

**ATTENTION! THE FOLLOWING VENDA PROFESSIONAL SERVICES AGREEMENT WILL BE LEGALLY BINDING ON THE CUSTOMER UPON EXECUTION OF AN APPLICABLE SOW OR VENDA ESTIMATE/ORDER FORM FOR PROFESSIONAL SERVICES (INCLUDING VENDA TRAINING). CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING VENDA PROFESSIONAL SERVICES AGREEMENT BEFORE EXECUTING THE APPLICABLE SOW OR VENDA ESTIMATE/ORDER FORM.**

If the hyperlink location of this Professional Services Agreement (the "PSA") is referenced in a Statement of Work (as defined below) signed by both an authorized representative of the procuring party (the "Customer") and Venda Limited ("Venda"); or is referenced in the description for an item on a Estimate/Order Form signed by Customer, or in an agreement between Venda and Customer, then the Professional Services procured by Customer shall be subject solely to the terms and conditions of this PSA and not the Main Terms (as defined below).

In addition to any Venda Professional Services provided to Customer pursuant to this PSA, Venda may also provide Customer with access to the Venda Software-as-a-Service application (the "Service") if the Customer has entered into an eCommerce Services Agreement, License Agreement, Subscription Services Agreement or similar agreement (such agreement is the "Main Terms").

**1. Scope of Services.** Subject to the terms and conditions of the Main Terms and this PSA, Venda will provide Customer with Professional Services as set forth in the applicable statements of work executed by Venda and Customer or an Estimate/Order Forms executed by Customer (each, a "Statement of Work" or "SOW"). "Deliverable(s)" shall mean the Professional Services, deliverables and/or training materials provided pursuant to an SOW. All Statements of Work shall be deemed part of and subject to this PSA.

**1.1. Terms and Conditions for Training.**

**1.1.1. Training Deliverables.** Customer is solely responsible for any printing, shipping and copying charges for any training Deliverables. All electronic and hard copy versions of the training Deliverables are provided for Customer's internal training purposes only. Customer is prohibited from: (a) modifying the training Deliverables, unless otherwise authorized in writing by Venda or set forth in an applicable SOW; (b) reselling or sublicensing any training Deliverables; and (c) utilizing the training Deliverables to replicate or attempt to perform the training, unless otherwise authorized in writing by Venda or set forth in an applicable SOW; and (d) developing or attempting to develop any of the products described in such training Deliverables. Customer may not record, stream or otherwise capture any performance or aspect of the training Professional Services. Training Deliverables are not subject to any maintenance, support or updates.

**1.1.2. For Onsite Delivery.** Customer is responsible for providing appropriate training facilities for the training delivery, including without limitation Internet connectivity, student access to a Demo Account to which Customer may be granted access (pursuant to Section 1.1.3 below), projector, student computers and other reasonable classroom amenities.

**1.1.3. Access to Demo Account.** In connection with Venda's provision of training hereunder, Venda may provide attending Customer employees ("Training Users") with temporary and limited access to the Service solely for such Training Users' non-commercial use and receipt of training hereunder ("Demo Account"). Such Training Users' access to the Demo Account shall be subject to the terms and conditions that appear upon the initial provisioning or use of the Demo Account ("Trial Account Agreement"). The Trial Account Agreement may also be found at [www.venda.com/termsofservice.shtml](http://www.venda.com/termsofservice.shtml). By selecting "I Agree" and/or accessing or using the Demo Account enabled for Customer by Venda, Customer and the Training Users agree to the terms of such Trial Account Agreement in connection with Customer's use and the use by its Training Users of the Demo Account. Venda has no obligation to provide any maintenance, support or updates with respect to Customer's use of the Demo Account.

**2. Change Management Process.** If Customer or Venda requests a change in any of the specifications, requirements, Deliverables, or scope (including drawings and designs) of the Professional Services described in any Statement of Work, the party seeking the change shall propose the applicable changes by written notice. Within forty-eight (48) hours of receipt of the written notice, each party's project leads shall meet, either in person or via telephone conference, to discuss and agree upon the proposed changes. Venda will prepare a change order describing the proposed changes to the Statement of Work and the applicable change in fees and expenses, if any (each, a "Change Order"). Change Orders are not binding unless and until they are executed by both parties. Executed Change Orders shall be deemed part of, and subject to, this PSA. If the parties disagree about the proposed changes, the parties shall promptly escalate the change request to their respective senior management for resolution.

**3. Project Materials.**

**3.1 Deliverables.** Venda shall own all rights, title and interest in and to the Deliverables (excluding any Customer Confidential Information provided to Venda for its provisioning of Professional Services), and related intellectual property rights. Venda shall have the right to use any such Customer Confidential Information solely for the purpose of providing the Professional Services to Customer hereunder. Deliverables are Venda Confidential Information and Customer may not reverse engineer,

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decompile, disassemble, translate, copy, reproduce, display, publish, create derivative works of, assign, sell, lease, rent, license, sublicense or grant a security interest in all or any portion of the Deliverables. Subject to terms and conditions of the Main Terms and this PSA, and during the Term, Venda hereby provides Customer with a limited, non-exclusive, non-transferable (except in connection with an assignment under the General Provisions section of the Main Terms applicable to assignment) and terminable license to use the Deliverables solely for Customer's internal operations in connection with its authorized use of the applicable Service.

**3.2 Tools.** Notwithstanding any other provision of this PSA: (i) nothing herein shall be construed to assign or transfer any intellectual property rights in the proprietary tools, libraries, know-how, techniques and expertise ("Tools") used by Venda to develop the Deliverables, and to the extent such Tools are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables or as otherwise agreed by Customer; and (ii) the term "Deliverables" shall not include the Tools. Tools are Venda Confidential Information. Customer customizations may require the use of the SuiteCloud features governed by the SuiteCloud Terms of Service at [www.netsuite.com/termssofservice](http://www.netsuite.com/termssofservice).

### 4. Professional Services Warranty.

**4.1 Professional Services Warranty.** Venda warrants that (a) it and each of its employees, consultants and subcontractors, if any, that it uses to provide and perform Professional Services has the necessary knowledge, skills, experience, qualifications, and resources to provide and perform the services in accordance with this SOW; and (b) the Professional Services will be performed for and delivered to Customer in a good, diligent, workmanlike manner in accordance with industry standards. Venda's ability to successfully perform hereunder is dependent upon Customer's provision of timely information, access to resources, and participation. If through no fault or delay of Customer the Professional Services do not conform to the foregoing warranty, and Customer notifies Venda within sixty (60) days of Venda's delivery of the Professional Services, Customer may require Venda to re-perform the non-conforming portions of the Professional Services.

**4.2 Disclaimer.** SECTION 4.1 ABOVE SETS FORTH THE SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES RELATED TO THE PROFESSIONAL SERVICES, DELIVERABLES, AND TOOLS UNDER THIS PSA. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT. EXCEPT AS PROVIDED HEREIN, THE PROFESSIONAL SERVICES AND DELIVERABLES PROVIDED TO CUSTOMER ARE ON AN "AS IS" AND "AS AVAILABLE" BASIS.

**5. Limitations of Liability for Professional Services.** IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THIS PSA OR THE APPLICABLE SOW FOR ANY LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE APPLICABLE SOW OR PSA, THE MAXIMUM LIABILITY OF VENDA AND ITS AFFILIATES ARISING OUT OF OR IN THE CONNECTION WITH THIS PSA OR THE APPLICABLE SOW WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE SHALL BE THE AMOUNT PAID BY CUSTOMER FOR SUCH PROFESSIONAL SERVICES UNDER THE APPLICABLE SOW. BOTH PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS PSA AND THAT THE PARTIES WOULD NOT ENTER INTO THIS PSA OR THE APPLICABLE SOW WITHOUT THESE LIMITATIONS ON THEIR LIABILITY. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES SHALL BE SUBJECT TO THE LIMITATIONS IN THIS SECTION. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S FAILURE TO COMPLY WITH THE TERMS OF THIS PSA OR THE APPLICABLE SOW. NOTHING IN THIS PSA EXCLUDES OR RESTRICTS THE LIABILITY OF EITHER PARTY FOR DEATH OR PERSONAL INJURY RESULTING FROM ITS NEGLIGENCE OR EITHER PARTY'S LIABILITY IN THE TORT OF DECEIT OR FOR FRAUDULENT MISREPRESENTATION.

### 6. Payment Provisions.

**6.1 Fees and Payments.** Fees and expenses for each applicable project shall be set forth in the applicable SOW. All fees payable are due within 30 days from the invoice date unless otherwise specified in Customer Estimate/Order. All fees are non-refundable, except as otherwise explicitly stated in the applicable Estimate/Order Form or this PSA.

**6.2 Taxes.** Venda fees do not include any local, state, federal or foreign taxes, VAT, levies or duties of any nature ("Taxes"). Customer is responsible for paying all Taxes, including sales, use, personal property, value-added, excise, customs fees, import duties, stamp duties and any other similar taxes and duties, including penalties and interest, imposed by any United States federal, state, provincial or local government entity or any non-US government entity on the transactions contemplated by this PSA, excluding only taxes based on Venda's income. If Venda has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer unless Customer provides Venda with a valid tax exemption certificate authorized by the appropriate taxing authority.

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### 7. Term and Termination.

**7.1** This PSA shall be effective as of the Effective Date of the Main Terms and shall continue in effect during the Term of the Main Terms. Each SOW shall commence on the date it is last signed, and shall expire upon completion of the project set forth in the applicable SOW, or as otherwise set forth in the applicable SOW. Once signed by both parties, a SOW and/or an Estimate/Order Form shall be non-cancellable, except as otherwise explicitly stated in such SOW or Estimate/Order Form. Sections 4.2 and 5 through 11 shall survive termination of this PSA.

**7.2 Termination.** This PSA will terminate automatically when the Main Terms and all SOWs and agreements referencing this PSA are terminated or expired. Additionally, either party may terminate this PSA for convenience upon written notice in the event there are no active SOWs hereunder. Upon termination or expiration of this PSA, Customer shall have no rights to continue use of the Deliverables and Tools.

**8. Confidentiality.** For purposes of this PSA, "Confidential Information" means: (a) Customer Data; (b) the terms of this PSA and (c) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this PSA, that: (i) in the case of information in tangible form, is marked "confidential" or "proprietary;" (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the receiving party within ten (10) days following disclosure; (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information.

Notwithstanding the foregoing, the following shall not be Confidential Information: (1) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (2) information that was rightfully in the receiving party's possession without restriction prior to disclosure; (3) information that was rightfully disclosed to the receiving party by a third party without restriction (4) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party's Confidential Information; and (5) aggregate data collected or generated by Venda or on behalf of Venda regarding Venda's products and services (for purposes of providing or improving Venda products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain any personally identifiable or Customer-specific information.

Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this PSA or as directed by Customer. Either party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers who have executed binding written agreements requiring confidentiality and non-use obligations at least as restrictive as those in this Section 8. Additionally, Customer must input credit card information and social security numbers only in the fields designated for such data in the Service. Either party may disclose Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or regulation.

**9. Subcontracting.** Venda's relationship with Customer pursuant to this PSA will be that of an independent contractor. Neither party will have any authority to bind the other, to assume or create any obligation, to enter into any agreements, or to make any warranties or representations on behalf of the other. Nothing in this PSA shall be deemed to create any agency, partnership or joint venture relationship between the parties. Each party is solely responsible for all of its employees and agents and its labor cost and expenses and for any and all claims, liabilities or damages or debts of any type whatsoever that may arise on account of each party's activities or those of its employees or agents in the performance of this PSA. Venda reserves the right to use third parties (who are under a covenant of confidentiality with Venda), including, but not limited to, offshore subcontractors to assist with the Professional Services, including, without limitation, any data migration, configuration, implementation and custom code development processes.

**10. Non-Impediment.** Nothing in this PSA shall be construed as precluding or limiting in any way the right of Venda to provide consulting, development, or other services of any kind to any individual or entity (including without limitation performing services or developing materials which are similar to and/or competitive with the Professional Services and/or Deliverables hereunder).

**11. Governing Law and Jurisdiction.** This Agreement is governed by English law and Customer and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts of England in any dispute arising out of or relating to this Agreement.

### 12. Email and Notices.

**12.1** Except for Legal Notices set for in Section 12.2 below, Customer's email address for communication and notice purposes relating to this PSA shall be set forth on the applicable Estimate/Order Form (or subsequent email addresses as advised by Customer). Customer agrees to accept emails from Venda at the above email address specified under this Section. Venda may provide any and all notices and other communications in the English language to Customer through either email, posting on the Service (or other electronic transmission) or by mail or express delivery service. Upon account setup, Customer may

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further designate additional contacts for various types of notices, as defined in the Help Documentation. Venda recommends that the main contact email addresses be group addresses (such as [notices@customer.com](mailto:notices@customer.com)) so that notices are reviewed promptly and not delayed due to the absence of one individual. In addition, Venda may rely and act on all information, authorizations and instructions provided to Venda from the above-specified email address and/or Customer administrators.

**12.2** Any notice required under this PSA shall be provided to the other party in writing. If Customer has a legal dispute with Venda or if Customer wishes to provide a notice under the Indemnification Section of this PSA, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: Oracle Corporation UK Ltd, Oracle Parkway, Thames Valley Park, Reading, Berkshire RG6 1RA, marked for the attention of the Director of Legal Services, Legal Department.

**13. Force Majeure.** Neither party shall be liable for loss, delay, non-performance (including failure to meet the service level commitment, but excluding payment obligations) to the extent resulting from any force majeure event (as determined by French case law), including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and any to resume performance as soon as possible and any delivery date shall be extended accordingly. Notwithstanding the foregoing, a party may not be discharged from any payment obligations hereunder by the occurrence of a force majeure event.

**14. Assignment.** This PSA shall inure to benefit and bind the parties hereto, their successors and assigns, but neither party may assign this PSA without written consent of the other, except that Venda may assign without consent to a related entity or the successor of all or substantially all of Venda's business or assets to which this Agreement relates.

**15. Entire PSA.** The parties acknowledge that they have had previous discussions related to the performance by Venda of Professional Services for Customer and the possible strategies which may be used by Venda to implement the Service to achieve the requirements identified by Customer. This PSA, together with the attached exhibits that are incorporated by reference, and the Agreement, constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this PSA and such exhibits. The parties expressly disclaim any reliance on any and all prior agreements, understandings, RFPs, verbal and/or written communications related to the Professional Services to be provided by Venda. No other act, document, usage or custom shall be deemed to amend or modify this PSA unless agreed to in writing signed by a duly authorized representative of both parties.

**16. General Provisions.** If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this PSA shall otherwise remain in full force and effect. A waiver of any breach under this PSA should not constitute a waiver of any other breach or future breach. This PSA may be executed in counterparts and/or by facsimile or electronic signature and if so executed shall be equally binding as an original copy of this PSA executed in ink by both parties.

CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS PSA, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS, AND THE PERSON SIGNING THIS PSA, THE APPLICABLE ESTIMATE/ORDER FORM, AND/OR STATEMENT OF WORK HAS BEEN AUTHORIZED TO DO SO.