



## Applaud Solutions UK Ltd End User License Agreement

### A. Agreement Definitions

“You” and “your” refers to the individual or entity that has executed this agreement (“agreement”) and ordered programs and/or services from Applaud Solutions UK Ltd (“Applaud Solutions”) or an authorized distributor.

The term “program documentation” refers to the program user manual and program installation manuals.

The term “programs” refers to the software products owned or distributed by Applaud Solutions which you have ordered, program documentation, and any program updates acquired through technical support.

The term “services” refers to technical support services which you have ordered.

### B. Applicability of Agreement

This agreement is valid for the order which this agreement accompanies.

### C. Rights Granted

Upon Applaud Solutions’ acceptance of your order, you have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the ordering document), limited right to use the programs and receive any technical support services you ordered solely for your internal business operations and subject to the terms of this agreement, including the definitions and rules set forth in the order and the program documentation. You may allow your agents and contractors (including, without limitation, outsourcers) to use the programs for this purpose and you are responsible for their compliance with this agreement in such use.

For programs that are specifically designed to allow your customers and suppliers to interact with you in the furtherance of your internal business operations, such use is allowed under this agreement.

Program documentation is delivered with the programs which you may access online at <http://www.applaudsolutions.com>.

### D. Ownership and Restrictions

Applaud Solutions or its licensors retain all ownership and intellectual property rights to the programs. Applaud Solutions retains all ownership and intellectual property rights to anything developed and delivered under this agreement resulting from services. You may make a sufficient number of copies of each program for your licensed use and one copy of each program media.

Third party technology that may be appropriate or necessary for use with some Applaud Solutions programs is specified in the program documentation. Such third party technology is licensed to you under the terms of the third party technology license agreement specified in the program documentation and not under the terms of this agreement.

You may not:

- remove or modify any program markings or any notice of Applaud Solutions’ or its licensors’ proprietary rights;
- make the programs available in any manner to any third party for use in the third party’s business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);

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Applaud Solutions  
[www.applaudsolutions.com](http://www.applaudsolutions.com)

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- cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs);
- disclose results of any program benchmark tests without Applaud Solutions' prior written consent.

#### **E. Warranties, Disclaimers and Exclusive Remedies**

Applaud Solutions warrants that a program licensed to you will operate in all material respects as described in the applicable program documentation for one year after delivery (i.e., via physical shipment or electronic download). You must notify Applaud Solutions of any program warranty deficiency within one year after delivery.

**APPLAUD SOLUTIONS DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT APPLAUD SOLUTIONS WILL CORRECT ALL PROGRAM ERRORS.**

**FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND APPLAUD SOLUTIONS' ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF APPLAUD SOLUTIONS CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES YOU PAID TO APPLAUD SOLUTIONS FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES; OR, IF APPLAUD SOLUTIONS CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT SERVICES AND RECOVER THE FEES YOU PAID TO APPLAUD SOLUTIONS FOR THE DEFICIENT SERVICES.**

**TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### **F. Trial Programs**

You may order trial programs, or Applaud Solutions may include additional programs with your order which you may use for trial, non-production purposes only. You have a fixed number of days (as specified in product specification) from date of installation on a given database to evaluate these programs. If you decide to use any of these programs after the trial period ends on a given database, you must obtain a license for such programs from Applaud Solutions. If you decide not to obtain a license for any program after the trial period ends, you will cease using any such programs on your Oracle instance. Programs licensed for trial purposes are provided "as is" and Applaud Solutions does not guarantee technical support or offer any warranties for these programs.

#### **G. Indemnification**

If a third party makes a claim against either you or Applaud Solutions ("Recipient" which may refer to you or Applaud Solutions depending upon which party received the Material), that any information, design, specification, instruction, software, data, or material ("Material") furnished by either you or Applaud Solutions ("Provider" which may refer to you or Applaud Solutions depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense, will 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:

- 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);

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- gives the Provider sole control of the defense and any settlement negotiations; and
- gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

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 fees the Recipient may have paid to the other party for it and any unused, prepaid technical support fees you have paid to Applaud Solutions for the license.

If you are the Provider and such return materially affects Applaud Solutions' ability to meet its obligations under the relevant order, then Applaud Solutions may, at its option and upon 30 days prior written notice, terminate the order.

The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient.

The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Applaud Solutions will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Applaud Solutions.

Applaud Solutions will not indemnify you for infringement caused by your actions against any third party if the Applaud Solutions program(s) as delivered to you and used in accordance with the terms of this agreement would not otherwise infringe any third party intellectual property rights.

Applaud Solutions will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of this agreement (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of this agreement. This section provides the parties' exclusive remedy for any infringement claims or damages.

#### **I. End of Agreement**

If either of us breaches a material term of this agreement 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 this agreement.

If Applaud Solutions ends this agreement as specified in the preceding sentence, you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for programs ordered under this agreement plus related taxes.

If Applaud Solutions ends the license for a program under the Indemnification section, you must pay within 30 days all amounts remaining unpaid related to such license plus related taxes. 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 programs and/or services ordered.



If Applaud Solutions are the breaching party then Applaud Solutions will reimburse any fees paid by you past the termination date and the proportion of any technical support fees pre-paid for the support period during which the breach occurred, prorated from the termination date.

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

#### **J. Fees and Taxes**

All fees payable to Applaud Solutions are due within 30 days from the invoice date. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Applaud Solutions must pay based on the programs and/or services you ordered, except for taxes based on Applaud Solutions' income.

You agree that you have not relied on the future availability of any programs or updates in entering into the payment obligations in your ordering document.

#### **K. Nondisclosure**

By virtue of this agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under this agreement. Confidential information shall be limited to the terms and pricing under this agreement and all information clearly identified as confidential at the time of disclosure.

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.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent either party from disclosing the terms or pricing under this agreement or orders submitted under this agreement in any legal proceeding arising from or in connection with this agreement or disclosing the confidential information to a federal or state governmental entity or any other person or entity as required by law.

#### **L. Entire Agreement**

You agree that this agreement and the information which is incorporated into this agreement by written reference, together with the applicable ordering document, are the complete agreement for the programs ordered by you, and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such programs and/or services.

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 a term consistent with the purpose and intent of this agreement.

It is expressly agreed that the terms of this agreement and any Applaud Solutions ordering document shall supersede the terms in any purchase order or other non-Applaud Solutions document and no terms included in any such purchase order or other non-Applaud Solutions document shall apply to the programs and/or services ordered. This agreement and ordering documents may not be modified and the



rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of you and of Applaud Solutions. Any notice required under this agreement shall be provided to the other party in writing.

#### **M. Limitation of Liability**

**NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. APPLAUD SOLUTIONS' MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID APPLAUD SOLUTIONS UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PROGRAMS OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID APPLAUD SOLUTIONS FOR THE DEFICIENT PROGRAM OR SERVICES GIVING RISE TO THE LIABILITY.**

#### **N. Export**

Export laws and regulations of the United Kingdom and any other relevant local export laws and regulations apply to the programs. You agree that such export control laws govern your use of the programs (including technical data) and any services deliverables provided under this agreement, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, program 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.

#### **O. Other**

Upon 45 days written notice, Applaud Solutions may audit your use of the programs. You agree to cooperate with Applaud Solutions' business operations. You agree to pay within 30 days of written notification any fees applicable to your use of the programs in excess of your license rights. If you do not pay, Applaud Solutions can end your technical support, licenses and/or this agreement. You agree that Applaud Solutions shall not be responsible for any of your costs incurred in cooperating with the audit.

#### **P. Force Majeure**

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; 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 90 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures. You are still obliged to pay for programs delivered but Applaud Solutions will act in good faith and make all reasonable efforts to accommodate extensions in payment terms.

#### **Q. License Definitions and Rules**

To fully understand your license grant, you need to review the definition for the licensing metric and term designation as well as the licensing rules which are listed below.

**Person:** is defined as an individual who uses the programs or is processed by the programs. A person may be any one of the following:

- an employee or contingent worker who is actively working on behalf of your organization



- a former employee who has one or more benefit plans managed by the system or continues to be paid through the system or has access to the programs covered by this license agreement
- An individual who is not employed or contracted by your organization but whose details are managed by your organization, including individuals working for close partners, affiliates and third parties
- an applicant or candidate for employment within your organization
- any of the above relating to a third party, partner, affiliate or different organization who has access to the programs via access to your systems or is processed by your systems via an agreement with your organization

**Authorized Signature:**

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_