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<div align="center">UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION</div>

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12 UNITED STATES OF AMERICA, et al.,   )   CASE NO. C 04-0807 VRW

13   Plaintiffs,

14   v.

15 ORACLE CORPORATION   )   **PARTIES' JOINT SUBMISSION OF**
                                              DEFINITIONS
16   Defendant.

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19   Pursuant to the Court's Order, dated June 25, 2004, the parties have conferred regarding

20 definitions for the terms specified in the Court's Order and have reached agreed-upon definitions

21 for nearly all the terms. Except as indicated below, the parties jointly stipulate to the definitions

22 set forth below. Those definitions or comments as to which the parties have not agreed are

23 separately indicated below.

24   1.   High-function software: The parties could not agree upon the definition for high-

25 function software.

26   *Plaintiffs' separate definition*:

27   As an initial matter, Plaintiffs note that the definition of "high-function software"

28 presents a different issue than the other terms on the Court's list. For the other terms, the

relevant question is how market participants generally use the word. "High-function software," however, is a term adopted by Plaintiffs in order to describe more precisely the features of a category of software products that industry participants call "enterprise" software, "up-market" software, or "Tier One" software." *See, e.g.*, Tr. at 274:24-275:7 (Richard Bergquist testimony); Tr. at 1771:5-1772:1 (Phillip Wilmington testimony); Tr. at 1554:25-1555:7 (Curtis Wolfe testimony); Tr. at 2180:22-2181:5 (Marco Iansiti testimony).[1] Through the evidence presented at trial, Plaintiffs have identified the features of this software that distinguish it from products developed and sold by other industry players (*e.g.*, mid-market, etc.). Plaintiffs describe these features below.

"High-function software" is a software product that is capable of executing a wide array of business processes at a superior level of performance. *See, e.g.*, Tr. at 2035:5-17 (Marco Iansiti testimony). Thus,"high-function" software must have at least the following advanced performance capabilities, not all of which each user may demand:

    (a)   the software must be *scalable*, such that it can track thousands of transactions and support thousands of concurrent users; *see, e.g.*, Tr. at 3011:19 to 3013:3 (Doug Burgum testimony); Tr. at 289:22 to 290:7 (Richard Bergquist testimony); Tr. at 1755:11-24 (Ken Johnsen testimony);[2]

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[1] "High-function software" is also, however, how Plaintiffs have defined the relevant product market in this case. Market definition is, of course, a factual question, not a semantic one, and it is dependent on critical underlying facts about how a market operates. *Rebel Oil Co., Inc. v. Atlantic Richfield Co.*, 51 F.3d 1421, 1434 (9th Cir. 1995) ("A 'market' is any grouping of sales whose sellers, if unified by a monopolist or a hypothetical cartel, would have market power in dealing with any group of buyers."). Thus, while Plaintiffs herein define "high-function software" as Plaintiffs use the term in this case, Plaintiffs will be addressing the term as it relates to market definition in this case, and how Plaintiffs' market definition is supported by the factual record of the trial, in the Proposed Findings of Fact and in the post-trial brief.

[2] As an example, whereas high-function software can process and track virtually unlimited transactions across companies, Lawson software – which Plaintiffs maintain is not high-function – cannot track more than 10,000 transactions between entities. Tr. at 2050:19-23 (Marco Iansiti testimony).

(b)   the software must be *highly configurable* (*e.g.,* it must enable unlimited levels of organization), such that the user can mold the software to meet its business needs without having to undertake expensive and inefficient customization of the software; *see* Tr. at 1753:9-1754:8 (Ken Johnsen testimony); Tr. at 2046:19-2048:5, 2036:7-20 (Marco Iansiti testimony); Tr. at 284:17-285:6, 287:9-17 (Richard Bergquist testimony);[3]

(c)   the software must be able to *perform a variety of related transactions seamlessly* (*e.g.,* provide a "very tight integration between" business processes without having to write customized code) and with a *high degree of ease and sophistication*; *see* Tr. at 1135:16-1136:13 (Scott Wesson testimony); *see also, e.g.*, Tr. at 2039:12-2040:7 (Marco Iansiti testimony);[4] and

(d)   the software must have the capability to *handle international aspects* of a business, such as multiple currencies, multiple languages, and multiple legal regimes (*e.g.*, "enhanced multi-currency transaction support, invoicing in any currency, [and] cross-charging and inter-company accounting" and the support of "30 languages, all currencies, and many regulatory requirements in a single database" with all languages "installable in the same Unicode instance"). *See* P2208, at 14, 35; *see also* Tr. at 290:15-23 (Richard Bergquist testimony); *Cf.* Tr.

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[3] For example, high-function software generally permits the customer to establish unlimited distinct units and employees within each unit that can share data seamlessly and can be moved -- or reconfigured -- easily (such as with a click and a drag) without causing the loss of historical data. In contrast, the Lawson products permit only 5 levels of organization in FMS and only 3 in HRM and do not enable extensive data sharing across entities. Tr. at 2046:23-2047:5 (Marco Iansiti testimony).

[4] Examples include the ability (i) to accept thousands of invoices in different currencies and to remit payment in a different currency while automatically recalculating the exchange rates on a real-time basis; (ii) to create reports from hundreds of separate business units while permitting the user to quickly "drill down" to the underlying source data; (iii) to model reorganizations of the business and to generate forecasts; and (iv) to generate reports on costs associated with a product or component that may be drawn from dozens or even hundreds of distinct entities within the larger organization. Tr. at 2039:12-2040:7 (Marco Iansiti testimony).

1   at 3645:16-24 (Jay Coughlan testimony) (Lawson's products only support French,

2   French Canadian and Spanish, in addition to English); Tr. at 4106:15-25 (Jay

3   Rising testimony) (integrated international payroll system ADP creating with

4   SAP is "a new product, not a replacement product" for ADP's current 26 "local"

5   payroll solutions that are not integrated).

6   *Defendant's separate definition:*

7   "High-function software" is a term coined by Plaintiffs as "shorthand" to "describe the

8 phenomenon that . . . different customers have different requirements." (Tr. at 30:23-31:3 C.

9 Scott).) The term has no independent, industry-standard, or generally accepted meaning (Tr. at

10 349:7-10 R. Bergquist), 2298:6-20 (K. Elzinga).), and the evidence offers no clear guidance on

11 the aspects or dimensions of "high-function software" or the level of quality or performance that

12 would qualify EAS software as "high-function software." (*Compare* Tr. at 394:17-395:12 R.

13 Bergquist), 1612:3-7 C. Bass), 2089:14-21 (M. Iansiti).) "High-function software" does not in

14 fact describe a kind of software (in contrast to "lower-function software"), but rather customer

15 performance requirements that, in some cases, allegedly can only be met by products from

16 Oracle, PeopleSoft or SAP. (Tr. at 3807:8-25 (J. Hausman); Amended Complaint ¶ 23(b)

17 (defining "high function FMS software" as "Financial Management Services (FMS) software

18 and accompanying services … that meet[s] the demands of multifaceted organizations with high-

19 level functional needs").).)[5]

20   2.   Function:

21   A function is a business process that can be performed manually and/or can be automated

22 in whole or in part by enterprise applications software. Examples of business functions include

23 paying payroll or preparing a general ledger. Function is related to functionality, but is not used

24 interchangeably.

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27   [5] Oracle does not believe the Court's Order contemplated argument on which products
    are or are not "high-function," and therefore will not respond to Plaintiffs' arguments on that
28 score.

3.   Functionality:

Functionality refers to the ability of enterprise applications software to automate particular business functions. Functionality can also be thought of as the capabilities of a software program.

Plaintiffs' separate comments:

Functionality is one means of distinguishing high-function software from basic software solutions. Tr. at 2039:2-2040:7 (Marco Iansiti testimony). A number of software solutions allow organizations to automate basic functions. For example, almost all organizations track basic information on their employees. Basic software packages allow the user to track employee names, addresses, salaries and job levels. In contrast, the high-function human resource capital management software sold by PeopleSoft, Oracle and SAP goes beyond the basics and allows an organization to track employees by skills, job classes, job codes, union affiliations, and any number of other criteria. Tr. at 1484:8-1485:20 (Mary Glover testimony). Thus in this example, the greater functionality of high-function human resource capital management software gives managers more information and allows an organization more efficiently and effectively to utilize its employees. As another example, "high functionality" can also be used to describe a software solution's ability to support international operations, such as the ability to make payments for and manipulate (*e.g.*, track/report/convert/consolidate) transactions in multiple countries denominated in multiple currencies subject to multiple regulatory regimes – *i.e.*, such software would have "international functionality."

Defendant's separate comments:

As explained above, the term "high-function software" is a DOJ-constructed term and Defendant Oracle Corporation cannot, based on the record or otherwise, assess its relation, if any, to the term "functionality."

4.   Core financial management services ("FMS") software:

The term "core financial management services ("FMS") software," as generally used in the software industry and by the parties in this case, refers to the software necessary to automate

1 an organization's basic financial functions, including the following modules: General Ledger,

2 Accounts Receivable, Accounts Payable, and Cash and Asset Management.

3   5.   Core human resource management ("HRM") software:

4   The term "core human resource management ("HRM") software," as generally used in

5 the software industry and by the parties in this case, refers to the software necessary to automate

6 an organization's basic human resource management functions, including the following modules:

7 Payroll, Employee Tracking and Benefits Administration business processes.

8   6.   Legacy system; Incumbent system:

9   A legacy system refers to an installed software system that was never or is no longer

10 available for purchase as a new product or platform. An incumbent system refers to whatever

11 software system a customer currently has installed. Legacy systems are one subset of incumbent

12 systems.

13   7.   Enterprise resource planning ("ERP") software:

14   Enterprise resource planning ("ERP") software refers, at a minimum, to the set of

15 business applications software that is designed to automate an organization's back-office

16 functions, such as payroll, general ledger, accounts payable and receivable, benefits

17 management, and employee recordkeeping. It traditionally encompasses HRM and FMS. Some

18 also include one or more other pillars in the definition of ERP, such as Supply Chain

19 Management (SCM) or Customer Relationship Management (CRM). It is Plaintiffs' position

20 that the term ERP is not equivalent to high-function software; high-function software is a subset

21 of ERP.

22   8.   Enterprise application software ("EAS"):

23   In contrast to ERP, enterprise applications software ("EAS") refers to the broader

24 universe of software applications that are used by an enterprise to automate its overall business

25 processes. In addition to the Human Resource Management (HRM) and Financial Management

26 Services (FMS) pillars that traditionally comprise ERP, EAS also encompasses the Supply Chain

27 Management (SCM), Customer Relationship Management (CRM), Product Life Cycle

28 Management, Student Information Systems (SIS), and Business Intelligence (BI) pillars. It is

1 Plaintiffs' position that the term EAS is not equivalent to high-function software; high-function

2 software is a subset of EAS.

3   9.   Integration:

4   In the context of this case, the term "integration" refers to the ability of a software

5 application in one module to communicate with, work with and update software and data in

6 another module. Most companies, particularly large ones, have a large number of software

7 products that need to be integrated so they can communicate with each other.

8   10.   Analytics:

9   Analytics is software that enables a company to use, analyze, report and aggregate data

10 collected through one or more other business applications.

11   11.   Module:

12   A module is software designed to automate one or more functions.

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