

**YOU AGREE THAT BY PLACING AN ORDER THROUGH AN ORDERING DOCUMENT THAT INCORPORATES THESE GENERAL TERMS (THE "ORDERING DOCUMENT") YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THE ORDERING DOCUMENT AND THESE GENERAL TERMS. IF YOU ARE PLACING SUCH AN ORDER ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THE ORDERING DOCUMENT AND THESE GENERAL TERMS AND, IN SUCH EVENT, "YOU" AND "YOUR" AS USED IN THESE GENERAL TERMS SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OR SUCH ENTITY DO NOT AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THE ORDERING DOCUMENT AND THESE GENERAL TERMS, YOU SHALL NOT PLACE AN ORDER OR USE PRODUCTS OR SERVICES OFFERINGS.**



## GENERAL TERMS

These General Terms (these "General Terms") are between Oracle (China) Software Systems Co, Ltd ("Oracle") and the individual or entity that has executed the order that incorporates these General Terms by reference. In placing an order that is subject to these General Terms, you agree that the two Schedules (as defined below) that are attached to these General Terms are incorporated into these General Terms. If a term is relevant only to a specific Schedule, that term applies only to that Schedule when that Schedule is incorporated into these General Terms.

### 1. DEFINITIONS

- 1.1 **"Hardware"** refers to the computer equipment, including components, options and spare parts.
- 1.2 **"Integrated Software"** refers to any software or programmable code that is (a) embedded or integrated in the Hardware and enables the functionality of the Hardware or (b) specifically provided to You by Oracle under Schedule H and specifically listed (i) in accompanying documentation, (ii) on an Oracle webpage or (iii) via a mechanism that facilitates installation for use with Your Hardware. Integrated Software does not include and You do not have rights to (a) code or functionality for diagnostic, maintenance, repair or technical support services; or (b) separately licensed applications, operating systems, development tools, or system management software or other code that is separately licensed by Oracle. For specific Hardware, Integrated Software includes Integrated Software Options (as defined in Schedule H) separately ordered.
- 1.3 **"Master Agreement"** refers to these General Terms (including any amendments thereto) and the two Schedules incorporated into the Master Agreement (including any amendments to those incorporated Schedules). The Master Agreement governs Your use of the Products and Service Offerings ordered from Oracle or an authorized reseller.
- 1.4 **"Operating System"** refers to the software that manages Hardware for Programs and other software.
- 1.5 **"Products"** refers to Programs, Hardware, Integrated Software and Operating System.
- 1.6 **"Programs"** refers to (a) the software owned or distributed by Oracle that You have ordered under Schedule P, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include Integrated Software or any Operating System or any software release prior to general availability (e.g., beta releases).
- 1.7 **"Program Documentation"** refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. You may access the documentation online at <http://oracle.com/documentation>.
- 1.8 **"Schedule"** refers to all Oracle Schedules to these General Terms as identified in Section 2.
- 1.9 **"Separate Terms"** refers to separate license terms that are specified in the Program Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.

- 1.10 **“Separately Licensed Third Party Technology”** refers to third party technology that is licensed under Separate Terms and not under the terms of the Master Agreement.
- 1.11 **“Service Offerings”** refers to technical support, education, hosted/outsourcing services, remote software services, consulting, advanced customer support services, or other services which You have ordered. Such Service Offerings are further described in the applicable Schedule.
- 1.12 **“You”** and **“Your”** refers to the individual or entity that has executed these General Terms.

## **2. MASTER AGREEMENT TERM AND APPLICABLE SCHEDULES**

This Master Agreement is applicable to the order which this Master Agreement accompanies. As of the Effective Date, the following Schedules are incorporated into the Master Agreement: Schedule H - Hardware and Schedule P – Program.

The Schedules set forth terms and conditions that apply specifically to certain types of Oracle offerings which may be different than, or in addition to, these General Terms.

## **3. SEGMENTATION**

The purchase of any Products and related Service Offerings or other Service Offerings are all separate offers and separate from any other order for any Products and related Service Offerings or other Service Offerings You may receive or have received from Oracle. You understand that You may purchase any Products and related Service Offerings or other Service Offerings independently of any other Products or Service Offerings. Your obligation to pay for (a) any Products and related Service Offerings is not contingent on performance of any other Service Offerings or delivery of any other Products or (b) other Service Offerings is not contingent on delivery of any Products or performance of any additional/other Service Offerings. You acknowledge that You have entered into the purchase without reliance on any financing or leasing arrangement with Oracle or its affiliate.

## **4. OWNERSHIP**

Oracle or its licensors retain all ownership and intellectual property rights to the Programs, Operating System, Integrated Software and anything developed or delivered under the Master Agreement.

## **5. INDEMNIFICATION**

- 5.1 Subject to sections 5.5, 5.6 and 5.7 below, if a third party makes a claim against either You or Oracle (“Recipient” which may refer to You or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, hardware, or material (collectively, “Material”) furnished by either You or Oracle (“Provider” which may refer to You or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party’s intellectual property rights, the Provider, at the Provider’s sole cost and expense, will 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:
- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
  - b. gives the Provider sole control of the defense and any settlement negotiations; and
  - c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.
- 5.2 If the Provider believes or it is determined that any of the Material may have violated a third party’s intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it and, if Oracle is the Provider of an infringing Program, any unused, prepaid technical support fees You have paid to Oracle for the license of the infringing Program. If such return

materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

- 5.3 Notwithstanding the provisions of section 5.2 and with respect to hardware only, if the Provider believes or it is determined that the hardware (or portion thereof) may have violated a third party's intellectual property rights, the Provider may choose to either replace or modify the hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality) or obtain a right to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may remove the applicable hardware (or portion thereof) and refund the net book value and, if Oracle is the Provider of infringing Hardware, any unused, prepaid technical support fees You have paid to Oracle for the Hardware.
- 5.4 In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, Oracle may end the license for, and require return of, the Program associated with that Separately Licensed Third Party Technology and shall refund any Program license fees You have paid to Oracle for the Program license and any unused, prepaid technical support fees You have paid to Oracle for the Program license.
- 5.5 Provided You are a current subscriber to Oracle technical support services for the Operating System (e.g., Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems or Oracle Linux Premier Support), then for the period of time for which You were a subscriber to the applicable Oracle technical support services (a) the phrase "Material" above in section 5.1 shall include the Operating System and the Integrated Software and any Integrated Software Options that You have licensed and (b) the phrase "Program(s)" in this section 5 is replaced by the phrase "Program(s) or the Operating System or Integrated Software or Integrated Software Options (as applicable)" (i.e., Oracle will not indemnify You for Your use of the Operating System and/or Integrated Software and/or Integrated Software Options when You were not a subscriber to the applicable Oracle technical support services). Notwithstanding the foregoing, with respect solely to the Linux operating system, Oracle will not indemnify You for Materials that are not part of the Oracle Linux covered files as defined at <http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf>.
- 5.6 The Provider will not indemnify the Recipient if the Recipient alters Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material after the end of the license to use that Material. 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. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by Oracle. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of the Master Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for the Program under the terms of the Master Agreement. Oracle will not indemnify You for infringement caused by Your actions against any third party if the Program(s) as delivered to You and used in accordance with the terms of the Master Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time license rights are obtained.
- 5.7 This section provides the parties' exclusive remedy for any infringement claims or damages.

## **6. TERMINATION**

- 6.1 If either of us breaches a material term of the Master 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 the Master Agreement. If Oracle terminates the Master Agreement as specified in the preceding sentence, You must pay within 30 days all amounts which have accrued

prior to such termination, as well as all sums remaining unpaid for Products ordered and/or Service Offerings received under the Master Agreement plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under the Master Agreement, You may not use those Products or Service Offerings ordered.

- 6.2 If You have used a contract with Oracle or an affiliate of Oracle to pay for the fees due under an order and You are in default under that contract, You may not use the Products and/or Service Offerings that are subject to such contract.
- 6.3 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.

## **7. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION**

- 7.1 All fees payable to Oracle 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 Oracle must pay based on the Products and/or Service Offerings You ordered, except for taxes based on Oracle's income. Also, You will reimburse Oracle for reasonable expenses related to providing Service Offerings.
- 7.2 You understand that You may receive multiple invoices for the Products and Service Offerings You ordered. Invoices will be submitted to You pursuant to Oracle's Invoicing Standards Policy, which may be accessed at <http://oracle.com/contracts>.

## **8. NONDISCLOSURE**

- 8.1 By virtue of the Master 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 the Master Agreement. Confidential Information shall be limited to the terms and pricing under the Master Agreement and all information clearly identified as confidential at the time of disclosure.
- 8.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.
- 8.3 We each agree not to disclose each other's Confidential Information to any third party other than those set forth in the following sentence for a period of three years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under the Master Agreement. Nothing shall prevent either party from disclosing the terms or pricing under the Master Agreement or orders submitted under the Master Agreement in any legal proceeding arising from or in connection with the Master Agreement or disclosing the Confidential Information to a governmental entity as required by law.

## **9. ENTIRE AGREEMENT**

- 9.1 You agree that the Master Agreement and the information which is incorporated into the Master Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the Products and/or Service Offerings ordered by You and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Products and/or Service Offerings.

9.2 It is expressly agreed that the terms of the Master Agreement and any Oracle order shall supersede the terms in any purchase order, procurement internet portal or any other similar non-Oracle document and no terms included in any such purchase order, portal or other non-Oracle document shall apply to the Products and/or Service Offerings ordered. In the event of inconsistencies between the terms of any Schedule and these General Terms, the Schedule shall take precedence. In the event of any inconsistencies between the terms of an order and the Master Agreement, the order shall take precedence. The Master Agreement and orders may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of You and of Oracle. Any notice required under the Master Agreement shall be provided to the other party in writing.

**10. 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. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THE SCHEDULE GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PRODUCTS OR SERVICE OFFERINGS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT PRODUCT OR SERVICE OFFERINGS GIVING RISE TO THE LIABILITY.**

**11. EXPORT**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. You agree that such export laws govern Your use of the Products (including technical data) and any Service Offerings deliverables provided under the Master 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, Product and/or materials resulting from Service Offerings (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.

**12. 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; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Service Offerings and affected orders upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for Products and Service Offerings ordered or delivered.

**13. GOVERNING LAW AND JURISDICTION**

The Master Agreement, and all matters arising out of or relating to the Master Agreement, shall be construed and governed by the laws of the People's Republic of China and You and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts of the People's Republic of China in Beijing in any dispute arising out of or relating to the Master Agreement.

**14. NOTICE**

If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification section of these General Terms, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Oracle (China) Software Systems Co, Ltd at 1st Floor, A-Building 2, Incubator Software Park, Haidian District, Beijing 100094, People's Republic of China, Attention: General Counsel.

## 15. ASSIGNMENT

You may not assign the Master Agreement or give or transfer the Programs, Operating System, Integrated Software and/or any Service Offerings or an interest in them to another individual or entity. If You grant a security interest in the Programs, Operating System, Integrated Software and/or any Service Offerings deliverables, the secured party has no right to use or transfer the Programs, Operating System, Integrated Software and/or any Service Offerings deliverables, and if You decide to finance Your acquisition of any Products and/or any Service Offerings, You will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights You may otherwise have with respect to the Linux operating system, third party technology or Separately Licensed Third Party Technology licensed under open source or similar license terms.

## 16. OTHER

- 16.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.
- 16.2 If any term of the Master 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 the Master Agreement.
- 16.3 Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to the Master Agreement may be brought by either party more than two years after the cause of action has accrued.
- 16.4 Products and Service Offerings deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Service Offerings deliverables in such applications.
- 16.5 If requested by an authorized reseller on Your behalf, You agree Oracle may provide a copy of the Master Agreement to the authorized reseller to enable the processing of Your order with that authorized reseller.
- 16.6 You understand that Oracle's business partners, including any third party firms retained by You to provide consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner unless (i) the business partner is providing services as an Oracle subcontractor in furtherance of an order placed under the Master Agreement and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle resources under that order.
- 16.7 For software (i) that is part of Programs, Operating Systems, Integrated Software or Integrated Software Options (or all four) and (ii) that You receive from Oracle in binary form and (iii) that is licensed under an open source license that gives You the right to receive the source code for that binary, You may obtain a copy of the applicable source code from <https://oss.oracle.com/sources/> or <http://www.oracle.com/goto/opensourcecode>. If the source code for such software was not provided to You with the binary, You may also receive a copy of the source code on physical media by submitting a written request pursuant to the instructions in the "Written Offer for Source Code" section of the latter website.
- 16.8 Oracle may refer to You as an Oracle customer of the ordered Products and Service Offerings in sales presentations, marketing vehicles and activities.

This Hardware Schedule (this "Schedule H") is a Schedule to the General Terms to which this Schedule H is attached. The General Terms and this Schedule H, together with the attached Schedule P, are the Master Agreement. This Schedule H shall coterminate with the General Terms.

## 1. DEFINITIONS

- 1.1 **"Commencement Date"** for the Hardware, Operating System and Integrated Software refers to the date the Hardware is delivered. For Integrated Software Options, the Commencement Date refers to the date the Hardware is delivered or the effective date of the order if shipment of Hardware is not required.
- 1.2 **"Integrated Software Options"** refers to software or programmable code embedded in, installed on, or activated on the Hardware that requires one or more unit licenses that You must separately order and agree to pay additional fees. Not all Hardware contains Integrated Software Options; please refer to the Oracle Integrated Software Options License Definitions, Rules and Metrics accessible at <http://oracle.com/contracts> (the "Integrated Software Options License Rules") for the specific Integrated Software Options that may apply to specific Hardware. Oracle reserves the right to designate new software features as Integrated Software Options in subsequent releases and that designation will be specified in the applicable documentation and in the Integrated Software Options License Rules.
- 1.3 Capitalized terms used but not defined in this Schedule H have the meanings set forth in the General Terms.

## 2. RIGHTS GRANTED

- 2.1 Your Hardware order consists of the following items: Operating System (as defined in Your configuration), Integrated Software and all Hardware equipment (including components, options and spare parts) specified on the applicable order. Your Hardware order may also include Integrated Software Options. Integrated Software Options may not be activated or used until You separately order them and agree to pay additional fees.
- 2.2 You have the right to use the Operating System delivered with the Hardware subject to the terms of the license agreement(s) delivered with the Hardware. Current versions of the license agreements are located at <http://oracle.com/contracts>. You are licensed to use the Operating System and any Operating System updates acquired through technical support only as incorporated in, and as part of, the Hardware.
- 2.3 You have the limited, non-exclusive, royalty free, non-transferable, non-assignable right to use Integrated Software delivered with the Hardware subject to the terms of this Schedule H and the applicable documentation. You are licensed to use that Integrated Software and any Integrated Software updates acquired through technical support only as incorporated in, and as part of, the Hardware. You have the limited, non-exclusive, royalty free, non-transferable, non-assignable right to use Integrated Software Options that You separately order subject to the terms of this Schedule H, the applicable documentation and the Integrated Software Options License Rules; the Integrated Software Options License Rules are incorporated in and made a part of this Schedule H. You are licensed to use those Integrated Software Options and any Integrated Software Options updates acquired through technical support only as incorporated in, and as part of, the Hardware. To fully understand Your license right to any Integrated Software Options that You separately order, You need to review the Integrated Software Options License Rules. In the event of any conflict between the Master Agreement and the Integrated Software Options License Rules, the Integrated Software Options License Rules shall take precedence.
- 2.4 The Operating System or Integrated Software or Integrated Software Options (or all three) may include separate works, identified in a readme file, notice file or the applicable documentation, which are licensed under open source or similar license terms; Your rights to use the Operating System,

Integrated Software and Integrated Software Options under such terms are not restricted in any way by the Master Agreement including this Schedule H. The appropriate terms associated with such separate works can be found in the readme files, notice files or in the documentation accompanying the Operating System, Integrated Software, and Integrated Software Options.

- 2.5 Upon payment for Hardware-related Service Offerings, You have the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for Your internal business operations anything developed by Oracle and delivered to You under this Schedule H (“deliverables”); however, certain deliverables may be subject to additional license terms provided in the order.

### **3. RESTRICTIONS**

- 3.1 You may only make copies of the Operating System, Integrated Software and Integrated Software Options for archival purposes, to replace a defective copy, or for program verification. You shall not remove any copyright notices or labels on the Operating System, Integrated Software or Integrated Software Options. You shall not decompile or reverse engineer (unless required by law for interoperability) the Operating System or Integrated Software.
- 3.2 You acknowledge that to operate certain Hardware, Your facility must meet a minimum set of requirements as described in the Hardware documentation. Such requirements may change from time to time, as communicated by Oracle to You in the applicable Hardware documentation.
- 3.3 The prohibition on the assignment or transfer of the Operating System or any interest in it under section 15 of the General Terms shall apply to all Operating Systems licensed under this Schedule H, except to the extent that such prohibition is rendered unenforceable under applicable law.

### **4. TRIAL PROGRAMS**

Oracle may include additional Programs on the Hardware (e.g., Exadata Storage Server software). You are not authorized to use those Programs unless You have a license specifically granting You the right to do so; however, You may use those additional Programs for trial, non-production purposes for up to 30 days from the date of delivery provided that You may not use the trial Programs to provide or attend third party training on the content and/or functionality of the Programs. To use any of these Programs after the 30 day trial period, You must obtain a license for such Programs from Oracle or an authorized reseller. If You decide not to obtain a license for any Program after the 30 day trial period, You will cease using and promptly delete any such Programs from Your computer systems. Programs licensed for trial purposes are provided “as is” and Oracle does not provide technical support or offer any warranties for these Programs.

### **5. TECHNICAL SUPPORT**

- 5.1 Oracle Hardware and Systems Support acquired with Your order may be renewed annually and, if You renew Oracle Hardware and Systems Support for the same systems and same configurations, for the first and second renewal years the technical support fee will not increase by more than 3% over the prior year’s fees.
- 5.2 If ordered, Oracle Hardware and Systems Support (including first year and all subsequent years) is provided under Oracle’s Hardware and Systems Support Policies in effect at the time the technical support services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information, and consents that Oracle may require in order to perform the technical support services. The Oracle Hardware and Systems Support Policies are incorporated in this Schedule H and are subject to change at Oracle’s discretion; however, Oracle will not materially reduce the level of technical support services provided during the period for which fees for Oracle Hardware and Systems Support have been paid. You should review the policies prior to entering into the order for technical support services. You may access the current version of the Oracle Hardware and Systems Support Policies at <http://oracle.com/contracts>.
- 5.3 Oracle Hardware and Systems Support is effective upon the Commencement Date of the Hardware or upon the effective date of the order if shipment of Hardware is not required.



## 6. **HARDWARE-RELATED SERVICE OFFERINGS**

In addition to technical support, You may order a limited number of Hardware-related Service Offerings under this Schedule H as listed in the Hardware-Related Service Offerings document, which is at <http://oracle.com/contracts>. You agree to provide Oracle with all information, access and full good faith cooperation reasonably necessary to enable Oracle to deliver these Service Offerings and You will perform the actions identified in the order as Your responsibility. If while performing these Service Offerings Oracle requires access to another vendor's products that are part of Your system, You will be responsible for acquiring all such products and the appropriate license rights necessary for Oracle to access such products on Your behalf. Service Offerings provided may be related to Your license to use Products owned or distributed by Oracle which You acquire under a separate order. The agreement referenced in that order shall govern Your use of such Products.

## 7. **WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES**

- 7.1 Oracle provides a limited warranty ("Oracle Hardware Warranty") for (i) the Hardware, (ii) the Operating System and the Integrated Software and the Integrated Software Options, and (iii) the Operating System media, the Integrated Software media and the Integrated Software Options media ("media", and (i), (ii) and (iii) collectively, "Hardware Items"). Oracle warrants that the Hardware will be free from, and using the Operating System and Integrated Software and Integrated Software Options will not cause in the Hardware, material defects in materials and workmanship for one year from the date the Hardware is delivered to You. Oracle warrants that the media will be free from material defects in materials and workmanship for a period of 90 days from the date the media is delivered to You. You may access a more detailed description of the Oracle Hardware Warranty at <http://www.oracle.com/us/support/policies/index.html> ("Warranty Web Page"). Any changes to the Oracle Hardware Warranty specified on the Warranty Web Page will not apply to Hardware or media ordered prior to such change. The Oracle Hardware Warranty applies only to Hardware and media that have been (1) manufactured by or for Oracle, and (2) sold by Oracle (either directly or by an Oracle-authorized distributor). The Hardware may be new or like new. The Oracle Hardware Warranty applies to Hardware that is new and Hardware that is like-new which has been remanufactured and certified for warranty by Oracle.
- 7.2 Oracle also warrants that technical support services and Hardware-related Service Offerings (as referenced in section 6 above) ordered and provided under this Schedule H will be provided in a professional manner consistent with industry standards. You must notify Oracle of any technical support service or Hardware-related Service Offerings warranty deficiencies within 90 days from performance of the deficient technical support service or Hardware-related Service Offerings.
- 7.3 **FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (i) THE REPAIR OR, AT ORACLE'S OPTION AND EXPENSE, REPLACEMENT OF THE DEFECTIVE HARDWARE ITEM, OR IF SUCH REPAIR OR REPLACEMENT IS NOT REASONABLY ACHIEVABLE, THE REFUND OF THE FEES YOU PAID ORACLE FOR THE DEFECTIVE HARDWARE ITEM AND THE REFUND OF ANY UNUSED PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE DEFECTIVE HARDWARE ITEM; OR (ii) THE REPERFORMANCE OF THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT HARDWARE-RELATED SERVICE OFFERINGS. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS WITH RESPECT TO THE ABOVE ITEMS, INCLUDING ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- 7.4 Replacement units for defective parts or Hardware Items replaced under the Oracle Hardware Warranty may be new or like new quality. Such replacement units assume the warranty status of the Hardware into which they are installed and have no separate or independent warranty of any kind. Title in all defective parts or Hardware Items shall transfer back to Oracle upon removal from the Hardware.

**7.5 ORACLE DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE HARDWARE, OPERATING SYSTEM, INTEGRATED SOFTWARE, INTEGRATED SOFTWARE OPTIONS OR MEDIA.**

7.6 No warranty will apply to any Hardware, Operating System, Integrated Software, Integrated Software Options or media which has been:

- a. modified, altered or adapted without Oracle's written consent (including modification or removal of the Oracle/Sun serial number tag on the Hardware);
- b. maltreated or used in a manner other than in accordance with the relevant documentation;
- c. repaired by any third party in a manner which fails to meet Oracle's quality standards;
- d. improperly installed by any party other than Oracle or an authorized Oracle certified installation partner;
- e. used with equipment or software not covered by an Oracle warranty, to the extent that the problems are attributable to such use;
- f. relocated, to the extent that problems are attributable to such relocation;
- g. used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- h. used by parties appearing on the then-current U.S. export exclusion list;
- i. relocated to countries subject to U.S. trade embargo or restrictions;
- j. used remotely to facilitate any activities for parties or in the countries referenced in 7.6(h) and 7.6(i) above; or
- k. purchased from any entity other than Oracle or an Oracle authorized reseller.

7.7 The Oracle Hardware Warranty does not apply to normal wear of the Hardware or media. The Oracle Hardware Warranty is extended only to the original purchaser or original lessee of the Hardware and may be void in the event that title to the Hardware is transferred to a third party.

**8. AUDIT**

Upon 45 days written notice, Oracle may audit Your use of the Operating System, Integrated Software and Integrated Software Options. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to pay within 30 days of written notification any fees applicable to Your use of the Operating System, Integrated Software and Integrated Software Options in excess of Your license rights. If You do not pay, Oracle can end (a) Service Offerings (including technical support) related to the Operating System, Integrated Software and Integrated Software Options, (b) licenses of the Operating System, Integrated Software and Integrated Software Options ordered under this Schedule H and related agreements and/or (c) the Master Agreement. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit.

**9. ORDER LOGISTICS**

**9.1 Delivery, Installation and Acceptance of Hardware**

9.1.1 You are responsible for installation of the Hardware unless You purchase installation services from Oracle for that Hardware.

9.1.2 Oracle will deliver the Hardware in accordance with Oracle's Order and Delivery Policies which are in effect at the time of Your order and which may be accessed at <http://oracle.com/contracts>. Oracle will use the delivery address specified by You on Your purchasing document or when Your purchasing document does not indicate a ship to address, the location specified on the order and the delivery terms in the Order and Delivery Policies that are applicable to Your country of destination will apply.

9.1.3 Acceptance of the Hardware is deemed to occur on delivery.

9.1.4 Oracle may make and invoice You for partial deliveries.

- 9.1.5 Oracle may make substitutions and modifications to the Hardware that do not cause a material adverse effect in overall Hardware performance.
- 9.1.6 Oracle will use its reasonable commercial efforts to deliver the Hardware within a timeframe that is consistent with Oracle's past practices regarding the amount and type of Hardware that You have ordered.

## **9.2 Delivery and Installation of Integrated Software Options**

- 9.2.1 You are responsible for installation of the Integrated Software Options unless the Integrated Software Options have been pre-installed by Oracle on the Hardware You are purchasing under the order or unless You purchase installation services from Oracle for the Integrated Software Options.
- 9.2.2 Oracle has made available to You for electronic download at the electronic delivery web site located at the following Internet URL: <http://edelivery.oracle.com> the Integrated Software Options listed in the order. Through the Internet URL, You can access and electronically download to Your location the latest production release as of the effective date of the applicable order of the Integrated Software Options and related documentation for the Integrated Software Options listed. Provided that You have continuously maintained technical support for the listed Integrated Software Options, You may continue to download the Integrated Software Options and related documentation. Please be advised that not all Integrated Software Options are available on all Hardware/Operating System combinations. For the most recent Integrated Software Options availability please check the electronic delivery web site specified above. You acknowledge that Oracle is under no further delivery obligation with respect to Integrated Software Options under the applicable order, electronic download or otherwise.

## **9.3 Transfer of Title**

Title to the Hardware will transfer upon delivery.

## **9.4 Territory**

The Hardware shall be installed in the country/countries that You specify as the delivery location on Your purchasing document or when Your purchasing document does not indicate a ship to address, the location specified in the order.

## **9.5 Pricing, Invoicing, and Payment Obligation**

- 9.5.1 You may change a Hardware order prior to shipment subject to the then current change order fee as established by Oracle from time to time. The applicable change order fees and a description of allowed changes are defined in the Order and Delivery Policies, which may be accessed at <http://oracle.com/contracts>.
- 9.5.2 In entering into payment obligations under an order, You agree and acknowledge that You have not relied on the future availability of any Hardware, Program or updates. However, (a) if You order technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under the Master Agreement, if and when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to You under an order and the Master Agreement.
- 9.5.3 Hardware and Integrated Software Options fees are invoiced as of the respective Commencement Dates.
- 9.5.4 Hardware-related Service Offering fees are invoiced in advance of the Hardware-related Service Offering performance; specifically, technical support fees are invoiced annually in advance. The period of performance for all Hardware-related Service Offerings is effective upon the Commencement Date of the Hardware or upon the effective date of the order if shipment of Hardware is not required.

9.5.5 In addition to the prices listed on the order, Oracle will invoice You for any applicable freight charges or applicable taxes, and You will be responsible for such charges and taxes notwithstanding any express or implied provision in the “Incoterms” referenced in the Order and Delivery Policies. The Order and Delivery Policies may be accessed at <http://oracle.com/contracts>.

This Program Schedule (this "Schedule P") is a Schedule to the General Terms to which this Schedule P is attached. The General Terms and this Schedule P, together with the attached Schedule H, are the Master Agreement. This Schedule P shall coterminate with the General Terms.

## **1. DEFINITIONS**

- 1.1 "Commencement Date" refers to the date of shipment of tangible media or the effective date of the order if shipment of tangible media is not required (if the order was placed through the Oracle store, the effective date is the date the order was submitted to Oracle).
- 1.2 Capitalized terms used but not defined in this Schedule P have the meanings set forth in the General Terms.

## **2. RIGHTS GRANTED**

- 2.1 Upon Oracle's acceptance of Your order, You have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the order), limited right to use the Programs and receive any Program-related Service Offerings You ordered solely for Your internal business operations and subject to the terms of the Master Agreement, including the definitions and rules set forth in the order and the Program Documentation.
- 2.2 Upon payment for Program-related Service Offerings, You have the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for Your internal business operations anything developed by Oracle and delivered to You under this Schedule P ("deliverables"); however, certain deliverables may be subject to additional license terms provided in the order.
- 2.3 You may allow Your agents and contractors (including, without limitation, outsourcers) to use the Programs and deliverables for Your internal business operations and You are responsible for their compliance with the General Terms and this Schedule P 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 the General Terms and this Schedule P.
- 2.4 You may make a sufficient number of copies of each Program for Your licensed use and one copy of each Program media.

## **3. RESTRICTIONS**

- 3.1 The Programs may contain or require the use of third party technology that is provided with the Programs. Oracle may provide certain notices to You in Program Documentation, readmes or notice files in connection with such third party technology. Third party technology will be licensed to You either under the terms of the Master Agreement or, if specified in the Program Documentation, readmes or notice files, under Separate Terms. Your rights to use Separately Licensed Third Party Technology under Separate Terms are not restricted in any way by the Master Agreement. However, for clarity, notwithstanding the existence of a notice, third party technology that is not Separately Licensed Third Party Technology shall be deemed part of the Programs and is licensed to You under the terms of the Master Agreement.

If You are permitted under an order to distribute the Programs, You must include with the distribution all such notices and any associated source code for Separately Licensed Third Party Technology as specified, in the form and to the extent such source code is provided by Oracle, and You must distribute Separately Licensed Third Party Technology under Separate Terms (in the form and to the extent Separate Terms are provided by Oracle). Notwithstanding the foregoing, Your rights to the Programs are solely limited to the rights granted in Your order.

- 3.2 You may not:

- a. remove or modify any Program markings or any notice of Oracle's or its licensors' proprietary rights;
- b. make the Programs or materials resulting from the Service Offerings 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 Service Offerings You have acquired);
- c. 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);
- d. disclose results of any Program benchmark tests without Oracle's prior written consent.

3.3 The prohibition on the assignment or transfer of the Programs or any interest in them under section 15 of the General Terms shall apply to all Programs licensed under this Schedule P, except to the extent that such prohibition is rendered unenforceable under applicable law.

#### **4. TRIAL PROGRAMS**

You may order trial Programs, or Oracle may include additional Programs with Your order which You may use for trial, non-production purposes only. You may not use the trial Programs to provide or attend third party training on the content and/or functionality of the Programs. You have 30 days from the Commencement Date to evaluate these Programs. To use any of these Programs after the 30 day trial period, You must obtain a license for such Programs from Oracle or an authorized reseller. If You decide not to obtain a license for any Program after the 30 day trial period, You will cease using and promptly delete any such Programs from Your computer systems. Programs licensed for trial purposes are provided "as is" and Oracle does not provide technical support or offer any warranties for these Programs.

#### **5. TECHNICAL SUPPORT**

5.1 For purposes of an order, technical support consists of Oracle's annual technical support services You may have ordered from Oracle or an authorized reseller for the Programs. If ordered, annual technical support (including first year and all subsequent years) is provided under Oracle's technical support policies in effect at the time the technical support services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information and consents that Oracle may require in order to perform the technical support services. The technical support policies are incorporated in this Schedule P and are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of technical support services provided for supported Programs during the period for which fees for technical support have been paid. You should review the policies prior to entering into the order for the applicable technical support services. You may access the current version of the technical support policies at <http://oracle.com/contracts>.

5.2 Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with Your order may be renewed annually and, if You renew SULS for the same number of licenses for the same Programs, for the first and second renewal years the fee for SULS will not increase by more than 3% over the prior year's fees. If Your order is fulfilled by an authorized reseller, the fee for SULS for the first renewal year will be the price quoted to You by Your authorized reseller; the fee for SULS for the second renewal year will not increase by more than 3% over the prior year's fees.

5.3 If You decide to purchase technical support for any Program license within a license set, You are required to purchase technical support at the same level for all licenses within that license set. You may desupport a subset of licenses in a license set only if You agree to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If You decide not to purchase technical support, You may not update any unsupported Program licenses with new versions of the Program.

## **6. PROGRAM-RELATED SERVICE OFFERINGS**

In addition to technical support, You may order a limited number of Program-related Service Offerings under this Schedule P as listed in the Program-Related Service Offerings document, which is at <http://oracle.com/contracts>. You agree to provide Oracle with all information, access and full good faith cooperation reasonably necessary to enable Oracle to deliver these Service Offerings and You will perform the actions identified in the order as Your responsibility. If while performing these Service Offerings Oracle requires access to another vendor's products that are part of Your system, You will be responsible for acquiring all such products and the appropriate license rights necessary for Oracle to access such products on Your behalf. Service Offerings provided may be related to Your license to use Programs owned or distributed by Oracle which You acquire under a separate order. The agreement referenced in that order shall govern Your use of such Programs.

## **7. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES**

7.1 Oracle warrants that a Program licensed to You will operate in all material respects as described in the applicable Program Documentation for a period of one year after delivery (i.e., via physical shipment or electronic download). You must notify Oracle of any Program warranty deficiency within one year after delivery. Oracle also warrants that technical support services and Program-related Service Offerings (as referenced in section 6 above) ordered and provided under this Schedule P will be provided in a professional manner consistent with industry standards. You must notify Oracle of any technical support service or Program-related Service Offerings warranty deficiencies within 90 days from performance of the deficient technical support service or Program-related Service Offerings.

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

7.3 **FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE ERRORS OF THE APPLICABLE PROGRAM LICENSE IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES YOU PAID TO ORACLE 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 PROGRAM-RELATED SERVICE OFFERINGS; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS.**

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

## **8. AUDIT**

Upon 45 days written notice, Oracle may audit Your use of the Programs. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal 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, Oracle can end (a) Program-related Service Offerings (including technical support), (b) Program licenses ordered under this Schedule P and related agreements and/or (c) the Master Agreement. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit.

## **9. ORDER LOGISTICS**

### **9.1 Delivery and Installation**

- 9.1.1 You are responsible for installation of the Programs unless the Programs have been pre-installed by Oracle on the Hardware You are purchasing under the order or unless You purchase installation services from Oracle for those Programs.
- 9.1.2 Oracle has made available to You for electronic download at the electronic delivery web site located at the following Internet URL: <http://edelivery.oracle.com> the Programs listed in the Programs and Program Support Service Offerings section of the applicable order. Through the Internet URL, You can access and electronically download to Your location the latest production release as of the effective date of the applicable order of the software and related Program Documentation for each Program listed. Provided that You have continuously maintained technical support for the listed Programs, You may continue to download the Programs and related Program Documentation. Please be advised that not all Programs are available on all hardware/operating system combinations. For the most recent Program availability please check the electronic delivery web site specified above. You acknowledge that Oracle is under no further delivery obligation with respect to Programs under the applicable order, electronic download or otherwise.
- 9.1.3 If ordered, Oracle will deliver the tangible media to the delivery address specified on the applicable order. You agree to pay applicable media and shipping charges. The applicable shipping terms for the delivery of tangible media are: FCA Shipping Point, Prepaid, and Add.

## **9.2 Territory**

The Programs shall be used in the country/countries specified in the order.

## **9.3 Pricing, Invoicing and Payment Obligation**

- 9.3.1 In entering into payment obligations under an order, You agree and acknowledge that You have not relied on the future availability of any Program or updates. However, (a) if You order technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under the Master Agreement, if and when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to You under an order and the Master Agreement.
- 9.3.2 Program fees are invoiced as of the Commencement Date.
- 9.3.3 Program-related Service Offering fees are invoiced in advance of the Program-related Service Offering performance; specifically, technical support fees are invoiced annually in advance. The period of performance for all Program-related Service Offerings is effective upon the Commencement Date.
- 9.3.4 In addition to the prices listed on the order, Oracle will invoice You for any applicable shipping charges or applicable taxes and You will be responsible for such charges and taxes.