

## **EXHIBIT 3**

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FELICIA WILSON,		:	
	CLAIMANT,	:	JAMS Case # 142502031
-against-		:	
		:	
ORACLE CORPORATION,		:	<b><u>RESPONDENT'S MOTION TO DISMISS</u></b>
	RESPONDENT.	:	<b><u>BASED ON EXPRESS CONTRACT TERMS</u></b>
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Respondent Oracle Corporation submits this memorandum and the attached contractual documents governing Claimant Felicia Wilson's entitlement to commissions. As explained below, this arbitration should be dismissed because Wilson's claim that she is contractually entitled to unpaid commissions is inconsistent with the terms of those contractual documents.

#### **PRELIMINARY STATEMENT**

Wilson is currently employed by Oracle as an Applications Sales Representative. In this capacity, she sells Oracle's software applications to business enterprise customers and is paid commissions on those sales. Wilson's commissions are calculated based on commission rates set forth in her Individualized Compensation Plan (Ex. 1). Particularly relevant in this case, that Plan contains the following provision: "Commission for any sales credit from a single customer in excess of 250% of quota in the given fiscal year will be calculated at 0.2x of the tier 1 rate."

There is no dispute that Wilson's commissions in connection with a sale to a single customer (Pearson, Inc. ) in fiscal year 2014 triggered this provision and that her commissions were calculated in accordance with its terms. In this arbitration, Wilson asks the Arbitrator to re-write her Individualized Compensation Plan so that this provision does not apply to the Pearson sale because, in her view, its application was unfair. She also claims that Oracle engaged in breach of contract by refusing her request to exempt the Pearson sale from this single-customer provision.

It is well settled law that, when parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms. Because Oracle compensated

Wilson on the Pearson sale in accordance with the express terms of her Individualized Compensation Plan, she cannot maintain a contract claim for more compensation. Because there was no breach of contract, Wilson's New York Labor Law claim also fails as a matter of law.

The critical issue at this juncture of the case is whether Oracle should be required, as Wilson insists, to defend its decision not to modify the terms of her Individualized Compensation Plan to exempt the Pearson sale from the single-customer provision. In short, she demands discovery and a hearing to force Oracle to justify its decision not to pay her more than her contractual commission entitlement established by her Individualized Compensation Plan. Yet, the entire point of reducing commission arrangements to writing is to avoid precisely this sort of dispute. Indeed, it would be unreasonable to allow Wilson's breach of contract claim to survive, and proceed through discovery, given that she was paid all the commissions she is entitled to under the applicable contractual documents. It is for this reason that New York courts routinely dismiss breach of contract claims for unpaid compensation that are contrary to the terms of an applicable written contract.

### **THE UNDISPUTED FACTS**

#### *The Oracle Commission Agreement*

Oracle compensates sales representatives like Wilson with commissions based on the revenue they generate from the sale of Oracle products. Like other sales representatives, Wilson's commission entitlement is governed by two documents: A fiscal year Incentive Compensation Terms & Conditions (which sets forth compensation terms applicable to Oracle sales representatives generally) and a fiscal year Individualized Compensation Plan (which sets forth the terms applicable to the individual sales representative, including individualized commission rates). The documents applicable to this dispute are Wilson's FY14 Individualized Compensation Plan and the FY2014 Incentive Compensation Terms & Conditions (the "FY14 Terms and Conditions"), attached as

Exhibits 1 and 2, respectively.<sup>1</sup> On June 1, 2013, Wilson electronically signed her FY14 Individualized Compensation Plan, accepting its terms and the terms of the FY14 Terms and Conditions, which contains the following integration and no oral modification clause:

The Employee agrees that . . . Except as set forth in Section II A. below, that neither Oracle, nor its agents, representatives, directors, officers or Employees have made any representations to them concerning the terms or effects of these Terms and Conditions, other than those explicitly contained in these Terms and Conditions and that the Employees agree not to rely on any such representations should they be made in the future.

(Ex. 2, p. 4).<sup>2</sup>

*The Commission Formula in Wilson's Individualized Compensation Plan*

Wilson's FY14 Individualized Compensation Plan sets forth both a sales target (also referred to as a quota) and applicable commission rates (Ex. 1). For FY2014, her sales target/quota was \$2,969,480, and her commission rates fell into four tiers, as follows:

	<u>Credited Sales</u>	<u>Commissions on Credited Sales</u>
Tier 1	0- 2,969,480	4.71463017%
Tier 2	2,969,480- 3,711,850	7.07194526%
Tier 3	3,711,850- 7,423,700	9.42926034%
Tier 4	> 7,423,700	9.42926034%

Accordingly, Wilson's commissions would be 4.71463017% of her credited sales between 0 and \$2,969,480 (Tier 1); 7.07194526% of her credited sales between \$2,969,480 and \$3,711,850 (Tier 2); and so on. (Ex. 1).

Wilson's FY14 Individualized Compensation Plan contains an important provision applicable to sales made to a single customer: "Commission for any sales credit from a single customer in

<sup>1</sup> Relevant provisions in these documents are highlighted for the Arbitrator's convenience.

<sup>2</sup> Section IIA is irrelevant because it only applies to *Oracle's* changes to Individualized Compensation Plans. (Ex. 2, p. 5). Oracle made no such changes to Wilson's Individualized Compensation Plan.



excess of 250% of quota in the given fiscal year will be calculated at 0.2x of the tier 1 rate.” (Ex. 1, p. 2). The effect of this provision is clear and straightforward on its face – commissions on sales to a single customer in excess of 250% of the representative’s quota will be calculated at .2 times the Tier 1 rate listed in Wilson’s Individualized Compensation Plan.<sup>3</sup>

#### *Wilson’s Commissions on the Pearson Transaction*

In fiscal year 2014, Wilson was part of a team that sold applications software to Pearson, Inc., an education publication and services company. There is no dispute that this was a sale to a single customer. There is no dispute that Wilson’s credited sales on this transaction were \$10,456,055. There is no dispute that Wilson was paid commissions on this *entire amount*. The only issue is whether the correct commission rates were used to calculate Wilson’s commissions on this sale under the terms of her Individualized Compensation Plan. As explained below, they were.

Since Wilson’s \$10,456,055 Pearson sales credit was to a single customer, the single-customer provision in her Individualized Compensation Plan applied. Again, that provision states that “Commission for any sales credit from a single customer in excess of 250% of quota in the given fiscal year will be calculated at 0.2x of the tier 1 rate.” Wilson’s FY2014 sales quota was \$2,969,480 (see Ex. 1). 250% of this sales quota is \$7,423,700. Thus, Wilson’s sales credit from a single customer (\$10,465,055) in excess of 250% of her sales quota was **\$3,032,355** (\$10,465,055 - \$7,423,700 = \$3,032,355).

Importantly, Wilson received commissions on the first \$7,423,700 of sales revenue from Pearson at the standard tiered rates set forth in her Individualized Compensation Plan because the single-customer provision only applies to sales to a single customer *that exceed* 250% of sales

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<sup>3</sup> The single-customer provision is also referenced in the FY14 Terms and Conditions: “Cumulative Sales Credit that exceeds 250% of the acceleration target for Plans that include multi-tier rate schedules may be subject to a modified Commission Rate as detailed in the Employee’s Individualized Compensation Plan.” (Ex. 2, 5-6).

quota. Only the excess amount – in this case, \$3,032,355 – was subject to the single-customer excess rate. In accordance with the express terms of her Individualized Compensation Plan, Wilson's commissions on this excess amount (\$3,032,355) were calculated at .2 times her Tier 1 rate (4.71463017%), which yielded a commission on the excess amount of \$28,592.87 (.2 x 4.71463017% x \$3,032,355 = \$28,592.87).

Even after application of the single-customer provision, Wilson's FY14 commission on that transaction alone amounted to \$616,302.31. (Ex. 3). Regardless of their magnitude, however, Wilson's commissions on the Pearson sale were calculated strictly in accordance with the terms of her Individualized Compensation Plan.

In August 2014, after the close Oracle's 2014 fiscal year, Wilson inquired about her commissions. In response, Oracle's Compensation Department explained how her FY14 commissions were calculated, including the impact of the single-customer provision, as explained above. (Ex. 3).

### **ARGUMENT**

#### **I. Wilson's Breach of Contract Claim is Barred Because She Was Paid Commissions In Accordance With the Terms of Her Individualized Compensation Plan**

As the New York Court of Appeals has aptly observed, "A familiar and eminently sensible proposition of law is that, when parties set down their agreement in a clear, complete document, their writing should as a rule be enforced according to its terms." *W.W.W. Associates, Inc. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990). In other words, "When the meaning of a contract is plain and clear, the agreement is not to be subverted by straining to find an ambiguity, but is to be enforced according to its terms." *Distinctive Venture LLC v. Cooper Advisory Services, Inc.*, 22 Misc.3d 1118(A) (Sup. Ct., Nassua Co., 2009). Moreover, "[i]t is well settled that extrinsic and parole evidence is not admissible to create an ambiguity in a written agreement which is complete and



clear and unambiguous upon its face.” *W.W.W. Associates, Inc.*, 77 N.Y. at 163. These well-established principles apply with equal force to commission agreements in the employment context. *See Mitchell v. Leahey*, 289 A.D.2d 1002, 1002 (4<sup>th</sup> Dept. 2001) (“The court erred, however, in finding that the agreement was ambiguous with respect to the amount of commissions that plaintiff would receive and in considering extrinsic evidence submitted by plaintiff and defendant with respect to the amount of commissions to which plaintiff is entitled”).

As explained above, Wilson’s commissions on the Pearson sale were calculated in accordance with the express terms of her Individualized Compensation Plan, including the commission rates called for in that Plan. Under the well-established principles of contract interpretation summarized above, it should be “enforced according to its terms.” *W.W.W. Associates, Inc.*, 77 N.Y. at 162.

Two cases are particularly instructive. In *Patcher v. Bernard Hodes Group, Inc.*, 10 N.Y.3d 609, 617-18 (2008), the New York Court of Appeals held that, in the employment context, the parties to an agreement to pay commissions “are free to add whatever conditions they may wish to their agreement,” and so “may provide that the computation of a commission will include certain downward adjustments from gross sales, billings or receivables.” The court further explained that “the commission will not be deemed ‘earned’ or vested until computation of the agreed-upon formula.” *Id.* Here, the “agreed-upon formula” in Wilson’s FY14 Individualized Compensation Plan included particular rates applicable to sales to a single customer in excess of 250% of sales quota, and Wilson’s commissions were properly calculated based on those rates.

In *Tierney v. Capricorn Investors, L.P.*, 189 A.D.2d 629, 630-31 (1<sup>st</sup> Dept. 1993), the plaintiff-employee’s employment agreement provided for bonus compensation, but plaintiff alleged that he had an oral agreement for an additional payment based on a percentage of fees the employer

received from a particular project on which he had worked. The lower court denied defendant's motion to dismiss plaintiff's breach of contract claim, but the Appellate Division reversed, holding that "Plaintiff's first cause of action for breach of contract to recover compensation over and above the compensation set forth in the Employment Agreement, cannot be sustained" because the additional compensation he sought "is inconsistent with the terms of that Agreement." *Id.* See also *Nickerson v. Volt Delta Resources, Inc.*, 211 A.D.2d 512, 513 (1<sup>st</sup> Dept. 1995) ("the alleged oral modification to provide commission at 'industry standards' varies the terms of the written bonus plan, and is inadmissible parole evidence"). Similarly here, Wilson's demand for commissions beyond those provided in her Individualized Compensation Plan must be rejected.

In her Statement of Claim, Wilson does not deny that Oracle paid her commissions on the Pearson sale. Rather, she claims that Oracle committed a breach of contract by applying, over her objection, the single-customer provision in her Individualized Compensation Plan. She makes four arguments to support this claim, none of which have merit.

First, Wilson misleadingly suggests that the single-customer provision was not part of her Individualized Compensation Plan, but rather was a "retroactive quarter-million dollar reduction of her earned commission" which "was unwarranted, inappropriate and unfair." (Statement of Claim, p. 1&2). She similarly complains that the "reduced" amount was the result of an extra-contractual retroactive adjustment to her originally-posted commissions. (*Id.*) Yet the single-customer provision, and associated rates, are expressly included in her Individualized Compensation Plan, which she accepted on June 1, 2013, months before the Pearson sale was consummated. Moreover, it makes no difference whether this provision is characterized as an "adjustment" or "reduction" (even though it was neither). *Patcher* holds that a commission agreement can provide that commissions are earned only after a contractually-mandated adjustment. 10 N.Y.3d at 617-18.



Second, Wilson claims that her supervisors told her that application of the single-customer provision would be “unthinkable” in her case. (Statement of Claim, p. 2). Even if true, which Oracle disputes, this is precisely the sort of extrinsic evidence that courts have consistently held cannot alter the terms of an express contract especially where, as here, there is an integration and no oral modification provision in the written contract (“Employees agree not to rely on any such representations should they be made in the future” (Ex. 2, p. 4)). This rule applies to statements, conduct or purported oral modifications occurring before, contemporaneous with, or after contract formation. See *Nickerson*, 211 A.D.2d at 513 (“alleged oral modification” to provide commissions in excess of written plan was “inadmissible parole evidence”); *Kennedy Associates v. JPMorgan Chase Bank, N.A.*, 134 A.D.3d 412, 413 (1<sup>st</sup> Dept. 2015) (“where, as here, a contract is clear on its face, there is no need to resort to the parties’ course of conduct in order to determine their intent.”)

Third, Wilson argues that “Oracle’s policy with respect to commission adjustments was that these were to prevent unfairness and windfalls,” and that this purported policy statement somehow “precludes the use of such a retroactive adjustment to penalize productivity and leadership.” (Statement of Claim, p. 2). Yet, there was no *extra-contractual* “adjustment” to Wilson’s commission entitlement. Rather, as explained above, her commissions on the Pearson sale were calculated according to the express commission formula in her Individualized Compensation Plan, which specified the rates applicable to sales to a single-customer. This is permissible according to *Patcher*.

Fourth, Wilson claims that Oracle breached its contract because it denied her commission exception request. (Statement of Claim, p. 2-3). Wilson’s exception request sought to void the single-customer provision in her Individual Compensation Plan with respect to the Pearson sale. (*Id.*) As she acknowledges, this request was ultimately denied. She complains that this denial was “in bad faith, contrary to the parties’ agreements, arbitrary and capricious, an abuse of discretion,

grossly unfair, and violated Oracle's legal duty of fair dealing." (*Id.*, p. 3). The simple and sufficient response to this argument is that Oracle paid Wilson commissions in accordance with the express terms of her Individual Compensation Plan – a fact she cannot dispute. Wilson asked to be paid more than her contract provided. Oracle declined to do so, as was its right, and it should not now be forced to defend that decision because its refusal to modify the terms of a contract cannot be a breach of contract.<sup>4</sup>

This last point crystalizes what is at stake in this case at this juncture. Wilson wants to take extensive discovery (including deposing Oracle's CEO) to purportedly establish that, for a host of reasons, Oracle *should not have applied* the single-customer provision in her Individualized Compensation Plan – *e.g.*, because of her hard work on the Pearson deal, because she asked that it not be applied, because her supervisors purportedly supported her request, because she thought it was unfair. Yet, there is a written agreement that sets forth how Wilson was to be compensated on the Pearson sale, and Oracle complied with the terms of that written agreement. The entire point of having written commission agreements is to avoid disputes like this. Indeed, this is the rationale behind the well-established rule that written agreements should be enforced according to their terms and without resort to litigation, discovery, disputes about fairness, or extrinsic evidence as to intent or course of conduct. In short, to force Oracle to defend, in this arbitration, its decision to pay Wilson in accordance with the terms of her commission agreement, and no more, would undermine "the stability to commercial transactions" underlying the well-established rule that a written agreement should be "enforced according to its terms." *W.W.W. Associates, Inc.*, 77 N.Y.2d at 162. It would also set a potentially devastating precedent whereby any Oracle sales

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<sup>4</sup> It makes no difference that internal interim evaluators at Oracle may have provisionally endorsed Wilson's request for a commission exception, as she alleges. It is, of course, only the company's *final decision* that matters. There would be no point in a process that requires various levels of review if the interim recommendations are binding – which is precisely what Wilson argues here.



representative who becomes dissatisfied with the terms of her previously consummated Individual Compensation Plan can request that it be modified and then sue Oracle in arbitration if that request is denied. Only a dismissal of this case *at this juncton* can avoid such a result.

II. Wilson Cannot State a Claim Under New York Labor Law § 191-c(3)

In addition to breach of contract, Wilson asserts a claims under New York Labor Law § 191-c(3) for twice the amount of commissions she claims, as well as costs and disbursements. (Statement of Claim, p. 3). However, Section 191-c(3) only applies to independent contractors, not employees, and is therefore inapplicable to Wilson, who is an Oracle employee. *See Goldberg v. Select Indus., Inc.*, 609 N.Y.S.2d 202, 204 (1<sup>st</sup> Dept. 1994) (“the provisions of Labor Law §§ 191-a through 191-c . . . apply only to sales representatives who are independent contractors rather than employees”).

Insofar as Wilson means to bring a claim for unpaid wages under New York Labor Law § 191(c), that claim “rises or falls with plaintiff’s claim for breach of contract.” *Simas v. Merrill Corp.*, 2004 WL 213013, \*2 (S.D.N.Y. 2004). Because Wilson cannot maintain that she was denied commissions in breach of contract, she cannot maintain a cause of action under New York Labor Law § 191(c) for failure to pay those commissions. *See Linder v. Innovative Commercial Systems*, 127 A.D.3d 670, 671 (1<sup>st</sup> Dept. 2015) (“since plaintiff was fully compensated under his agreement with defendants, he had no claim for a violation of the Labor Law”); *Tierney*, 189 A.D.2d at 630-31 (“The plaintiff cannot assert a statutory claim for wages under the Labor Law if he has no enforceable contractual right to those wages”).

Dated: New York, NY  
May 20, 2016

Respectfully submitted,  
**SHEPPARD, MULLIN, RICHTER & HAMPTON LLP**  
By: Christopher J. Collins, Attorneys for Respondent



# EXHIBIT 1

ORACLE

Fiscal Year 2014 Individualized Compensation Plan

Name

Wilson, Felicia Ann

Employee Number

82849

Title

3317.Applications Sales Representative V

Effective

01-JUN-2013

(Figures shown below are in US Dollars)

Applications (EPM) Sales Target	Applications (EPM) Rates* (see note below)	Club Qualification Club Excellence qualification is discretionary. Selection is at the discretion of the Executive Vice President.
2,969,480.00	0- 2,969,480 4.71463017% 2,969,480- 3,711,850 7.07194526% 3,711,850- 7,423,700 9.42926034% > 7,423,700 9.42926034%	
Applications (Exalytics) Unit Target (Rack)		
1.000		
Target Variable		
140,000.000		

Minimum Order Value: 10000

Compensation Administration Type - Sales Credit/Rollup

Menu Option: C178.1

Sales Credit Multiplier:

- Eligible Subscription Offering New/Expansion (30+ months) - 4.1
- Eligible Subscription Offering New/Expansion (18-29 months) - 3.6
- Eligible Subscription Offering New/Expansion (3-17 months) - 3.1
- Eligible Subscription Offering New/Expansion (<3 months) - 1.0
- On Premise - 1.0
- Eligible Subscription Offering Renewal (30+ months) - 1.5
- Eligible Subscription Offering Renewal (18-29 months) - 1.0
- Eligible Subscription Offering Renewal (12-17 months) - 0.5
- Eligible Subscription Offering Renewal (<12 months) - 0.25

Compensation Plan is eligible to receive First Year Support, License, Subscription, Systems Sales Credit. Commission for any sales credit from a single customer in excess of 250% of quota in the given fiscal year will be calculated at 0.2x of the tier 1 rate. Sales Credit for software will be assigned to eligible Sales Employees based on transaction amount times applicable Sales Credit Multipliers (see Appendix 1 for additional information). Refer to the Global Product Matrix for eligibility of these products and the Sales Crediting method that would apply.\*Note:

Accelerated Commission Rates above the lowest tier Commission Rate apply only after the Unit Target (Exadata, Exalogic, Exalytics or combination) as specified above has been exceeded.

In addition to the above compensation, you may be eligible to receive SPIFs (Special Promotion Incentive Funds) for specific products and services. Please refer to the link below for a complete listing of SPIFs available under this plan. In order to be considered eligible for any Bonus, including but not limited to the Sales Target Bonus, Business Initiatives Bonus, Margin Bonus and Revenue Bonus, an Employee must be employed by the Company through the last business day of the applicable Bonus Period. In addition, to be eligible for a Bonus, the Employee must have been employed on an eligible Plan (e.g. on a Sales or Pre-Sales job code) for a minimum of 30 days or one full calendar month (i.e. February) in the Bonus Period, taking into account transfer dates, new hire dates, and Leaves of Absence (LOA). Please refer to local Appendix 4 for Bonus Period details and applicable variations.

I acknowledge receipt and accept the Plan which consists of this document, accompanied by the FY14 Incentive Compensation Terms and Conditions and the applicable Appendices included in the list below" (the "FY14 Terms and Conditions") available at <http://my.oracle.com>, as my FY14 compensation package. I have read and agree to be bound by the FY14 Terms and Conditions. I understand that I do not earn Commissions or Bonuses until the Company makes any and all final determinations and adjustments, modifications or changes described in Section II.B of the FY14 Terms and Conditions, and until the Company has been paid in full by the customer on the applicable transaction(s). I agree that any such adjustments, modifications or changes will constitute an application of the terms of the Plan as opposed to a unilateral change by Oracle, and I accept that they will be fully binding. Any payment made to me under the Plan before I have earned such payment as set forth in the FY14 Terms and Conditions is considered an Advance Against Compensation. \*List of Appendices: Appendix 1: License Sales; Appendix 2: Customer Services Sales; Appendix 3: Oracle University Sales; Appendix 4: Country / Organization Variations; Appendix 5: Consulting Sales; Appendix 6: On Demand Sales; Appendix 7: OFD Sales; Appendix 8: Systems Sales; Appendix 9: HSGBU Sales.

Go to: <http://my.oracle.com> to review the Special Bonus/Incentive programs.null

<div>Approved By</div> <div></div> <div>Jody Terry Vice President Finance NA</div> <div>Oracle America</div> <div>01-JUN-2013</div>	<div>Accepted By</div> <div></div> <div>Wilson, Felicia Ann</div> <div>01-JUN-2013</div>
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# EXHIBIT 2



**FY14 Incentive Compensation Terms & Conditions**  
**June 1, 2013**

**North America**  
**(NA)**

**United States & Canada**

**English**

**Version 1.0**

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## I. Introduction

The Incentive Compensation Plan ("the Plan") consists of (1) this document (the "FY14 Incentive Compensation Terms and Conditions") including relevant Appendices and (2) the applicable Individualized Compensation Plan document. Reference to "the Company" is to Oracle Corporation and/or the applicable local subsidiary of Oracle employing the Employee. Signature of the Individualized Compensation Plan, either electronically by click acceptance or in writing, and/or acceptance of any payments under the Plan, and/or performance of any work in a position covered by the Plan, indicates acceptance of the Plan. Reference to "Company" herein does not include for the period prior to Acquisition, any company which Oracle subsequently acquires or which becomes an affiliate of or related to Oracle. Following Acquisition, reference to "Company" herein will only include companies which have become owned by Oracle and former employees of any Acquired Company who are compensated pursuant to this Plan. The provisions and definitions of these FY14 Incentive Compensation Terms and Conditions govern the administration of the Plan. This Plan shall be executed in the English language. Such English language version shall serve as the original, and if translated into any other language, then in the event of any inconsistency between the two versions, the English language version shall prevail where permissible under local law. Please refer to local Appendix 4 for applicable variations.

Where there is a direct conflict between the general terms of the FY14 Incentive Compensation Terms and Conditions and the relevant appendices, the relevant appendices shall take precedence. Where there is a direct conflict between Appendix 4 and any other appendix, Appendix 4 shall take precedence.

These FY14 Incentive Compensation Terms and Conditions and the Individualized Compensation Plan cover transactions Booked during the 2014 Fiscal Year from June 1, 2013 through May 31, 2014.

**NOTE: Certain provisions of these Terms and Conditions are not applicable in certain local regions/countries. Please refer to local Appendix 4 for a list of provisions, if any that do not apply in your local region/country.**

### The Company agrees:

- To pay Incentive Compensation under the terms and conditions of the Plan.

### The Employee agrees:

- To accept as full Incentive Compensation the compensation paid under the Plan.
- To abide by published Company policies including these Terms and Conditions, the Code of Ethics and Business Conduct, FCPA Policy and Anti-Corruption and Supplemental Business Conduct, the Proprietary Information Agreement, Oracle Business Practices, Global Revenue Recognition Policy, and other employment and/or financial guidelines. These references are located as listed under Supplemental Weblinks.
- To repay Advances Against Compensation that are not offset by compensation earned.
- Except as set forth in Section II A. below, that neither Oracle, nor its agents, representatives, directors, officers or Employees have made any representations to them concerning the terms or effects of these Terms and Conditions, other than those explicitly contained in these Terms and Conditions and that Employees agree not to rely on any such representations should they be made in the future.
- Please refer to local Appendix 4 for applicable variations.

## II. Administration and Approvals

### A. Interpretation of the Plan/Changes to the Plan

The Chairman, Chief Executive Officer (CEO), and/or their/his/her designee(s), shall have the final responsibility, authority and discretion in all matters of design, administration and interpretation of the Plan. The foregoing shall also have the final responsibility, authority and discretion in all matters of administration and interpretation of all Acquired Company Plans in the event any question arises concerning such Acquired Company Plans during the period covered by this Plan. The Chairman and CEO expressly designate the



## FY14 Incentive Compensation Terms & Conditions – JAPAC, LAD, NA

Global Incentive Compensation Administration Group ("GIC") as responsible for carrying out the responsibilities, authority and discretion provided for in this provision.

Sales activities and the sales process at Oracle can be and often are extremely complex. Oracle, sales management, and Sales Representatives themselves may encounter unforeseen situations and have to adapt to constantly changing markets and technologies which can produce circumstances in which fairness and equity require management of sales compensation more appropriately tailored to particular circumstances than is possible under a single written document. Accordingly, for those reasons, and not to permit unfair treatment towards any Employee or deprive an individual of appropriate compensation, the Company reserves the right in its sole discretion to adjust, modify or change the Individualized Compensation Plan and/or these FY14 Incentive Compensation Terms and Conditions, during or after the close of the fiscal year, including but not limited to making such adjustment, modification or change, for the purpose of addressing Administrative Errors, Unanticipated Circumstances, the impact of Acquisition(s), inaccurate Sales Targets (i.e. quotas) and for the purpose of addressing payments or potential payments which are either beyond those reasonably contemplated by the Company and/or which fail to reflect a reasonable valuation of the Employee's contribution toward a transaction or group of transactions. On the same basis as the Company retains discretion to modify Individualized Compensation Plans and the FY14 Incentive Compensation Plan Terms and Conditions, adjustments, modifications and changes may be made at any time to Sales Credits, Commission Rates, Commissions, Sales Targets, Funding Formulas, or any other applicable terms and conditions, which may result in a decrease or an increase in compensation including but not limited to the imposition of a Maximum Commission on total earnings for a single transaction, group of transactions or for the entire fiscal year. The modifications provided for in this section are valid only if approved by the relevant Executive Vice President (EVP) or his/her designee and Global Incentive Compensation (GIC) through the applicable approval process. A new Individualized Compensation Plan need not be issued to the Employee in order for any such modifications under the Plan to be binding on the Employee. Due to the nature of the Company's sales, sales process, technologies and Incentive Compensation administration, the appropriateness of modifications provided for in this section may not become apparent until a period of time after a sale occurs. The Company retains the right to make such modifications at any time during the fiscal year and until final year-end closing and reconciliation of Employee Individualized Compensation Plans. Any Employee claim of a breach of its authority under the Plan by Company, which authority is exercised under this provision, will be required to demonstrate that Company abused its discretion and authority under the Plan.

Compensation Administration may, at any time, undertake an audit to ensure all payments are in accordance with the Individualized Compensation Plan and these FY14 Incentive Compensation Terms and Conditions and may identify payments that may be the result of Administrative Errors and/or Unanticipated Circumstances including payments which fail to reflect a reasonable valuation of the Employee's contribution toward a transaction and earnings potential which is beyond that reasonably contemplated by the Company. Please refer to local Appendix 4 for applicable variations.

Employees do not earn Commissions or Bonuses until the Company makes any and all final determinations and adjustments, modifications or changes described above and in Section II.B below, and until the Company has been irrevocably paid in full by the customer on the applicable transaction(s) in its/their entirety and the transactions is/are not subject to dispute by the customer. Any payment made to the Employee under the Plan before the Employee has earned such payment as set forth herein is considered an Advance Against Compensation.

### **B. Commissions that Exceed Maximum Commission or Deal Threshold**

The Maximum Commission and Deal Threshold provisions have been established to ensure reasonable compensation is paid, especially in the case of unplanned windfalls and unexpected gains and that earnings reflect a reasonable valuation of the Employee's contribution toward a transaction. Employees will not earn, on any single transaction or on multiple transactions to a single customer within one fiscal quarter where Sales Credit has been assigned, more than the Maximum Commission or Bonus amount shown in Appendix 4 (under "Maximum Commission/Bonus") except as approved by the EVP or his/her designee and GIC; if applicable, Sales Credits and earnings will be limited accordingly and the Commission/Bonus payment may be subject to a different vesting schedule.

Cumulative Sales Credit that exceeds 250% of the acceleration target for Plans that include multi-tier rate



schedules may be subject to a modified Commission Rate as detailed in the Employee's Individualized Compensation Plan.

Additionally, for any single transaction including Unlimited License Agreements (ULA) or Enterprise License Agreements (ELA) greater than the threshold set forth in Appendix 4 (under "Deal Threshold") the EVP or his/her designee and GIC will review the transaction and determine appropriate treatment of the transaction. Appropriate treatment may include, for example, limiting the amount of Sales Credit including reducing it to zero, subjecting the Commission to a different vesting schedule, limiting the amount of total Sales Target attainment, limiting the amount of Sales Credit to pools, adjusting or further adjusting the Sales Target and/or Commission Rate, and/or assigning a Maximum Commission at an amount other than the Maximum Commission/Bonus outlined in Appendix 4. Commissions on such transactions that require EVP or his/her designee and GIC approval will not be earned unless and until such approvals are received.

**C. Global Incentive Compensation (GIC) Website**

These FY14 Incentive Compensation Terms and Conditions are posted at a central website as listed in Appendix 4 and are subject to revision. The website will be updated to reflect any revisions to these FY14 Incentive Compensation Terms and Conditions. Updates will not always be posted prior to changes or additional terms going into effect.

**D. No Employment Agreement**

This Plan is not intended to and shall not be construed to create or imply a guarantee of employment for any specific period of time or to alter the at-will nature of the employment relationship with Oracle where applicable. Except as set forth herein, nothing in this Plan shall modify, limit or restrict the applicable terms and conditions of the employment relationship between the Company and the Employee. Plans in subsequent fiscal quarters or fiscal years will not necessarily have any similarity to those of prior fiscal quarters or fiscal years, but will reflect the Company's anticipated business objectives for the forthcoming fiscal period. No Plan, unless otherwise approved by the Chairman, CEO, and/or his/her designee, is valid for Sales Credit, Commissions, and/or Bonuses beyond the fiscal year in which the Plan is issued.

**E. Individual Compensation Statements**

Individual statements of payments are made available to coincide with the Commission and/or Bonus payment. Upon receipt of the individual statement of payments, any discrepancies must be brought to the attention of the local compensation department immediately or prior to the time period provided by law, so that they may be promptly resolved. Please refer to local Appendix 4 for applicable variations. Use the [Compensation Administration Contact Tool](#) to find the local compensation department.

**F. Global Product Matrix**

Products and/or services available for Commission and/or Bonus credit vary by sales positions. The Global Product Matrix is located at the website referenced in Appendix 4 and lists products and services by eligible sales position and/or Plan type.

**G. Approvals**

Products and services available for Commission and Bonus credit are limited to products and/or services that are in production and/or available locally. A sale not made in accordance with the FY14 Global Approval Matrix, a sale of unauthorized products or a sale made pursuant to unauthorized non-standard terms and conditions, including but not limited to unapproved pricing or unauthorized extended payment terms, violation of Oracle's Code of Conduct and Supplemental Policies, side letters or discounts will not be a valid sale under the Plan and will result in the non-payment or recovery of Commissions and/or Bonus and the reversal of associated Sales and/or Bonus Credit regardless of the additional possibility of disciplinary action being taken up to and including termination of employment.

**H. End of Quarter Cutoff**

Employees are subject to the order cutoff details as communicated quarterly via email by Global Finance Operations or Sales Management/Operations. This communication details the cutoff dates/times by which complete order packages must be received by the appropriate Contracts/Order Administration group to ensure processing and inclusion for Sales Credit/compensation in the current quarter/fiscal year. Sales Credit/compensation for order packages received after the indicated cutoff dates/times will not be credited until processed by Contracts/Order Administration group as a Booking, and this may result in Sales



Credit/compensation being credited in the next quarter and/or the next fiscal year against the Incentive Compensation Plan in effect at that point in time.

**I. Certification**

For certain transactions (generally those over \$1 million USD), Employees may be asked to sign a statement certifying that there are no side agreements (as defined in the certification) relating to the transaction. If an Employee fails to provide such certification in a form acceptable to the Company and its external auditors or if the Employee provides such certification containing inaccurate or false information then the Employee may be deemed ineligible to receive any Sales Credit, Commissions, Bonuses or other payments on the transaction.

**J. Commissions/Bonuses Outside of Plan**

Employees may be eligible to receive Commission and/or Bonus and/or SPIF credit for new products, additional products and/or services, and/or Bonus components during the fiscal quarter or fiscal year under established guidelines in which case they will receive separate written notification of their eligibility and applicable terms.

**K. Advances Against Compensation**

Any payment to an Employee under the Plan, which unless specifically designated as non-recoverable, is considered a recoverable Advance Against Compensation. Advances Against Compensation may result in the Employee incurring a Negative Compensation Balance, where Commission or Bonus advanced exceeds Commission or Bonus earned. Neither Commission nor Bonus payments will be made to Employees who have incurred a Negative Compensation Balance until Commissions or Bonuses have offset the entire Negative Compensation Balance in full. Where granted, a Recoverable Draw is considered an Advance Against Compensation. Any Recoverable Draw requires the prior approval of the CEO and/or his/her designee.

In addition, where permitted by law, Negative Compensation Balances may be recovered by the Company under the Collections Process. The Company reserves the right to recover all Advances Against Compensation that are not fully offset against Commissions or Bonuses. Upon termination of employment or transfer to a position not compensated under this Plan, Negative Compensation Balances are due and payable immediately. The circumstances under which the Company may decide to invoke the Collections Process to recover Negative Compensation Balances can include but are not limited to any of the following: the Negative Compensation Balance exceeds 10% of the Employee's Annual Target Variable, the balance has existed or is anticipated to exist for more than 90 days. If permitted under applicable local law, the Company reserves the right to deduct any outstanding Advances Against Compensation or Negative Compensation Balances from an Employee's final paycheck and/or severance or notice payment. Only the Chairman, CEO, and/or their/his/her designee (s) is authorized to waive a Negative Compensation Balance.

Please refer to local Appendix 4 for applicable variations.

**L. Plan is Confidential**

This Plan constitutes highly restricted, privileged, confidential and proprietary information of the Company. As such, all Employees must keep the Plan confidential in accordance with the terms of their Proprietary Information Agreement and are expressly prohibited from disclosing this Plan or any of its contents to any third party without the Company's advance written consent, unless compelled by local law. Please refer to local Appendix 4 for applicable variations.

**III. Commissions, Sales Credits, Bonuses, and Club Excellence**

**NOTE:** Subject to the terms of the Plan, Commissions, Sales Credits, and Bonuses will be based on corporate Recognized Revenue. Corporate Recognized Revenues will be based upon applying US GAAP.

**A. Compensation Rates and Sales Targets**

Commission Rate(s) set forth in the applicable Individualized Compensation Plan, is (are) established on an individual basis, and generally apply to sales only.