

ORACLE TERMS AND CONDITIONS

The Participating State, each Ordering Entity and Contractor agree that notwithstanding anything to the contrary set forth in the Contract, the following provisions, terms and conditions shall apply in each instance that any Ordering Entity (including the Participating State) purchases any Oracle Products or Service Offerings under the Contract:

Definitions:

The following terms shall be construed and interpreted as follows:

“Addendum” shall mean this Participating Addendum made between the Participating State, acting by and through the State Purchasing Office, and the Contractor, as amended, supplemented or otherwise modified from time to time in accordance with Section 13.D of Exhibit A to the Addendum and Section N. of these Oracle Terms and Conditions.

“Ancillary Programs” refers to third party materials specified in the Program Documentation which may only be used for the purposes of installing or operating the programs with which the ancillary programs are delivered.

“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.

“Hardware” refers to the computer equipment, including components, options and spare parts.

“Integrated Software” refers to any software or programmable code that is embedded or integrated in the Hardware and enables the functionality of the Hardware and specifically listed (i) in accompanying documentation, (ii) on an Oracle webpage or (iii) via a mechanism that facilitates installation for use with the Participating State’s Hardware. Integrated Software does not include and the Participating State does 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.

“Operating System” refers to the software that manages Hardware for Programs and other software.

“Oracle” refers to Oracle America, Inc.

“Products” refers to Programs, Hardware, Integrated Software and Operating System.

“Programs” refers to (a) the software owned or distributed by Oracle that the Ordering Entity has ordered hereunder, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include Integrated Software or any Operating System.

“Program Documentation” refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. The Participating State and Ordering Entity may access the documentation online at <http://oracle.com/contracts>.

“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.

“Separately Licensed Third Party Technology” refers to third party technology that is licensed under Separate Terms and not under the terms of the Contract.

“Service Offerings” refers to technical support, education, hosted/outsourcing services, consulting, advanced customer support services, or other services which the Ordering Entity has ordered. Oracle cloud services are hereby excluded from the Addendum. No Ordering Entity shall purchase any Oracle cloud services under the Contract.

A. 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 Contract.

B. Rights Granted.

1. Upon the Contractor’s acceptance of the Ordering Entity’s Order, the Ordering Entity has 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 the Ordering Entity ordered solely for the Ordering Entity’s internal business operations and subject to the terms of the Contract, the License Definitions and Rules, the Order, and the Program Documentation.

2. Upon payment for Program-related Service Offerings, the Ordering Entity has the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for the Ordering Entity’s internal business operations anything developed by Oracle and delivered to the Ordering Entity hereunder (“deliverables”); however, certain deliverables may be subject to additional license terms provided in the Order.

3. The Ordering Entity may allow the Ordering Entity’s agents and contractors (including, without limitation, outsourcers) to use the Programs and deliverables for the Ordering Entity’s internal business operations and the Ordering Entity is responsible for their compliance with the Contract, in such use. For Programs that are specifically designed to allow the Ordering Entity’s customers and suppliers to interact with the Ordering Entity in the furtherance of the Ordering Entity’s internal business operations, such use is allowed under the Contract.

4. The applicable Ordering Entity has 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>. The applicable Ordering Entity is

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.

5. The applicable Ordering Entity has the limited, non-exclusive, royalty free, non-transferable, non-assignable right to use Integrated Software delivered with the Hardware subject to the terms hereof and the applicable documentation. The applicable Ordering Entity is 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.

6. Hardware and Integrated Software are not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or operation of a nuclear facility. No Ordering Entity will use Hardware and/or Integrated Software for the purposes set forth in the immediately preceding sentence.

7. Hardware, if purchased, includes Oracle's Hardware warranty in effect at the time the Hardware is purchase. Such Hardware warranty can be accessed at <http://www.oracle.com/support/policies.html>.

8. The Ordering Entity may make a sufficient number of copies of each Program, Operating System and/or Integrated Software for the Ordering Entity's licensed use and one copy of each Program media.

C. Restrictions.

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 the Ordering Entity in Program Documentation, readmes or notice files in connection with such third party technology. Third party technology will be licensed to the Ordering Entity under Separate Terms as specified in the Program Documentation, readmes or notice files, and not under the terms of the Contract. 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 the Ordering Entity under the terms of the Contract.

If the Ordering Entity is permitted under an Order to distribute the Programs, the Ordering Entity 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 the Ordering Entity 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, the Ordering Entity's rights to the Programs are solely limited to the rights granted in the Ordering Entity's Order.

2. The Ordering Entity may not:

a. remove or modify any Program markings or any notice of Oracle's or its licensors' proprietary rights;

b. make the Programs, Operating System, Integrated Software and/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 the Ordering Entity has 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), Operating System and/or Integrated Software;

d. disclose results of any Program benchmark tests without Oracle's prior written consent; provided that Program benchmark tests may be disclosed if required by the Colorado Open Records Act C.R.S. 24-72-201 *et. Seq* (the "Act"), so long as the applicable Ordering Entity provides Oracle with ten (10) days written notice prior to disclosing such Program benchmark test in response to a valid request made pursuant to the Act to allow Oracle to seek injunctive or other such relief as may be appropriate;

e. use the Programs for rental, timesharing, subscription service, hosting or outsourcing; or

f. permit title to the Programs, Operating System and/or Integrated Software to pass to the Ordering Entity or any other third party.

3. The prohibition on the assignment or transfer of the Programs or any interest in them under Section D shall apply to all Programs licensed hereunder, except to the extent that such prohibition is rendered unenforceable under applicable law.

D. Assignment. The Participating State or Ordering Entity may not assign 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 the Ordering Entity grants 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 the Ordering Entity decides to finance the Ordering Entity's acquisition of any Programs, Operating System, Integrated Software and/or any Service Offerings, the Ordering Entity will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights the Ordering Entity 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.

E. Trial Programs. The Ordering Entity may order trial Programs, or Oracle may include additional Programs with the Ordering Entity's Order which the Ordering Entity may use for trial, non-production purposes only. The Ordering Entity may not use the trial Programs to provide or attend third party training provided by the Contractor or a third party on the content and/or functionality of the Programs. The Ordering Entity has 30 days from the Commencement Date to evaluate these Programs, subject to the terms of the Contract. To use any of these Programs after the 30 day trial period, the Ordering Entity must obtain a license for such Programs from the Contractor. If the Ordering Entity decides not to obtain

a license for any Program after the 30 day trial period, the Ordering Entity will cease using and promptly delete any such Programs from the Ordering Entity's 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.

F. Technical Support.

1. For purposes of an Order, technical support consists of Oracle's annual technical support services the Ordering Entity 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. The Ordering Entity agrees 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 herein 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. The Ordering Entity should review the policies prior to entering into the Order for the applicable technical support services. Ordering Entity may access the current version of the technical support policies at <http://oracle.com/contracts>.

2. Technical support is effective upon the Commencement Date unless otherwise stated in the Ordering Entity's Order.

3. If the Ordering Entity decides to purchase technical support for any Program license within a license set the Ordering Entity is required to purchase technical support at the same level for all licenses within that license set. The Ordering Entity may desupport a subset of licenses in a license set only if the Ordering Entity agrees 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 the Ordering Entity decides not to purchase technical support (a) the Ordering Entity may not update any unsupported Program licenses with new versions of the Program and (b) at the time of the license, the Ordering Entity will be required to pay reinstatement fees to Oracle in accordance with Oracle's current technical support policies if the Ordering Entity decides to purchase technical support at a later date.

G. LIMITATION OF LIABILITY. EXCEPT AS SET FORTH IN THE IMMEDIATELY FOLLOWING SENTENCE, TO THE EXTENT NOT PRECLUDED BY APPLICABLE LAW, ORACLE SHALL NOT BE LIABLE FOR ANY DIRECT OR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE, ARISING FROM THE USE OF THE PROGRAMS OR OUT OF OR RELATED TO THE CONTRACT, THE ADDENDUM, AS AMENDED HEREBY, OR ANY ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE. THE IMMEDIATELY FOREGOING SENTENCE SHALL NOT BE CONSTRUED TO EXCUSE ORACLE FROM LIABILITY TO THE APPLICABLE ORDERING ENTITY TO THE EXTENT OF ANY DIRECT DAMAGES (AS OPPOSED TO INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE,

OR CONSEQUENTIAL DAMAGES) SUFFERED BY THE APPLICABLE ORDERING ENTITY FOR BODILY INJURY (INCLUDING WRONGFUL DEATH) OR DAMAGE TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS (AS DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT) OF ORACLE WHILE PERFORMING SERVICES ON AN ORDERING ENTITY'S PREMISES, IF SUCH ACTIONS OR OMISSIONS WERE NOT CAUSED BY THE ACTION OR OMISSION OF SUCH ORDERING ENTITY OR ANY THIRD PARTY; PROVIDED THAT ORACLE SHALL NOT HAVE ANY LIABILITY FOR ANY CLAIM OF BODILY INJURY AND/OR TANGIBLE PERSONAL PROPERTY DAMAGE ARISING FROM THE USE OF SOFTWARE OR HARDWARE. FOR THE PURPOSE OF THIS PARAGRAPH, "TANGIBLE PERSONAL PROPERTY" SHALL NOT INCLUDE DOCUMENTATION, SOFTWARE, DATA, OR DATA FILES.

H. Export. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. The Ordering Entity agrees that such export laws govern the Ordering Entity's use of the Products (including technical data) and any Service Offerings deliverables provided under the Contract, and the Ordering Entity agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). The Ordering Entity agrees 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. The Ordering Entity shall include the following notice on packing lists, commercial invoices, shipping documents and other documents used in the transfer, export or re-export of the Products and any Service Offerings deliverables: "These commodities, technology, software, or hardware (including any Integrated Software and Operating System(s)) were exported in accordance with U.S. Export Administration Regulations and applicable export laws. Diversion contrary to applicable export laws is prohibited."

I. Audit. Upon 45 days written notice, Contractor may, at its own expense, audit any Ordering Entity's use of the Programs. The Ordering Entity shall cooperate with Contractor's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with the Ordering Entity's normal business operations. The Ordering Entity agrees to pay within 45 days of written notification any fees applicable to the Ordering Entity's use of the Programs in excess of the Ordering Entity's license rights. If The Ordering Entity does not pay Contractor within 45 days, Oracle may end (a) Program-related Service Offerings (including technical support) and/or (b) Program licenses ordered hereunder and related agreements. The Ordering Entity agrees that Contractor may (x) report the audit results to Oracle and/or (y) assign to Oracle Contractor's rights under this clause I, in which case Oracle shall not be responsible for any of the Ordering Entity's costs incurred in cooperating with the audit (which costs will continue to be Contractor's responsibility), and that Oracle may exercise its rights hereunder, including, without limitation, termination of such Ordering Entity's right to order any additional Programs and/or Service Offerings (including technical support).

J. Third-Party Beneficiary. The parties hereto agree that Oracle shall be, and is hereby, named as an express third-party beneficiary of the Contract, with full authority to enforce its third party beneficiary rights as described herein.

K. Other.

1. The Uniform Computer Information Transactions Act does not apply to Orders for Oracle Products or Service Offerings placed under this Contract. The Ordering Entity understands that Oracle's business partners, including any third party firms retained by the Ordering Entity 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 Contract and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle Products, Service Offerings or other resources under that Order.

2. In entering into payment obligations under an Order, the Ordering Entity agrees and acknowledges that the Ordering Entity has not relied on the future availability of any Program or updates. However, (a) if the Ordering Entity orders technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support pursuant to such Order, 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 the Ordering Entity under such Order and the Contract.

3. The Ordering Entity shall not limit in any way Oracle's right to develop, use, license, create derivative works of, or otherwise freely exploit the programs, Ancillary Programs, Program Documentation, or any other materials provided by Oracle, or to permit third parties to do so.

4. Some Programs may include source code that Oracle may provide as part of its standard shipment of such Programs, which source code shall be governed by the terms of the Contract.

5. Upon the termination of an Order for breach by the applicable Ordering Entity of its obligations thereunder or under the Contract or of any Program license by Oracle, in each case, the applicable Ordering Entity shall discontinue use and destroy or return to Contractor all copies of the Programs and Program Documentation.

L. Indemnification.

1. Subject to sections L.4, L.5 and L.6 below, if a third party makes a claim against an Ordering Entity, that any information, design, specification, instruction, software, data, hardware, or material (collectively, "Material") furnished by Oracle and used by such Ordering Entity infringes the third party's intellectual property rights, Oracle, at Oracle's sole cost and expense, will defend the Ordering Entity against the claim and indemnify the Ordering Entity 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 the Ordering Entity does the following:

- a. notifies Oracle promptly in writing, not later than 30 days after the Ordering Entity receives notice of the claim (or sooner if required by applicable law);
 - b. gives Oracle sole control of the defense and any settlement negotiations; and
 - c. gives Oracle the information, authority and assistance Oracle needs to defend against or settle the claim.
2. If Oracle believes or it is determined that any of the Material may have violated a third party's intellectual property rights, Oracle 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, Oracle may end the license for, and require return of, the applicable Material and Contractor refund any fees the Ordering Entity may have paid to the other party for it and any unused, prepaid technical support fees the Ordering Entity has paid to Contractor 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.
3. 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 Contractor shall refund any Program license fees an Ordering Entity may have paid to Contractor for the Program license and any unused, prepaid technical support fees an Ordering Entity has paid to Contractor for the Program license.
4. Provided an Ordering Entity is 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 such Ordering Entity was a subscriber to the applicable Oracle technical support services (a) the phrase "Material" above in section L.1 shall include the Operating System and the Integrated Software and any Integrated Software Options that the Ordering Entity has licensed and (b) the phrase "Program(s)" in this section L 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 the Ordering Entity for the Ordering Entity's use of the Operating System and/or Integrated Software and/or Integrated Software Options when the Ordering Entity was 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 the Ordering Entity 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. Oracle will not indemnify an Ordering Entity if such Ordering Entity alters Material or uses it outside the scope of use identified in Oracle's user documentation or if such Ordering Entity 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 Ordering Entity, or if the Ordering

Entity continues to use the applicable Material after the end of the license to use that Material. Oracle will not indemnify an Ordering Entity to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Oracle. Oracle will not indemnify an Ordering Entity 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 Contract, Oracle will indemnify an Ordering Entity 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 Contract. Oracle will not indemnify an Ordering Entity for infringement caused by such Ordering Entity's actions against any third party if the Program(s) as delivered to such Ordering Entity and used in accordance with the terms of the Contract would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify an Ordering Entity for any intellectual property infringement claim(s) known to such Ordering Entity at the time license rights are obtained.

6. This section provides the parties' exclusive remedy for any infringement claims or damages.

M. Warranties, Disclaimers and Exclusive Remedies.

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

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

3. FOR ANY BREACH OF THE ABOVE WARRANTIES, AN ORDERING ENTITY'S EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE ERRORS OF THE APPLICABLE PROGRAM LICENSE IN A COMMERCIALY REASONABLE MANNER, SUCH ORDERING ENTITY MAY END SUCH ORDERING ENTITY'S PROGRAM LICENSE AND RECOVER THE FEES SUCH ORDERING ENTITY PAID TO CONTRACTOR FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES SUCH ORDERING ENTITY HAS PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, SUCH ORDERING ENTITY MAY END THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS AND

RECOVER THE FEES SUCH ORDERING ENTITY PAID TO CONTRACTOR FOR THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS.

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

N. **Amendments to Oracle Terms and Conditions.** The parties hereto shall not amend or otherwise modify these Oracle Terms and Conditions without the prior written consent of Oracle.

O **Appropriations.** An Ordering Entity's issuance of a purchase order shall be the Ordering Entity's representation to Contractor that all funds for the Order have been fully appropriated and are available for Orders to be delivered before the end of that fiscal year of the Participating State.