in the preceding sentence, You must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such order plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable

efforts to cure the breach. You agree that if You are in default under this Agreement, You may not use those Services ordered.

8.4   You may terminate this Agreement at any time without cause by giving us 30 days prior written notice of such termination. Termination of the Agreement will not affect orders that are outstanding at the time of termination. Those orders will be performed according to their terms as if this Agreement were still in full force and effect. However, those orders may not be renewed or extended subsequent to termination of this Agreement.

8.5   For a period of no less than 60 days after the end of the Services Period of an order, Oracle will make Your Content (as it existed at the end of the Services Period) available for retrieval by You. At the end of such 60-day period, and except as may be required by law, Oracle will delete or otherwise render inaccessible any of Your Content that remains in the Services.

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

9. THIRD PARTY CONTENT, SERVICES AND WEB SITES

9.1   The Services may enable You to link to, transmit Your Content to, or otherwise access third parties' websites, platforms, content, products, services, and information. Oracle does not control and are not responsible for such third parties' websites, platforms, content, products, services, and information.

9.2   Any Third party Content Oracle makes accessible is provided on an "as-is" and "as available" basis without any warranty of any kind. You acknowledge and agree that Oracle is not responsible for, and have no obligation to control, monitor, or correct, Third Party Content. Oracle disclaims all liabilities arising from or related to Third Party Content.

9.3   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 FacebookTM, YouTubeTM and TwitterTM, etc. (each, a "Third Party Service"), depend on the continuing availability of such third parties' respective application programming interfaces (APIs). Oracle may need to update, change or modify the Services under this Agreement 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 unavailability, during the Services Period does not affect Your obligations under this Agreement or the applicable order, and You will not be entitled to any refund, credit or other compensation due to any such changes.

10. SERVICE MONITORING, ANALYSES AND ORACLE SOFTWARE

10.1   Oracle continuously monitors the Services to facilitate Oracle's operation of the Services; to help resolve Your service requests; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services; and to detect and address illegal acts or violations of the Acceptable Use Policy. Oracle monitoring tools do not collect or store any of Your Content residing in the Services, except as needed for such purposes. Oracle does not monitor, and does not address issues with, non-Oracle software provided by You or any

of Your Users that is stored in, or run on or through, the Services. Information collected by Oracle monitoring tools (excluding Your Content) may also be used to assist in managing Oracle's product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license management purposes.

10.2   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 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.

10.3   Oracle may provide You with online access to download certain Oracle Software for use with the Services. If Oracle licenses Oracle Software to You and do not specify separate terms for such software, then such Oracle Software is provided as part of the Services and You have the non-exclusive, worldwide, limited right to use such Oracle Software, subject to the terms of this Agreement and Your order, solely to facilitate Your use of the Services. You may allow Your Users to use the Oracle Software for this purpose, and You are responsible for their compliance with the license terms. Your right to use Oracle Software will terminate upon the earlier of Oracle's notice (by web posting or otherwise) or the end of the Services associated with the Oracle Software. If Oracle Software is licensed to You under separate third party terms, then Your use of such software is governed by the separate third party terms.

11. EXPORT

11.1   Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Such export laws govern use of the Services (including technical data) and any Services deliverables provided under this Agreement, and You and Oracle each 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.

11.2   You acknowledge that the Services are designed with capabilities for You and Your Users to access the Services without regard to geographic location and to transfer or otherwise move Your Content between the Services and other locations such as User workstations. You are solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of Your Content.

12. FORCE MAJEURE

Neither of us, nor Oracle, shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Services and affected orders upon written notice. This Section does not

excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for the Services.

13. NOTICE

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

13.2 Oracle may give notices applicable to Oracle's Cloud Services customer base by means of a general notice on the Oracle portal for the Cloud Services, and notices specific to You by electronic mail to Your e-mail address on record in Oracle's account information or by written communication sent by first class mail or pre- paid post to Your address on record in Oracle's account information.

14. ASSIGNMENT

You may not assign this Agreement or give or transfer the Services, or any interest in the Services, to another individual or entity.

15. OTHER

15.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between Oracle, Metaformers, Inc., and You. We are each responsible for paying our own employees, including employment related taxes and insurance. You understand that Oracle's business partners and other third parties, including any third parties with which Oracle has an integration agreement or that are retained by You to provide consulting or implementation services or applications that interact with the Cloud Services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for, bound by, or responsible for any problems with the Services, Your Content or Your Applications arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as an Oracle subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as Oracle would be responsible for Oracle resources under this Agreement. This Agreement is entered exclusively between You and Metaformers, Inc. While Oracle has no contractual relationship with You, Oracle is a third party beneficiary of this Agreement.

15.2 If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

15.3 Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two years after the cause of action has accrued.

15.4 Prior to entering into an order governed by this Agreement, You are solely responsible for determining whether the Services meet Your technical, business or regulatory requirements. Oracle will cooperate with Your efforts to determine whether use of the standard Services are consistent with those requirements. Additional fees may apply to any additional work performed by Oracle or changes to the Services. You remain solely responsible for Your regulatory compliance in connection with Your use of the Services.

15.5 Upon forty-five (45) days written notice and no more than once every twelve (12)

months, Oracle may audit Your compliance with the terms of this Agreement and Your order. You agree to cooperate with Oracle's audit and to provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations.

16. ENTIRE AGREEMENT

16.1   You agree that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, is the complete agreement for the Services ordered by You and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

16.2   It is expressly agreed that the terms of this Agreement and any Oracle order shall supersede the terms in any purchase order, procurement internet portal, or other similar non-Oracle document and no terms included in any such purchase order, portal, or other non-Oracle document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an order and the Agreement, the order shall take precedence; however, unless expressly stated otherwise in an order, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in an order. This Agreement and orders hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online by authorized representatives of You and of Oracle; however, Oracle may update the Service Specifications, including by posting updated documents on Oracle's websites. Except as set forth in Section 15.1, no third party beneficiary relationships are created by this Agreement.

17. AGREEMENT DEFINITIONS

17.1.   "Oracle Software" means any software agent, application or tool that Oracle makes available to You for download specifically for purposes of facilitating Your access to, operation of, and/or use with, the Services.

17.2.   "Program Documentation" refers to the user manuals, help windows, readme files for the Services and any Oracle Software. You may access the documentation online at http://oracle.com/contracts or such other address specified by Oracle.

17.3.   "Service Specifications" means the following documents, as applicable to the Services under Your order: (a) the Cloud Hosting and Delivery Policies, the Program Documentation, the Oracle service descriptions, and the Data Processing Agreement, available at www.oracle.com/contracts; (b) Oracle's privacy policy, available at http://www.oracle.com/us/legal/privacy/overview/index.html; and (c) any other Oracle documents that are referenced in or incorporated into Your order. The following do not apply to any non-Cloud Oracle service offerings acquired in Your order, such as professional services: the Cloud Hosting and Delivery Policies, Program Documentation, and the Data Processing Agreement. The following do not apply to any Oracle Software that is provided by Oracle as part of the Services and governed by the terms of this Agreement: the Cloud Hosting and Delivery Policies, Oracle service descriptions, and the Data Processing Agreement.

17.4.   "Third Party Content" means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Oracle that You may access through, within, or in conjunction with Your use of, the Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, Oracle data marketplaces and

libraries, dictionaries, and marketing data.

17.5. "Users" means those employees, contractors, and end users, as applicable, authorized by You or on Your behalf to use the Services in accordance with this Agreement and Your order. For Services that are specifically designed to allow Your clients, agents, customers, suppliers or other third parties to access the Cloud Services to interact with You, such third parties will be considered "Users" subject to the terms of this Agreement and Your order.

17.6. "Your Content" means all software, data (including Personal Data as that term is defined in the Data Processing Agreement for Oracle Cloud Services described in this Agreement), text, images, audio, video, photographs, non-Oracle or third party applications, and other content and material, in any format, provided by You or any of Your Users that is stored in, or run on or through, the Services. Services under this Agreement, Oracle Software, other Oracle products and services, and Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term "Your Content"

19. CLOUD SERVICES EFFECTIVE DATE

The Effective Date of this Cloud Services Agreement is _____ (DATE TO BE COMPLETED BY METAFORMERS, INC.).