

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 Deutschland B.V. & Co. KG ("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 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 four 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, cloud 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, Schedule P – Program, Schedule C – Cloud Services and Schedule LVM – Linux VM Service.

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 may 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. Oracle's affiliates are not considered as third parties. 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.

8.4 To the extent You provide personal information to Oracle as part of any Service Offerings You have ordered under the Master Agreement, Oracle will comply with:

- a. the relevant Oracle privacy policies applicable to the Service Offerings, available at <http://www.oracle.com/us/legal/privacy/overview/index.html>;
- b. the applicable administrative, physical, technical and other safeguards, and other applicable aspects of system and content management, available at <http://www.oracle.com/us/corporate/contracts/>; and
- c. the applicable version of the Data Processing Agreement for Oracle Services (the “Data Processing Agreement”). The version of the Data Processing Agreement applicable to Your order is available at <https://www.oracle.com/corporate/contracts/cloud-services/contracts.html#data-processing> and is incorporated herein by reference. The Data Processing Agreement does not apply to education services and Oracle Data Cloud services under Schedule D. Your order for Service Offerings may also contain additional or more specific privacy terms.

## **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

Oracle is liable for damages (including expenses) regardless of the legal reason (e.g. damages resulting from breach of contract or quasi contract, neglect of duty, tort) as follows:

- In case of injury to life, body or health, in case of claims based on the German Product Liability Act and in other cases in which Oracle's liability may not be excluded or limited according to mandatory laws, Oracle is liable according to statutory laws.
- In case of damages caused by willful intent, Oracle is liable according to statutory laws.
- In case of gross negligence of Oracle's legal representatives and executives, Oracle is liable according to statutory laws.
- In case of gross negligence of Oracle's vicarious agents (*Erfüllungsgehilfen*), Oracle is liable according to statutory laws if a Cardinal Duty was breached; in case of breach of a duty that is not a Cardinal Duty, Oracle's liability is limited to the typical contractual damage which was foreseeable when the parties entered into the contract. A cardinal duty is any obligation, the fulfillment of which is a prerequisite for enabling the proper fulfillment of the contract in the first place and in the observance of which You may normally trust ("Cardinal Duty").
- In case of slight negligence resulting in a breach of a Cardinal Duty, Oracle's liability is limited to the typical contractual damages foreseeable at the time the contract was concluded. You and Oracle agree that the typical contractual and foreseeable damages in no event exceed either (i), if the liability results from Your use of Products or Service Offerings, the fees You paid Oracle under Your respective order for the respective Products or Service Offerings or (ii), in all other cases, the amount of fees You paid Oracle under the Schedule giving rise to the liability.
- There is no strict liability, that is, liability irrespective of culpability (e.g. according to Section 536a para. 1 of the German Civil Code – *Bürgerliches Gesetzbuch* - if applicable), for damages arising from malperformance which is present at the time of conclusion of this Master Agreement or of Your order.

In all other cases Oracle's liability is excluded.

Oracle may invoke contributory negligence on Your part. You are especially obliged to perform routine backups and employ virus protection according to the current state of the art. Routine backups must occur at adequate intervals, but at least once a day, so that data can be restored with reasonable effort. In the case of a loss of data culpably caused by Oracle, Oracle's liability is limited to the expenses that are incurred if routine backups are properly made and virus protection properly employed.

For the avoidance of doubt, this section also applies to the extent the legal reason for Oracle's liability results from data protection law or a data processing agreement.

## 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 is governed by the laws of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are not applicable. You and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in Munich 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 Deutschland B.V. & Co. KG, Riesstrasse 25, 80992 Munich, Attention: Legal Department.

### **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.

## SCHEDULE H - Hardware

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, Schedule C, and Schedule LVM 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 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>.

5.2 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. PRODUCT DEFECTS**

7.1 Oracle warrants for a period of one year from commencement of the statutory limitation period that (i) the Hardware, (ii) the Operating System, the Integrated Software and the Integrated Software Options, and (iii) the Operating System media, the Integrated Software media and the Integrated Software Options media will show the characteristics agreed in the documentation or technical specification or, if no characteristics have been agreed, that they will be suitable for use as presumed under the agreement or for other ordinary use and include such characteristics as are usual in goods of the same kind and which you may expect in such goods. 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 Should product defects be established, Oracle shall at its own discretion either remedy the same or supply You with a new product. If Oracle does not succeed in remedying the product defects in the hardware, programs or media delivered within a reasonable period, You may set Oracle a reasonable grace period. Upon expiry of such grace period, You may request a reduction of the fees paid or rescission of the agreement.

7.3 Oracle does not warrant that the hardware, programs or media will meet all Your requirements or that the functions contained therein will run without interruption of error in any and all combinations you may select. A guarantee is only binding insofar as expressly stated in an offer or this Agreement and expressly described as such and specifically stating the obligation under such guarantee.

7.4. For a period of one year from commencement of the statutory limitation period, Oracle warrants that the Hardware-related Service Offerings ordered and provided under this Schedule H will be provided in a professional manner consistent with industry standards.

7.5 Furthermore the liability provisions as set forth in the General Terms shall apply.

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

- i. modified, altered or adapted without Oracle's written consent (including modification or removal of the Oracle/Sun serial number tag on the Hardware);
- ii. maltreated or used in a manner other than in accordance with the relevant documentation;
- iii. repaired by any third party in a manner which fails to meet Oracle's quality standards;
- iv. improperly installed by any party other than Oracle or an authorized Oracle certified installation partner;
- v. used with equipment or software not covered by an Oracle warranty, to the extent that the problems are attributable to such use;

- vi. relocated, to the extent that problems are attributable to such relocation;
- vii. used directly or indirectly in supporting activities prohibited by U.S. or other national export regulations;
- viii. used by parties appearing on the then-current U.S. export exclusion list;
- ix. relocated to countries subject to U.S. trade embargo or restrictions;
- x. used remotely to facilitate any activities for parties or in the countries referenced in 7.6(viii) and 7.6(ix) above; or
- xi. 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 and Installation**

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 usual delivery times 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>.



## SCHEDULE P - Program

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, Schedule C and Schedule LVM 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 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. PRODUCT DEFECTS**

7.1 Oracle warrants for a period of one year from commencement of the statutory limitation period that the programs will demonstrate the characteristics agreed in the applicable program documentation or the performance specifications, or, if no characteristics have been agreed, that they will be suitable for use as presumed under the agreement or for other ordinary use and include such characteristics as are usual in goods of the same kind and which you may expect in such goods.

7.2 Should product defects be established, Oracle shall at its own discretion either remedy the same or supply you with a new program. If Oracle does not succeed in remedying the product defects in the programs delivered within a reasonable period, you may set Oracle a reasonable grace period. Upon expiry of such grace period, you may request a reduction of the fees paid or rescission of the agreement.

7.3 Oracle does not warrant that the programs will meet all your requirements or that the functions contained therein will run without interruption or error in any and all combinations you may select. A guarantee is only binding insofar as expressly stated in an offer or this Agreement and expressly described as such and specifically stating the obligation under such guarantee.

7.4 For a period of one year from commencement of the statutory limitation period, Oracle warrants that the Program-Related Service Offerings ordered and provided under this Schedule P will be provided in a professional manner consistent with industry standards.

7.5 Furthermore the liability provisions as set forth in the General Terms shall apply.

## **8. AUDIT**

Upon 45 days written notice, Oracle may audit Your use of the Programs to ensure Your use of the Programs is in compliance with the terms of the applicable order and the Master Agreement. Any such audit shall not unreasonably interfere with Your normal business operations.

You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information reasonably requested by Oracle. Such assistance shall include, but shall not be limited to, the running of Oracle data measurement tools on Your servers and providing the resulting data to Oracle.

The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of section 8 (Nondisclosure) of the General Terms.

If the audit identifies non-compliance, You agree to remedy (which may include, without limitation, the payment of any fees for additional licenses for Programs) such non-compliance within 30 days of written notification of that non-compliance. If You do not remedy the non-compliance, 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 Dublin, Ireland (Incoterms 2010).

## **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.

## Schedule C – Cloud Services

This Cloud Services Schedule (this “Schedule C”) is a Schedule to the General Terms to which this Schedule C is attached. The General Terms and this Schedule C, together with the attached Schedule H, Schedule P and Schedule LVM are the Master Agreement. This Schedule C shall coterminate with the General Terms.

### 1. USE OF THE SERVICES

1.1 Oracle will make the Oracle services listed in Your order (the “Services”) available to You pursuant to the Master Agreement and Your order. Except as otherwise stated in the Master Agreement or Your order, You have the non-exclusive, worldwide, limited right to use the Services during the period defined in Your order, unless earlier terminated in accordance with the Master Agreement or Your order (the “Services Period”), solely for Your internal business operations. You may allow Your Users (as defined below) to use the Services for this purpose, and You are responsible for their compliance with the Master Agreement and Your order.

1.2 The Service Specifications describe and govern the Services. During the Services Period, we may update the Services and Service Specifications to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third Party Content. Oracle updates to the Services or Service Specifications will not materially reduce the level of performance, functionality, security or availability of the Services during the Services Period of Your order.

1.3 You may not, and may not cause or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking or availability testing of the Services; (c) perform or disclose any performance or vulnerability testing of the Services without Oracle’s prior written approval, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking, or remote access testing of the Services; or (d) use the Services to perform cyber currency or crypto currency mining ((a) through (d) collectively, the “Acceptable Use Policy”). In addition to other rights that we have in the Master Agreement and Your order, we have the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.

### 2. FEES AND PAYMENT

2.1 Once placed, Your order is non-cancelable and the sums paid nonrefundable, except as provided in the Master Agreement or Your order. Fees for Services listed in an order are exclusive of taxes and expenses.

2.2 If You exceed the quantity of Services ordered, then You promptly must purchase and pay fees for the excess quantity.

### 3. OWNERSHIP RIGHTS AND RESTRICTIONS

3.1 You or Your licensors retain all ownership and intellectual property rights in and to Your Content (as defined below). We or our licensors retain all ownership and intellectual property rights in and to the Services, derivative works thereof, and anything developed or delivered by or on behalf of us under the Master Agreement.

3.2 You may have access to Third Party Content through use of the Services. Unless otherwise stated in Your order, all ownership and intellectual property rights in and to Third Party Content and the use of such content is governed by separate third party terms between You and the third party.

3.3 You grant us the right to host, use, process, display and transmit Your Content to provide the Services pursuant to and in accordance with the Master Agreement and Your order. You have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Your Content, and for obtaining all rights related to Your Content required by Oracle to perform the Services.

3.4 You may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download or copy any part of the Services (including data structures or similar materials produced by programs); (b) access or use the Services to build or support, directly or indirectly, products or services competitive to Oracle; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of,

commercially exploit, or make available the Services to any third party except as permitted by the Master Agreement or Your order.

#### **4. NONDISCLOSURE**

Your Content residing in the Services will be considered Confidential Information subject to the terms of this section, Section 8 of the General Terms and Your order. Oracle will protect the confidentiality of Your Content residing in the Services for as long as such information resides in the Services. Oracle will protect the confidentiality of Your Content residing in the Services in accordance with the Oracle security practices defined as part of the Service Specifications applicable to Your order.

#### **5. PROTECTION OF YOUR CONTENT**

5.1 In order to protect Your Content provided to Oracle as part of the provision of the Services, Oracle will comply with the applicable administrative, physical, technical and other safeguards, and other applicable aspects of system and content management, available at <http://www.oracle.com/us/corporate/contracts/cloud-services/index.html>.

5.2 To the extent Your Content includes Personal Data (as that term is defined in the applicable data privacy policies and the Data Processing Agreement (as that term is defined below)), Oracle will furthermore comply with the following:

- a. the relevant Oracle privacy policies applicable to the Services, available at <http://www.oracle.com/us/legal/privacy/overview/index.html>; and
- b. the applicable version of the *Data Processing Agreement for Oracle Services* (the "Data Processing Agreement"), unless stated otherwise in Your order. The version of the Data Processing Agreement applicable to Your order (a) is available at <https://www.oracle.com/corporate/contracts/cloud-services/contracts.html#data-processing> and is incorporated herein by reference, and (b) will remain in force during the Services Period of Your order. In the event of any conflict between the terms of the Data Processing Agreement and the terms of the Service Specifications (including any applicable Oracle privacy policies), the terms of the Data Processing Agreement shall take precedence.

5.3 Without prejudice to Sections 5.1 and 5.2 above, You are responsible for (a) any required notices, consents and/or authorizations related to Your provision of, and our processing of, Your Content (including any Personal Data) as part of the Services, (b) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Your Content, including any viruses, Trojan horses, worms or other harmful programming routines contained in Your Content, and (c) any use by You or Your Users of the Services in a manner that is inconsistent with the terms of the Master Agreement. To the extent You disclose or transmit Your Content to a third party, we are no longer responsible for the security, integrity or confidentiality of such content outside of Oracle's control.

5.4 Unless otherwise specified in Your order (including in the Service Specifications), Your Content may not include any sensitive or special data that imposes specific data security or data protection obligations on Oracle in addition to or different from those specified in the Service Specifications. If available for the Services, You may purchase additional services from us (e.g., Oracle Payment Card Industry Compliance Services) designed to address specific data security or data protection requirements applicable to such sensitive or special data You seek to include in Your Content.

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

6.1 The parties agree that the cloud Services to be rendered under this Agreement are a novel and diverse type of service and that in the case of a deficiency in performance, application of the specific warranty provisions of the law of obligations set forth in the German Civil Code would not be in the interests of the parties. It is therefore agreed that in connection with any deficiency of performance, the following provisions shall apply exclusively.

6.2 We warrant that during the Services Period, we will perform the Services using commercially reasonable care and skill in all material respects as described in the Service Specifications.

We do not warrant that the Services will be performed error-free or uninterrupted, that we will correct all Services errors, or that the Services will meet Your requirements or expectations. We are not responsible for any issues related to the performance, operation or security of the Services that arise from Your Content or Third Party Content or services provided by third parties.

6.3 If a case of malperformance arises, You shall, without undue delay but at the latest within two weeks from when You first became aware of it, provide us with a written notice that describes the deficiency in the Services (including, as applicable, the service request number notifying us of the deficiency in the Services). If You fail to notify Oracle as required by this paragraph then any claims and rights out of the respective case of malperformance, to the extent You could observe it, shall be excluded.

6.4 After having given notice pursuant to Section 6.3, You shall provide Oracle with the opportunity to remedy the notified case of malperformance. If this is substantially achieved then any potential breach of duty by Oracle is deemed to have been remedied. If the case of malperformance cannot be remedied by a reasonable deadline, You shall be entitled to terminate the affected order for cause with a reasonable grace period. In the case of intentional or negligent malperformance on the part of Oracle, You might have, in addition to the aforementioned termination right, a claim for damages subject to the limitations set forth in Section 7. Any claims or rights arising from a case of malperformance shall become time-barred six months after such case was first notified or should have been notified pursuant to Section 6.3.

## 7. LIMITATION OF LIABILITY

Oracle is liable for damages (including expenses) regardless of the legal reason (e.g. damages resulting from breach of contract or quasi contract, neglect of duty, tort) as follows:

- In case of injury to life, body or health, in case of claims based on the German Product Liability Act and in other cases in which Oracle's liability may not be excluded or limited according to mandatory laws, Oracle is liable according to statutory laws.
- In case of damages caused by willful intent, Oracle is liable according to statutory laws.
- In case of gross negligence of Oracle's legal representatives and executives, Oracle is liable according to statutory laws.
- In case of gross negligence of Oracle's vicarious agents (*Erfüllungsgehilfen*), Oracle is liable according to statutory laws if a Cardinal Duty was breached; in case of breach of a duty that is not a Cardinal Duty, Oracle's liability is limited to the typical contractual damage which was foreseeable when the parties entered into the contract. A cardinal duty is any obligation, the fulfillment of which is a prerequisite for enabling the proper fulfillment of the contract in the first place and in the observance of which You may normally trust ("Cardinal Duty").
- In case of slight negligence resulting in a breach of a Cardinal Duty, Oracle's liability is limited to the typical contractual damages foreseeable at the time the contract was concluded. You and Oracle agree that the typical contractual and foreseeable damages in no event exceed the total amounts actually paid under Your order for the Services giving rise to the liability during the twelve (12) months immediately preceding the event giving rise to such liability.
- There is no strict liability, that is, liability irrespective of culpability (e.g. according to Section 536a para. 1 of the German Civil Code – *Bürgerliches Gesetzbuch* - if applicable), for damages arising from malperformance which is present at the time of conclusion of this Master Agreement or of Your order.

In all other cases Oracle's liability is excluded.

Oracle may invoke contributory negligence on Your part. You are especially obliged to perform routine backups and employ virus protection according to the current state of the art. Routine backups must occur at adequate intervals, but at least once a day, so that data can be restored with reasonable effort. In the case of a loss of data culpably caused by Oracle, Oracle's liability is limited to the expenses that are incurred if routine backups are properly made and virus protection properly employed.

For the avoidance of doubt, this section also applies to the extent the legal reason for Oracle's liability results from data protection law or a data processing agreement.

## 8. ADDITIONAL INFRINGEMENT INDEMNIFICATION TERMS

8.1 If Oracle is the Provider and exercises its option under Section 5.2 of the General Terms to end the

license for and require the return of Material that is a component of the Services, including Oracle Software, then Oracle will refund any unused, prepaid fees that You have paid for such Material. If such Material is third party technology and the terms of the third party license do not allow Oracle to terminate the license, then Oracle may, upon 30 days prior written notice, end the Services associated with such Material and refund to You any unused, prepaid fees for such Services.

8.2 We will not indemnify You to the extent that an infringement claim is based on Third Party Content or any Material from a third party portal or other external source that is accessible or made available to You within or by the Services (e.g., a social media post from a third party blog or forum, a third party Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

8.3 The phrase “user documentation” in the first sentence of Section 5.6 of the General Terms includes the Service Specifications referenced in Your order for Services.

## **9. TERM AND TERMINATION**

9.1 Services shall be provided for the Services Period defined in Your order.

9.2 We may suspend Your or Your Users’ access to, or use of, the Services if we believe that: (a) there is a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services; (b) You or Your Users are accessing or using the Services to commit an illegal act; or (c) there is a violation of the Acceptable Use Policy. When reasonably practicable and lawfully permitted, we will provide You with advance notice of any such suspension. We will use reasonable efforts to re-establish the Services promptly after we determine that the issue causing the suspension has been resolved. During any suspension period, we will make Your Content (as it existed on the suspension date) available to You. Any suspension under this section shall not excuse You from Your obligation to make payments under the Master Agreement.

9.3 If either of us breaches a material term of the Master Agreement or any order 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 (a) in the case of breach of any order, the order under which the breach occurred; or (b) in the case of breach of the Agreement, the Agreement and any orders that have been placed under the Agreement. If Oracle terminates any orders as specified in the preceding sentence, You must pay within 30 days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such order(s) plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching 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 pursuant to the first sentence of this paragraph, You may not use those Services ordered.

9.4 At the end of the Services Period, we will make Your Content (as it existed at the end of the Services Period) available for retrieval by You during a retrieval period set out in the Service Specifications. At the end of such retrieval period, and except as may be required by law, we will delete or otherwise render unrecoverable any of Your Content that remains in the Services. Our data deletion practices are described in more detail in the Service Specifications.

## **10. THIRD-PARTY CONTENT, SERVICES AND WEBSITES**

10.1 The Services may enable You to link to, transfer Your Content or Third Party Content to, or otherwise access third parties’ websites, platforms, content, products, services, and information (“Third Party Services”). Oracle does not control and is not responsible for such Third Party Services. You are solely responsible for complying with the terms of access and use of Third Party Services, and if Oracle accesses or uses any Third Party Services on Your behalf to facilitate performance of the Services, You are solely responsible for ensuring that such access and use, including through passwords, credentials or tokens issued or otherwise made available to You, is authorized by the terms of access and use for such services. If You transfer or cause the transfer of Your Content or Third Party Content from the Services to a Third Party Service or other location, that transfer constitutes a distribution by You and not by Oracle.

10.2 Any Third Party Content we make accessible is provided on an “as-is” and “as available” basis without any warranty of any kind. You acknowledge and agree that we are not responsible for, and have no obligation to control, monitor, or correct, Third Party Content. We disclaim all liabilities arising from or related to Third Party Content.

10.3 You acknowledge that: (i) the nature, type, quality and availability of Third Party Content may change at any time during the Services Period; and (ii) features of the Services that interoperate with Third Party Services such as Facebook™, YouTube™ and Twitter™, etc. , depend on the continuing availability of such third parties' respective application programming interfaces (APIs). We may need to update, change or modify the Services under the Master Agreement as a result of a change in, or unavailability of, such Third Party Content, Third Party Services or APIs. If any third party ceases to make its Third Party Content or APIs available on reasonable terms for the Services, as determined by us in our sole discretion, we may cease providing access to the affected Third Party Content or Third Party Services without any liability to You. Any changes to Third Party Content, Third Party Services or APIs, including their unavailability, during the Services Period does not affect Your obligations under the Master Agreement or the applicable order, and You will not be entitled to any refund, credit or other compensation due to any such changes.

## **11. SERVICE MONITORING, ANALYSES AND ORACLE SOFTWARE**

11.1 We continuously monitor the Services to facilitate Oracle's operation of the Services; to help resolve Your service requests; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services; and to detect and address illegal acts or violations of the Acceptable Use Policy. Oracle monitoring tools do not collect or store any of Your Content residing in the Services, except as needed for such purposes. Oracle does not monitor, and does not address issues with, non-Oracle software provided by You or any of Your Users that is stored in, or run on or through, the Services. Information collected by Oracle monitoring tools (excluding Your Content) may also be used to assist in managing Oracle's product and service portfolio, to help Oracle address deficiencies in its product and service offerings, and for license management purposes.

11.2 We may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). We may make Service Analyses publicly available; however, Service Analyses will not incorporate Your Content, Personal Data or Confidential Information in a form that could serve to identify You or any individual. We retain all intellectual property rights in Service Analyses.

11.3 We may provide You with the ability to obtain certain Oracle Software (as defined below) for use with the Services. If we provide Oracle Software to You and do not specify separate terms for such software, then such Oracle Software is provided as part of the Services and You have the non-exclusive, worldwide, limited right to use such Oracle Software, subject to the terms of the Master Agreement and Your order (except for separately licensed elements of the Oracle Software, which separately licensed elements are governed by the applicable separate terms), solely to facilitate Your use of the Services. You may allow Your Users to use the Oracle Software for this purpose, and You are responsible for their compliance with the license terms. Your right to use any Oracle Software will terminate upon the earlier of our notice (by web posting or otherwise) or the end of the Services associated with the Oracle Software. Notwithstanding the foregoing, if Oracle Software is licensed to You under separate terms, then Your use of such software is governed by the separate terms. Your right to use any part of the Oracle Software that is licensed under the separate terms is not restricted in any way by the Master Agreement.

## **12. ADDITIONAL EXPORT TERMS**

You acknowledge that the Services are designed with capabilities for You and Your Users to access the Services without regard to geographic location and to transfer or otherwise move Your Content between the Services and other locations such as User workstations. You are solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of Your Content.

## **13. ADDITIONAL NOTICE TERMS**

13.1 Any notice required under the Master Agreement shall be provided to the other party in writing as specified in Section 14 of the General Terms.

13.2 We may give notices applicable to our Services customers by means of a general notice on the Oracle portal for the Services, and notices specific to You by electronic mail to Your e-mail address on record in our account information or by written communication sent by first class mail or pre-paid post to Your address on record in our account information.

#### 14. OTHER

14.1 We are an independent contractor, and each party agrees that no partnership, joint venture, or agency relationship exists between the parties.

14.2 Our business partners and other third parties, including any third parties with which the Services have integrations or that are retained by You to provide consulting services, implementation services or applications that interact with the Services, are independent of Oracle and are not Oracle's agents. We are not liable for, bound by, or responsible for any problems with the Services or Your Content arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as our subcontractor on an engagement ordered under the Master Agreement and, if so, then only to the same extent as we would be responsible for our resources under the Master Agreement.

14.3 Prior to entering into an order governed by the Master Agreement, You are solely responsible for determining whether the Services meet Your technical, business or regulatory requirements. Oracle will cooperate with Your efforts to determine whether use of the standard Services are consistent with those requirements. Additional fees may apply to any additional work performed by Oracle or changes to the Services. You remain solely responsible for Your regulatory compliance in connection with Your use of the Services.

14.4 Upon forty-five (45) days written notice and no more than once every twelve (12) months, Oracle may audit Your use of Cloud Services to ensure Your use of the Cloud Services is in compliance with the terms of the applicable order and the Master Agreement. Any such audit shall not unreasonably interfere with Your normal business operations.

You agree to cooperate with Oracle's audit and to provide reasonable assistance and access to information reasonably requested by Oracle.

The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of section 4 (Nondisclosure) of this Schedule C.

If the audit identifies non-compliance, You agree to remedy (which may include, without limitation, the payment of any fees for additional Cloud Services) such non-compliance within 30 days of written notification of that non-compliance. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit.

14.5 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 other similar non-Oracle document and no terms included in any such purchase order, portal, or other non-Oracle document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an order and the Master Agreement, the order shall take precedence; however, unless expressly stated otherwise in an order, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in an order. The Master Agreement and orders hereunder may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online by authorized representatives of You and of Oracle; however, Oracle may update the Service Specifications, including by posting updated documents on Oracle's websites. No third party beneficiary relationships are created by the Master Agreement.

#### 15. AGREEMENT DEFINITIONS

15.1 **Oracle Software** means any software agent, application or tool that Oracle makes available to You for download specifically for purposes of facilitating Your access to, operation of, and/or use with, the Services.

15.2 **Program Documentation** refers to the user manuals, help windows, readme files for the Services and any Oracle Software. You may access the documentation online at <http://oracle.com/contracts> or such other address specified by Oracle.

15.3 “**Service Specifications**” means the following documents, as applicable to the Services under Your order: (a) the Oracle Cloud Hosting and Delivery Policies, the Program Documentation, the Oracle service descriptions, and the Data Processing Agreement described in this Schedule C; (b) Oracle’s privacy policies; and (c) any other Oracle documents that are referenced in or incorporated into Your order. The following do not apply to any non-Cloud Oracle service offerings acquired in Your order, such as professional services: the Oracle Cloud Hosting and Delivery Policies, Program Documentation, and the Data Processing Agreement. The following do not apply to any Oracle Software: the Oracle Cloud Hosting and Delivery Policies, Oracle service descriptions, and the Data Processing Agreement.

15.4 “**Third Party Content**” means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of Oracle that You may access through, within, or in conjunction with Your use of, the Services. Examples of Third Party Content include data feeds from social network services, rss feeds from blog posts, Oracle data marketplaces and libraries, dictionaries, and marketing data. Third Party Content includes third-party sourced materials accessed or obtained by Your use of the Services or any Oracle provided tools.

15.5 “**Users**” means those employees, contractors, and end users, as applicable, authorized by You or on Your behalf to use the Services in accordance with the Master Agreement and Your order. For Services that are specifically designed to allow Your clients, agents, customers, suppliers or other third parties to access the Cloud Services to interact with You, such third parties will be considered “Users” subject to the terms of the Master Agreement and Your order.

15.6 “**Your Content**” means all software, data (including Personal Data), text, images, audio, video, photographs, non-Oracle or third party applications, and other content and material, in any format, provided by You or any of Your Users that is stored in, or run on or through, the Services. Services under the Master Agreement, Oracle Software, other Oracle products and services, and Oracle intellectual property, and all derivative works thereof, do not fall within the meaning of the term “Your Content”. Your Content includes any Third Party Content that is brought by You into the Services, by Your use of the Services or any Oracle provided tools.

15.7 Capitalized terms used but not defined in this Schedule C have the meanings set forth in the General Terms.



## SCHEDULE LVM - Oracle Linux and Oracle VM Service Offerings

This Oracle Linux and Oracle VM Services Schedule (this "Schedule LVM") is a Schedule to the General Terms referenced above. The General Terms and this Schedule LVM, together with the attached Schedule H, Schedule P and Schedule C are the Master Agreement. This Schedule LVM shall coterminate with the General Terms.

### 1. DEFINITIONS

1.1 "**Covered Programs**" is defined as the specific set of software products listed on the document titled Oracle Linux and Oracle VM Included Files (available at <http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf>) for which You have ordered Oracle Linux/ Oracle VM Service Offering(s), including any related program documentation and patches and bug fixes acquired through such Oracle Linux/ Oracle VM Service Offering(s).

1.2 "**Oracle Linux Service Offering(s)**" and "**Oracle VM Service Offering(s)**" (collectively, "**Oracle Linux/Oracle VM Service Offering(s)**") refer to Oracle Linux and Oracle VM support services respectively and Oracle Linux/Oracle VM-related Service Offerings(s) as defined under the Oracle Linux and Oracle VM support policies.

1.3 "**Oracle Linux/Oracle VM Term(s)**" is defined as the duration for which You have acquired the applicable Oracle Linux/Oracle VM Service Offering(s).

1.4 "**Physical CPU(s)**" is defined as each monolithic integrated circuit responsible for executing a System's Covered Programs. A monolithic integrated circuit with multiple cores or hyperthreading is counted as a single Physical CPU when determining the total number of Physical CPUs in a System.

1.5 "**Supported System(s)**" is defined as a System to which You apply or intend to apply Oracle Linux/Oracle VM Service Offering(s) received from Oracle at the specified service level in Your order, including but not limited to updates, patches, fixes, security alerts, work arounds, configuration, installation assistance (for Oracle VM, Support System(s) includes Oracle VM Manager)

1.6 "**System(s)**" is defined as the computer on which the Oracle Linux programs and/or Oracle VM Server programs are installed. Where computers/blades are clustered, each computer/blade within the cluster shall be defined as a System. (For purposes of calculating the price of the Oracle VM Service Offering(s), the computers where the Oracle VM Manager programs are installed are not counted.)

1.7 Capitalized terms used but not defined in this Schedule LVM have the meanings set forth in the General Terms.

### 2. ORACLE LINUX/ORACLE VM SERVICE OFFERING(S)

2.1 The Oracle Linux/Oracle VM Service Offering(s) are provided at the support level and for the Oracle Linux/ Oracle VM Term defined in Your order.

2.2 When ordering Oracle Linux/Oracle VM Service Offering(s) You must comply with the following availability rules:

- Oracle Linux Premier Limited, Oracle Linux Basic Limited, and Oracle VM Premier Limited are available only for Systems with no more than 2 Physical CPUs per System.
- Oracle Linux Premier, Oracle Linux Basic, Oracle Linux Network, and Oracle VM Premier are available for Systems with any number of Physical CPUs per System.

2.3 Upon Oracle's acceptance of Your order, You have the limited right to receive the applicable Oracle Linux/Oracle VM Service Offering(s) solely for Your business operations and subject to the Terms of this Schedule LVM.

2.4 For purposes of the order, (a) Oracle Linux Service Offering(s) consist of the Oracle Linux support services level You may have ordered for the Oracle Linux programs; and (b) Oracle VM Service Offering(s) consist of the Oracle VM support services level You may have ordered for the Oracle VM programs. If ordered, the Oracle Linux/Oracle VM Service Offering(s) (including initial year and all

subsequent years) are provided under the Oracle Linux and Oracle VM support policies in effect at the time the Oracle Linux/Oracle VM Service Offering(s) are provided. The Oracle Linux and Oracle VM support policies, which are incorporated in this Schedule LVM, are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of Oracle Linux/Oracle VM Service Offering(s) provided during the period for which fees for the Oracle Linux/Oracle VM Service Offering(s) have been paid. Oracle Linux/Oracle VM Service Offering(s) are available for certain Systems, and may be subject to additional restrictions as set forth in the Oracle Linux and Oracle VM support policies. You should review the Oracle Linux and Oracle VM support policies prior to entering into the order for the applicable Oracle Linux/Oracle VM Service Offering(s). You may access the current version of the Oracle Linux and Oracle VM support policies at <http://www.oracle.com/us/support/library/enterprise-linux-support-policies-069172.pdf>.

2.5 The Oracle Linux/Oracle VM Service Offering(s) are effective upon the effective date of the order unless otherwise stated in Your order. If Your order was placed through the Oracle Store, the effective date is the date Your order was accepted by Oracle.

2.6 The Oracle Linux/Oracle VM Service Offering(s) provided under this Schedule LVM are in support of licenses You acquired separately. Patches, bug fixes and other code received as part of the Oracle Linux/Oracle VM Service Offering(s) under this Schedule LVM shall be provided under the terms of the appropriate license agreement that You accepted upon downloading and/or installing the Oracle Linux and/or Oracle VM program(s). The Oracle Linux /Oracle VM Service Offering(s) may also include the right to use certain additional software or tools during the Oracle Linux/Oracle VM Term for which fees for Oracle Linux/Oracle VM Service Offering(s) have been paid. The license terms for any such software or tools, as well as any limitations associated with them, will be referenced in the Program Documentation.

### 3. INDEMNIFICATION

3.1 Provided You are a current subscriber to the Oracle Linux/Oracle VM Service Offering(s), if a third party makes a claim against You that any Covered Programs furnished by Oracle, and used by You for Your business operations infringes its intellectual property rights, Oracle, at its sole cost and expense, will defend You against the claim and indemnify You from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Oracle, if You do the following:

- a. Notify Oracle promptly in writing, not later than 30 days after You receive notice of the claim (or sooner if required by applicable law);
- b. Give Oracle sole control of the defense and any settlement negotiations; and
- c. Give Oracle the information, authority, and assistance it needs to defend against or settle the claim.

3.2 If Oracle believes or it is determined that any Covered Programs may have violated a third party's intellectual property rights, Oracle may choose to either modify the Covered Programs to be non-infringing (while substantially preserving their utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, then Oracle may, upon 30 days notice to You, terminate Your right to receive indemnification for Your further use of the Covered Programs and refund any unused, prepaid service fees, You have paid for the Covered Programs.

3.3 Notwithstanding the above, Oracle will not defend or indemnify You in connection with claims, damages, liabilities, costs or expenses arising out of, or caused by, or related to: (a) Your distribution of the Covered Programs; (b) Your alteration of the Covered Programs; (c) Your use of a version of the Covered Programs which has been superseded, if the infringement claim could have been avoided by using the current version of the Covered Programs; (d) Your use of the Covered Programs outside the scope of use identified in the user documentation or the Oracle Linux and Oracle VM support policies; (e) Your use of the Covered Programs when You were not a subscriber to the Oracle Linux/Oracle VM Service Offering(s); (f) any information, design, specification, instruction, software, data, or material not furnished by Oracle; (g) the combination of any Covered Programs with any products or services not provided by Oracle; (h) Your claim, lawsuit, or action against a third party. **This section provides Your exclusive remedy for any infringement claims or damages, liabilities, costs or expenses.**

#### **4. FEES; ORACLE LINUX/ORACLE VM-RELATED SERVICE OFFERING(S)**

4.1 For the initial Oracle Linux/Oracle VM Term for which fees are to be paid for the applicable Oracle Linux/Oracle VM Service Offering(s), the fees due will be calculated based upon the number of Systems to be supported that are in existence as of the date of Your order. For the second and all subsequent Oracle Linux/Oracle VM Terms, the fees due will be calculated based on the total number of Systems supported that are in existence as of the first day of the applicable Oracle Linux/Oracle VM Term(s) (e.g., fees calculated for the second term will be based upon the total number of Systems supported that are in existence on the first day of the second term).

4.2 In addition to the fees for the Oracle Linux/Oracle VM Service Offering(s) specified above, You agree to pay additional fees for the level of Oracle Linux/ Oracle VM Service Offering(s) ordered based on the maximum number of Supported Systems that exist simultaneously at any time during the applicable Oracle Linux/Oracle VM Term and in accordance with the Oracle Linux and Oracle VM support policies for the level of support You are ordering. In the event that You decide to increase the number of Supported Systems, You agree that You will promptly place an order for Oracle Linux/ Oracle VM Service Offering(s) for the increased number of these Supported System(s) and pay the additional required fees.

4.3 You may order a limited number of Oracle Linux/Oracle VM-related Services Offering(s) under this Schedule LVM, as listed in the Oracle Linux and Oracle VM-related Service Offering(s) document, which is at <http://oracle.com/contracts>. For these Oracle Linux/ Oracle VM-related Service Offering(s), the fees due for the initial Oracle Linux/Oracle VM Term and all subsequent Oracle Linux/Oracle VM Terms will be based on Oracle's then current Oracle Linux and Oracle VM Service Offering(s) pricing policies.

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

5.1 Oracle warrants that the Oracle Linux/Oracle VM Service Offering(s) will be provided in a professional manner consistent with industry standards. You must notify Oracle of any Oracle Linux/Oracle VM Service Offering(s) warranty deficiencies within 90 days from performance of the defective Oracle Linux/Oracle VM Service Offering.

**5.2 TO THE EXTENT PERMITTED 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.**

**5.3 ORACLE DOES NOT GUARANTEE THAT THE COVERED PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS. FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY, AND ORACLE'S ENTIRE LIABILITY, SHALL BE THE REPERFORMANCE OF THE DEFICIENT ORACLE LINUX/ORACLE VM SERVICE OFFERING, OR IF ORACLE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT ORACLE LINUX/ORACLE VM SERVICE OFFERING AND RECOVER THE FEES PAID TO ORACLE FOR THE DEFICIENT ORACLE LINUX/ORACLE VM SERVICE OFFERING.**

#### **6. 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 THIS SCHEDULE LVM OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THIS SCHEDULE LVM, AND IF SUCH DAMAGES RESULT FROM DEFICIENT ORACLE LINUX/ORACLE VM SERVICE OFFERING(S), SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT ORACLE LINUX/ORACLE VM SERVICE OFFERING(S) GIVING RISE TO THE LIABILITY. THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT ORACLE'S INDEMNIFICATION OBLIGATION OR YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT CLAIMS OR DAMAGES, LIABILITIES, COSTS OR EXPENSES UNDER SECTION 3 OF THIS SCHEDULE LVM.**

## **7. GOVERNING LAW AND JURISDICTION**

Notwithstanding anything to the contrary set forth in the General Terms, this Schedule LVM is governed by the laws of California and You and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to this Schedule LVM.

## **8. AUDIT**

Upon 45 days written notice, Oracle may audit Your use of the Oracle Linux/Oracle VM Service Offering(s) to ensure Your use of the Oracle Linux/Oracle VM Service Offering(s) is in compliance with the terms of the applicable order and the Master Agreement. Any such audit shall not unreasonably interfere with Your normal business operations.

You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information reasonably requested by Oracle.

The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of the Nondisclosure section of the Master Agreement.

If the audit identifies non-compliance, You agree to remedy (which may include, without limitation, the payment of any fees applicable to Your use of the Oracle Linux/Oracle VM Service Offering(s) in excess of Your service rights) such non-compliance within 30 days of written notification of that non-compliance. If You do not remedy the non-compliance, Oracle can end (a) Oracle Linux/Oracle VM Service Offering(s), (b) Oracle Linux/Oracle VM-related Service Offering(s), 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**

9.1.1 Once placed, Your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Master Agreement.

9.1.2 Oracle Linux/Oracle VM Service Offering(s) fees are invoiced in advance of the Oracle Linux/Oracle VM Service Offering performance; specifically, Oracle Linux/Oracle VM Service Offering(s) fees are invoiced annually in advance. The period of performance for all Oracle Linux/Oracle VM Service Offering(s) is effective upon the effective date of the order.

9.1.3 If an order for an Oracle Linux/Oracle VM Service Offering is for an Oracle Linux/Oracle VM Term that is for multiple years, You are required to pay the fees covering such multiple years in advance of the start of such Oracle Linux/Oracle VM Term.