



## ORACLE LICENSE AND SERVICES AGREEMENT

### A. Agreement Definitions

"You" and "your" refers to the individual or entity that has executed this agreement ("agreement") and ordered Oracle programs and/or services from Oracle USA, Inc. ("Oracle") or an authorized distributor. The term "programs" refers to the software products owned or distributed by Oracle which you have ordered, program documentation, and any program updates acquired through technical support. The term "services" refers to technical support, education, outsourcing, consulting or other services which you have ordered. The term "program documentation" refers to the program user manual and program installation manuals. The term "third party programs" refers to programs designated in an ordering document as a third party program.

### B. Applicability of Agreement

This agreement is valid for the order to which this agreement accompanies.

### C. Rights Granted

Upon Oracle's acceptance of your order, you have the limited right to use the programs and receive any services you ordered solely for your internal business operations and subject to the terms of this agreement, including the definitions and rules set forth in the order and the program documentation. You may allow your agents and contractors to use the programs for this purpose and you are responsible for their compliance with this agreement in such use. If accepted, Oracle will notify you and this notice will include a copy of your agreement. Program documentation is delivered with the programs, or you may access the documentation online at <http://oracle.com/contracts>. Services are provided based on Oracle's policies for the applicable services ordered, which are subject to change, and the specific policies applicable to you, and how to access them, will be specified on your order. Upon payment for services, you will have a perpetual, non-exclusive, non-assignable, royalty free license to use for your internal business operations anything developed by Oracle and delivered to you under this agreement; however, certain deliverables may be subject to additional license terms provided in the ordering document.

The services provided under this agreement may be related to your license to use programs which you acquire under a separate order. The agreement referenced in that order shall govern your use of such programs. Any services acquired from Oracle are bid separately from such program licenses, and you may acquire either services or such program licenses without acquiring the other.

### D. Ownership and Restrictions

Oracle or its licensors retain all ownership and intellectual property rights to the programs. Oracle retains all ownership and intellectual property rights to anything developed by Oracle and delivered to you under this agreement resulting from the services. You may make a sufficient number of copies of each program for your licensed use and one copy of each program media.

You may not:

- remove or modify any program markings or any notice of Oracle's or its licensors' proprietary rights;
- make the programs or materials resulting from the services 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 services you have acquired);
- cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs;
- disclose results of any program benchmark tests without Oracle's prior written consent; or
- use third party programs except in connection with an Oracle owned program.

### E. Warranties, Disclaimers and Exclusive Remedies

The provisions of this paragraph and the following two paragraphs do not apply to third party programs. Oracle warrants that a program licensed to you will operate in all material respects as described in the applicable program documentation for one year after delivery. You must notify Oracle of any program warranty deficiency within one year after delivery. Oracle also warrants

that services ordered will be provided in a professional manner consistent with industry standards. You must notify Oracle of any services warranty deficiencies within 90 days from performance of the services described in the ordering document.

**ORACLE DOES NOT GUARANTEE THAT THE 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: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY, OR IF ORACLE CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES PAID TO ORACLE FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES, OR IF ORACLE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO ORACLE FOR THE DEFICIENT SERVICES.**

With respect to third party programs (as defined in section A above), Oracle will pass through to you, to the fullest extent possible, the warranties from Oracle's licensors as they relate to third party programs.

**TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### **F. 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 delivery date to evaluate these programs. If you decide 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 distributor. If you decide not to obtain a license for any program after the 30 day trial period, you will cease using and will 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.

#### **G. Indemnification**

If someone 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, or material ("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 its intellectual property rights, the Provider will indemnify the Recipient against the claim if the Recipient does the following:

- 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);
- gives the Provider sole control of the defense and any settlement negotiations; and
- gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated someone else'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 for it and any unused, prepaid technical support fees you have paid for the license. If you are the Provider and 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. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. 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 to the extent that an infringement claim is based upon the

combination of any Material with any products or services not provided by Oracle. Oracle will not indemnify you to the extent that an infringement claim is based upon third party programs. This section provides the parties' exclusive remedy for any infringement claims or damages.

#### **H. Technical Support**

For purposes of the ordering document, technical support consists of annual technical support services you may have ordered for the supportable programs. The term "supportable programs" refers to those programs for which Oracle offers annual technical support services, including third party programs specifically designated on the order as supportable 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 services are provided. The technical support policies, incorporated in this agreement, are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of 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 ordering document for the applicable services. You may access the current version of the technical support policies at <http://oracle.com/contracts>.

Technical support is effective upon the effective date of the ordering document 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.

Technical support acquired with your order may be renewed annually and, if you renew technical support for the same number of licenses for the same programs (except for any program designated as a third party program), for the first and second renewal years the fee for technical support, (except for technical support fees for third party programs), will not increase by more than 4% over the prior year's fees. The base upon which the increases are measured will be adjusted to take into account additional license fees, including fees owed pursuant to the incremental license fees section if included on your order. Unless otherwise provided in your order, the technical support fee for third party programs that are identified as supportable programs licensed pursuant to an ordering document will equal the fee in effect at the time such technical support is renewed. If your order is fulfilled by a member of Oracle's partner program, the fee for technical support for the first renewal year will be the price quoted to you by your partner; the fee for technical support for the second renewal year will not increase by more than 4% over the prior year's fees.

If you decide to purchase technical support for any 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.

Oracle reserves the right to desupport its programs or particular versions of its programs. You will be notified in advance when Oracle determines that a program is to be desupported. Such desupport notices, which are posted at Oracle's customer support web site, MetaLink (or Oracle's then current customer support web site), contain desupport dates, information about availability of alternative support arrangements and information about migration paths for certain features. The desupport notices are subject to change; Oracle will provide updated desupport notices on MetaLink (or Oracle's then current customer support web site) as necessary.

#### **I. End of Agreement**

If either of us breaches a material term of this agreement and fails to correct the breach within 30 days of written specification of the breach, the other party may terminate this agreement. If Oracle ends this agreement as specified in the preceding sentence or ends the license for the program under the Indemnification section, you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for programs ordered and/or services received under this agreement plus related taxes and expenses. Except for nonpayment of fees, we each agree 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 this agreement, you may not use those programs and/or services ordered. You further agree that if you have used a Oracle Finance Division contract to pay for the fees due under an order and you are in default under that contract, you may not use the programs and/or services ordered and Oracle may end this agreement. Provisions that survive termination or expiration include those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

**J. Fees and Taxes**

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 programs and/or services you ordered, except for taxes based on Oracle's income. Also, you will reimburse Oracle for reasonable expenses related to providing the services. Fees for services listed in an ordering document are exclusive of taxes and expenses. You agree that you have not relied on the future availability of any programs or updates in entering into the payment obligations in your order.

**K. Nondisclosure**

By virtue of this 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 this agreement. Confidential information shall be limited to the terms and pricing under this agreement, any source code for the programs, and all information clearly identified as confidential.

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.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent either party from disclosing the terms or pricing under this agreement or orders submitted under this agreement in any legal proceeding arising from or in connection with this agreement or disclosing the information to a federal or state governmental entity as required by law.

**L. Entire Agreement**

You agree that this agreement and the information which is incorporated into this 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 programs and/or services ordered by you, and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such programs and/or services. If any term of this agreement is found to be invalid or unenforceable, the remaining provisions will remain effective. It is expressly agreed that the terms of this agreement and any Oracle ordering document shall supersede the terms in any purchase order or other non-Oracle ordering document and no terms included in any such purchase order or other non-Oracle ordering document shall apply to the programs and/or services ordered. This agreement and ordering documents 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 this agreement shall be provided to the other party in writing.

**M. 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 AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PROGRAMS OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT PROGRAM OR SERVICES GIVING RISE TO THE LIABILITY.

**N. Export**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the programs. You agree that such export control laws govern your use of the programs (including technical data) and any services deliverables provided under this 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, program and/or materials resulting from services (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.

#### **O. Other**

This agreement is governed by the substantive and procedural laws of California and you and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco, San Mateo, or Santa Clara counties in California in any dispute arising out of or relating to this agreement.

If you have a dispute with Oracle or if you wish to provide a notice under the Indemnification section of this agreement, or if you become subject to insolvency or other similar legal proceedings, you will promptly send written notice to: Oracle USA, Inc., 500 Oracle Parkway, Redwood City, California, United States, 94065, Attention: General Counsel, Legal Department.

You may not assign this agreement or give or transfer the programs and/or any services or an interest in them to another individual or entity. If you grant a security interest in the programs and/or any services deliverables, the secured party has no right to use or transfer the programs and/or any services deliverables, and if you decide to finance your acquisition of the programs and/or any services, you will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>.

Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this agreement may be brought by either party more than two years after the cause of action has accrued.

Upon 45 days written notice, Oracle may audit your use of the programs. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. You agree to pay within 30 days of written notification any fees applicable to your use of the programs in excess of your license rights. If you do not pay, Oracle can end your technical support, licenses and/or this agreement. You agree that Oracle shall not be responsible for any of your costs incurred in cooperating with the audit.

The Uniform Computer Information Transactions Act does not apply to this agreement.

#### **P. 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; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export 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 90 days, either of us may cancel unperformed services 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 services provided.

#### **Q. License Definitions and Rules**

**Adapter:** is defined as each software code interface, installed on each Oracle Internet Application Server: Enterprise Edition, which facilitates communication of information between each version of a third party software application or system and Oracle programs.

**\$M Annual Transaction Volume:** is defined as one million U.S. dollars in all purchase orders transacted and all auctions conducted through the Oracle Exchange Marketplace by you and others during the applicable year of the Oracle Exchange Marketplace license, regardless of whether any such auction results in a purchase order, provided that an auction resulting in a purchase order shall only be counted against the Annual Transaction Volume once.

**Applications National Language Support (NLS) Supplement CD Packs:** Please be advised that only a subset of the products included on an Applications NLS Supplement CD Pack have been translated. For existing supported customers, MetaLink has information on which products have been translated for the supported languages (<http://metalink.oracle.com>). For new or unsupported customers, please contact your Oracle Account Manager for this information.

**Application User, Enterprise Asset Management (EAM) User, Field Sales User, Financials User, Inventory/Shipping User, Marketing User, Manufacturing User, Purchasing User, TeleSales User:** is defined as an individual authorized by you to use the applicable licensed application programs which are installed on a single server or on multiple servers regardless of whether the individual is actively using the programs at any given time. If you license the Self Service Work Request option in conjunction with EAM, you are required to maintain licenses for the equivalent number of EAM Users licensed and you are granted unlimited access to initiate work requests, view work request status and view scheduled completion dates for your entire employee population.

**Application Read-Only User:** is defined as an individual authorized by you to run only queries or reports against the application program for which you have also acquired non read-only licenses.

**Base Metric:** is defined as that metric limit for which you are licensed to use or benefit from the use of the programs.

**Case Report Form (CRF) Page:** is defined as the "electronic equivalent" of what would be the total number of physical paper pages initiated remotely by the program (measured explicitly in the program as Received Data Collection Instruments) during a 12 month period. You may not exceed the licensed number of CRF Pages during any 12 month period unless you acquire additional CRF Page licenses from Oracle.

**Collaboration Program User:** is defined as an individual authorized by you to use the programs which are installed on a single server or on multiple servers regardless of whether the individual is actively using the programs at any given time. For the purposes of counting and licensing the number of Web Conferencing users, a Collaboration Program User within your company is defined as a user able to initiate, or host, a web conference and also participate in a web conference; all participants in the web conference external to your company and attending a web conference are not required to be licensed.

**Compensated Individual:** is defined as an individual whose compensation or compensation calculations are generated by the programs. The term Compensated Individual includes, but is not limited to, your employees, contractors, retirees, and any other Person.

**Computer:** is defined as the computer on which the programs are installed. A Computer license allows you to use the licensed program on a single specified computer.

**SM Cost of Goods Sold:** is defined as one million U.S. dollars in the total cost of inventory that a company has sold during their fiscal year. If Cost of Goods Sold is unknown to you then Cost of Goods Sold shall be equal to 75% of total company revenue.

**Electronic Order Line:** is defined as the total number of distinct order lines entered electronically into the Oracle Order Management application from any source (not manually entered by licensed Order Management Users, Professional Users 2003, or Professional Users 2003 - External) during a 12 month period. This includes order lines originating as external EDI/XML transactions and/or sourced from other Oracle and non-Oracle applications. You may not exceed the licensed number of order lines during any 12 month period.

**Employee:** is defined as an active employee of yours. *(note: The value of these applications is determined by the size of the active employee population and not the number of actual users. Therefore, all of your active employees must be included in your order when licensing these applications.)*

**Employee User:** is defined as an individual authorized by you to use the application programs which are installed on a single server or multiple servers, regardless of whether or not the individual is actively using the programs at any given time. Your human resource personnel that require access to the Oracle Self Service Human Resources program may not be licensed as Employee Users, but must be licensed as Professional Users. Additionally, your technical support personnel that require access to the Oracle iSupport program may not be licensed as Employee Users, but must be licensed as Professional Users.

**Expense Report:** is defined as the total number of expense reports processed by Internet Expenses during a 12 month period. You may not exceed the licensed number of expense reports during any 12 month period.

**Field Technician:** is defined as an engineer, technician, representative, or other person who is dispatched by you, including the dispatchers, to the field using the programs.

**Full Time Equivalent (FTE) Student:** is defined as any full-time student enrolled in your institution and any part-time student enrolled in your institution counts as 25% of an FTE Student. The definition of "full-time" and "part-time" is based on your policies for student classification. If the number of FTE Students is a fraction, that number will be rounded to the nearest whole number for purposes of license quantity requirements.

**Hosted Named User:** is defined as an individual authorized by you to access the hosted service, regardless of whether the individual is actively accessing the hosted service at any given time.

**iLearning Subscription:** is defined as a web based learning environment that is made available to you subject to the terms of this agreement and Oracle's iLearning Subscription Policies. Oracle's iLearning Subscription Policies may be accessed at <http://oracle.com/contracts>, and may be updated by Oracle from time to time without notice to you.

#### **Implementation Services, Packaged Methods, Architecture Services, Accelerator Services, Assessment Services and Workshops**

Each Implementation Service, Packaged Method, Architecture Service, Accelerator Service, Assessment Service and Workshop is provided subject to the statement of obligation for that particular offering and Oracle's consulting services policies. Oracle's consulting services policies may be accessed at <http://oracle.com/contracts>, and are subject to change.

**1K Invoice Line:** is defined as one thousand invoice line items processed by the program during a 12 month period. You may not exceed the licensed number of Invoice Lines during any 12 month period unless you acquire additional Invoice Line licenses from Oracle.

**\$M in Managed Assets:** is defined as one million U.S. dollars of the following total: (1) Book value of investment in capital leases, direct financing leases and other finance leases, including residuals, whether owned or managed for others, active on the program, plus (2) Book value of assets on operating leases, whether owned or managed for others, active on the program, plus (3) Book value of loans, notes, conditional sales contracts and other receivables, owned or managed for others, active on the program, plus (4) Book value of non earning assets, owned or managed for others, which were previously leased and active on the program, including assets from term terminated leases and repossessed assets, plus (5) Original cost of assets underlying leases and loans, originated and active on the program, then sold within the previous 12 months.

**Membership:** is defined as an individual authorized by you to access the hosted service, regardless of whether the individual is accessing the hosted service at any given time.

**Metric** is defined as that size measurement utilized to: (i) measure the size of your use or benefit from the use of the programs; and (ii) define the limitations of the license granted pursuant to the agreement; and includes Employee Count, Reported Revenues, Student Count, Customer Count and Funds Raised.

**Module:** is defined as each production database running the programs.

**Named User Plus:** is defined as an individual authorized by you to use the programs which are installed on a single server or multiple servers, regardless of whether the individual is actively using the programs at any given time. A non human operated device will be counted as a named user plus in addition to all individuals authorized to use the programs, if such devices can access the programs. If multiplexing hardware or software (e.g., a TP monitor or a web server product) is used, this number must be measured at the multiplexing front end. Automated batching of data from computer to computer is permitted. You are responsible for ensuring that the named user plus per processor minimums are maintained for the programs contained in the user minimum table in the licensing rules section; the minimums table provides for the minimum number of named users plus required and all actual users must be licensed.

**Non Employee User - External:** is defined as an individual, who is not your employee, contractor or outsourcer, authorized by you to use the application programs which are installed on a single server or multiple servers, regardless of whether or not the individual is actively using the programs at any given time.

**Oracle Finance Division Contract:** is a contract between you and Oracle (or one of Oracle's affiliates) that provides for payments over time of some or all of the sums due under your order.

**Oracle University Online Service:** the Oracle University Online Service is a web based learning environment comprised of



both individual Oracle University Online Courses ("Online Courses") as well as such courses bundled together as the Oracle University Online Library ("Online Library"). A Premium Online Library may be available in certain foreign languages. The Oracle University Online service is made available to you subject to the terms of this agreement and Oracle University's Online Hosting Access Policies. Oracle University's Online Hosting Access Policies are located at [www.oracle.com/education/oln/index.html](http://www.oracle.com/education/oln/index.html), and may be updated by Oracle from time to time without notice to you. You acknowledge that you will create and activate an administrator account and password and that the Oracle University Online Service is available on <http://www.oracle.com/education/oln>. Notwithstanding anything to the contrary in the agreement, **Oracle does not warrant that the Oracle University Online service will be provided uninterrupted or error-free.**

If you acquire the Online Library, the term shall be one year from the effective date of your order. At the end of the term, you may renew your order for an additional one year term at the then current Online Library rate by contacting your local Oracle Education Sales Office. If you choose not to renew the membership, all rights to use the Online Library shall cease.

You may acquire under a separate order the Premium Online Library or an individual Online Course for a term of 6 months from the effective date of your order. At the end of the term, you may renew your order for an additional 6 month term at the then current Premium Online Library or individual Online Course rate by contacting your local Oracle Education Sales Office. If you choose not to renew the membership, all rights to use the Premium Online Library or the Online Course shall cease.

**Order Line:** is defined as the total number of order entry line items processed by the program during a 12 month period. Multiple order entry line items may be entered as part of an individual customer order or quote and may also be automatically generated by the Oracle Configurator. You may not exceed the licensed number of Order Lines during any 12 month period unless you acquire additional Order Line licenses from Oracle.

**Order Management User:** is defined as an individual authorized by you to use the applicable licensed application programs which are installed on a single server or on multiple servers regardless of whether the individual is actively using the programs at any given time. Order Management Users are allowed to manually enter orders directly into the programs but any orders entered electronically from other sources must be licensed separately.

**Orders:** is defined as the total number of distinct orders for all programs that are a part of Electronic Orders, entered electronically (not manually entered by licensed professional users) through EDI, XML or other electronic means including purchase orders transmitted from Oracle Purchasing, during a 12 month period. You may not exceed the licensed number of orders during any 12 month period.

**Partner Organization:** is defined as an external third party business entity that provides value-added services in marketing and selling your products. Depending upon the type of industry, partner organizations play different roles and are recognized by different names such as reseller, distributor, agent, dealer or broker.

**Person:** is defined as your employee or contractor who is actively working on behalf of your organization or a former employee who has one or more benefit plans managed by the system or continues to be paid through the system. For Time and Labor, a person is defined as an employee or contractor whose time or labor (piece work) or absences are managed by the application. For Project Resource Management, a person is defined as an individual who is scheduled on a project. For Internet Time, a person is defined as an individual who is charging time to a project via the application. The total number of licenses needed is to be based on the peak number of part-time and full-time people whose records are recorded in the system.

**Ported Number:** is defined as the telephone number that end users retain as they change from one service provider to another. This telephone number originally resides on a telephone switch and is moved into the responsibility of another telephone switch.

**Processor:** shall be defined as all processors where the Oracle programs are installed and/or running. Programs licensed on a Processor basis may be accessed by your internal users (including agents and contractors) and by third party users. For the purposes of counting the number of processors which require licensing, a multicore chip with "n" processor cores shall be counted as "n" processors. For the Healthcare Transaction Base program, only the processors on which Internet Application Server Enterprise Edition and this program are installed and/or running are counted for the purpose of determining the number of licenses required. For the iSupport, iStore and Configurator programs, only the processors on which Internet Application Server (Standard Edition and/or Enterprise Edition) and the licensed program are running are counted for the purpose of determining the number of licenses required for the licensed program; under these licenses you may also install and/or run the licensed program on the processors where a licensed Oracle Database (Standard Edition and/or Enterprise Edition) is installed



and/or running. With respect to the Customer Data Hub program, in determining the number of licenses required, only processors on which both Oracle Database Enterprise Edition and the Customer Data Hub program are running in production shall be counted.

**Professional User:** is defined as an individual authorized by you to use the application programs which are installed on a single server or multiple servers, regardless of whether or not the individual is actively using the programs at any given time. For the purposes of Order Management, Advanced Pricing and Purchasing, Professional Users are allowed to manually enter orders directly into these programs but any orders transmitted or executed electronically (via EDI, XML or other electronic means including purchase orders transmitted from Oracle Purchasing) must be licensed separately.

**Professional User – External :** is defined as an individual, who is not your employee, contractor or outsourcer, authorized by you to use the application programs which are installed on a single server or multiple servers, regardless of whether or not the individual is actively using the programs at any given time. For the purposes of Order Management, Advanced Pricing and Purchasing, Professional Users – External are allowed to manually enter orders directly into these programs but any orders transmitted or executed electronically (via EDI, XML or other electronic means including purchase orders transmitted from Oracle Purchasing) must be licensed separately.

**Professional User 2003:** is defined as an individual authorized by you to use the application programs which are installed on a single server or multiple servers, regardless of whether or not the individual is actively using the programs at any given time. Professional Users 2003 are allowed to manually enter orders directly into the programs but any orders entered electronically into Order Management from other sources must be licensed separately.

**Professional User 2003 – External:** is defined as an individual, who is not your employee, contractor or outsourcer, authorized by you to use the application programs which are installed on a single server or multiple servers, regardless of whether or not the individual is actively using the programs at any given time. Professional Users 2003 – External are allowed to manually enter orders directly into the programs but any orders entered electronically into Order Management from other sources must be licensed separately.

**Purchase Line:** is defined as the total number of purchase line items processed by the application during a 12 month period. Multiple purchase lines may be created on either a requisition or purchase order or may be automatically generated by other Oracle Application programs. For iProcurement, Purchase Lines are counted as all line items on an approved requisition created in iProcurement. For Purchasing Intelligence, Purchase Lines are counted as the line items on purchase orders processed through this application. This does not include communication on the same purchase order. For each application, you may not exceed the licensed number of Purchase Lines during any 12 month period unless you acquire additional Purchase Line licenses from us. You may acquire a different number of Purchase Line licenses for each program (the number of Purchase Lines for iProcurement could be a smaller number than for Purchasing Intelligence).

**\$M in Revenue:** is defined as one million U.S. dollars in all income (interest income and non interest income) before adjustments for expenses and taxes generated by you during a fiscal year.

**RosettaNet Partner Interface Processes® (PIPs®):** are defined as business processes between trading partners. Preconfigured system-to-system XML-based dialogs for the relevant E-Business Suite Application(s) are provided. Each preconfigured PIP includes a business document with the vocabulary and a business process with the choreography of the message dialog.

**Service Order Line:** is defined as the total number of service order entry line items processed by the program during a 12 month period. Multiple service order entry line items may be entered as part of an individual customer service order or quote. You may not exceed the licensed number of Service Order Lines during any 12 month period unless you acquire additional Service Order Line licenses from Oracle.

**Subscriber:** is defined as (a) a working telephone number for all wireline devices; (b) a portable handset or paging device that has been activated by you for wireless communications and paging; (c) a residential drop or a nonresidential device serviced by a cable provider; or (d) a live connected utility meter. The total number of Subscribers is equal to the aggregate of all types of Subscribers. If your business is not defined in the primary definition of Subscriber above, Subscriber is defined as each U.S. \$1,000 increment of your gross annual revenue as reported to the SEC in your annual report or the equivalent accounting or reporting document.

**Suite:** is defined as all the functional software components described in the product documentation.

**System:** shall be defined as each distinct production database. Test, development, failover and standby databases are not required to be licensed as systems; however, you may run the program on these databases

#### **Technical Reference Manuals**

Technical Reference Manuals ("TRMs") are Oracle's confidential information. You shall use the TRMs solely for your internal data processing operations for purposes of: (a) implementing applications programs, (b) interfacing other software and hardware systems to the applications programs and (c) building extensions to applications programs. You shall not disclose, use or permit the disclosure or use by others of the TRMs for any other purpose. You shall not use the TRMs to create software that performs the same or similar functions as any of Oracle products. You agree: (a) to exercise either at least the same degree of care to safeguard the confidentiality of the TRMs as you exercise to safeguard the confidentiality of your own most important confidential information or a reasonable degree of care, whichever is greater; (b) to maintain agreements with your employees and agents that protect the confidentiality and proprietary rights of the confidential information of third parties such as Oracle and instruct your employees and agents of these requirements for the TRMs; (c) restrict disclosure of the TRMs to those of your employees and agents who have a "need to know" consistent with the purposes for which such TRMs were disclosed; (d) maintain the TRMs at all times on your premises; and (e) not to remove or destroy any proprietary or confidential legends or markings placed upon the TRMs. Oracle shall retain all title, copyright and other proprietary rights in the TRMs. TRMs are provided to you "as-is" without any warranty of any kind. Upon termination, you shall cease using, and shall return or destroy, all copies of the applicable TRMs.

**Trainee:** is defined as an employee, contractor, student or other person who is being recorded by the program.

**Training Units** may be only used to acquire the products and services offered in the online catalogue posted at <http://www.peoplesoft.com/corp/en/training/> at the list price in effect at the time you order the relevant product or service, and may not be used for any product or service that is subject to a discount or a promotion when you order the relevant product or service. Training Units are valid for a period of 12 months from the date your order is accepted by Oracle, and you must acquire products and must use any acquired services prior to the end of such period. You may only use Training Units in the designated country in which you acquired them, you may not use them as a payment method for additional Training Units, and you may not use different Training Units accounts to acquire a single product or service or to pay related taxes, materials and/or expenses. Training Units are non-transferable and non-assignable. You may be required to execute standard Oracle ordering materials when using Training Units to order products or services.

Oracle will invoice you for the Training Unit you have acquired upon execution of the order by you and acceptance by Oracle. Upon receipt of the invoice from Oracle, you will pay the total fees due under the order. Upon receipt of such fees, Oracle will credit your Training Unit account. No Training Unit may be used to acquire any product or service until Oracle receives the payment for such Training Unit

**Workstation:** is defined as the client computer from which the programs are being accessed, regardless of where the program is installed.

#### **Term Designation**

If your program license does not specify a term, the program license is perpetual and shall continue unless terminated as otherwise provided in the agreement.

**1, 2, 3, 4, 5 Year Terms:** A program license specifying a 1, 2, 3, 4 or 5 Year Term shall commence on the effective date of the order and shall continue for the specified period. At the end of the specified period the program license shall terminate.

**1 Year Hosting Term:** A program license specifying a 1 Year Hosting Term shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate. A program license specifying a 1 Year Hosting Term may only be used for providing internet hosting services.

**1 Year Oracle Hosted Term:** A program license specifying a 1 Year Oracle Hosted Term shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate. A program license specifying a 1 Year Oracle Hosted Term must be hosted by Oracle.com via Computer and Administration services.

**1 Year Subscription:** A program license specifying a 1 Year Subscription shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate

**Licensing Rules**

**Failover:** Your license for the following programs, Oracle Database (Enterprise Edition, Standard Edition or Standard Edition One) and Oracle Internet Application Server (Enterprise Edition, Standard Edition, Standard Edition One or Java Edition) includes the right to run the licensed program(s) on an unlicensed spare computer in a failover environment for up to a total of ten separate days in any given calendar year. Any use beyond the right granted in the previous sentence must be licensed separately and the same license metric must be used when licensing the program(s).

**Testing:** For the purpose of testing physical copies of backups, your license for the Oracle Database (Enterprise Edition, Standard Edition or Standard Edition One) includes the right to run the database on an unlicensed computer for up to four times, not exceeding 2 days per testing, in any given calendar year.

**Primary Usage:** is defined as each licensed user of the following applications: Financials, Discrete Manufacturing, Process Manufacturing, Project Costing and Purchasing. Each licensed user is counted only once based on primary usage. You must specify how many users you are licensing for each application. Primary Usage of one of the applications listed above provides the licensed user with the right to use any or all of the other application programs listed above for which you are licensed. This concept also applies to Application Read-Only Users. Each Application Read-Only User of any of the applications listed above has the right to use any or all of the other application programs listed above for which you have also acquired Application Read-Only User licenses. Primary Usage does not provide you with the right to use other application programs including the extensions or options to the application programs listed above.

**You are responsible for ensuring that the following restrictions are not violated:**

- Oracle Database Standard Edition may only be used on machines which have the ability to run a maximum of four processors or on a cluster of machines supporting up to a maximum of four processors per cluster.
- Oracle Standard Edition One may only be used on machines which have the ability to run a maximum of two processors.
- The number of TRACE licenses (Rdb Server Option) must match the number of licenses of the associated database.
- The number of Diagnostics Pack and/or Configuration Management Pack licenses must match the number of licenses of the associated Internet Application Server program (Enterprise Edition, Standard Edition or Java Edition). The number of Identity Management licenses must match the number of licenses of the associated Internet Application Server Standard Edition program.
- Application licensing prerequisites as specified in the Applications Licensing Table which may be accessed at <http://oracle.com/contracts>.

**If you purchase Named User Plus licenses for the programs listed below, you must maintain the following user minimums and user maximums:**

Program	Named User Plus Minimum
Oracle Database Enterprise Edition	25 Named Users Plus per Processor
Rdb Enterprise Edition	25 Named Users Plus per Processor
CODASYL DBMS	25 Named Users Plus per Processor
Message Broker	10 Named Users Plus per Processor
TopLink	10 Named Users Plus per Processor
Internet Application Server Java Edition	10 Named Users Plus per Processor
Internet Application Server Standard Edition	10 Named Users Plus per Processor
Internet Application Server Enterprise Edition	10 Named Users Plus per Processor

Program	Named User Plus Maximum
Personal Edition	1 Named User Plus per database

The number of licenses for the programs listed below must match the number of licenses of the associated database and if you purchase Named User Plus licenses for these programs, you must maintain, at a minimum, 25 Named Users Plus per Processor per associated database:

Real Application Clusters, Partitioning, OLAP, Data Mining, Spatial, Advanced Security, Label Security, Diagnostics Pack, Tuning Pack, Change Management Pack, Configuration Management Pack

The effective date of this agreement shall be October 20, 2005.

LEXINGTON-FAYETT URBAN COUNT GOVERNMENT

ORACLE USA, INC.

Authorized Signature: Teresa Ann Isaac  
Name: Teresa Ann Isaac  
Title: Mayor  
Signature Date: 10/24/2005

Authorized Signature: Douglas W. Doherty  
Name: DOUGLAS W. DOHERTY  
Title: DIRECTOR, LICENSE CONTRACTS  
Signature Date: 10/21/2005

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

ATTEST:

BY: TERESA ANN ISAAC, MAYOR

Liz Damrell  
LIZ DAMRELL COUNCIL CLERK

Teresa Ann Isaac

AMENDMENT TO THE  
ORACLE LICENSE AND SERVICES AGREEMENT  
BETWEEN THE  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AND  
AND ORACLE USA, INC.

This Amendment to the Oracle License and Services Agreement, OLSA, (Agreement), is made as of 10/20, 2005, between the parties Oracle USA, Inc. Oracle ("Oracle") and Lexington-Fayette Urban County Government ("Licensee").

NOW, THEREFORE, the parties do mutually agree to amend the Agreement as follows:

1. D. Ownership and Restrictions. Add the following after the first paragraph as a new paragraph:

Lexington-Fayette Urban County Government (LFUCG) shall have the right to have installed multiple instances of the Software on different server(s) and/or have multiple instances of the Software installed on the same server or partitions thereof, or virtual machines without the approval of Oracle and at no additional cost to LFUCG.

2. H. Technical Support. Addendum to this section: add the following after the last paragraph in the OLSA for this section:

Premier Support: Oracle grants licensee the right to acquire five years of Premier Support. Premier Support provides updates, fixes and security alerts; tax, legal, and regulatory updates; upgrade scripts; technical support; major product and technology releases, access to its Customer Service Website, and certification with new third-party products/versions. Oracle grants licensee the right to acquire an additional three years of Extended Support. Extended Support provides updates, fixes and security alerts; tax, legal, and regulatory updates; upgrade scripts; technical support; access to its Customer Service Website; and major product and technology releases. Extended Support does not include certification with new third-party products/versions. For the first year of the Extended Support Period, year 6 in the life of the product, the additional fee will be calculated as 10% of the annual support fee. For years two and three, years 7 and 8 in the life of the product, the additional fee will be calculated as 20% of the annual support fee. After year 8 in the life of the product, Oracle grants licensee the right to acquire Sustaining Support for as long as they license the Oracle products. Sustaining Support provides access to its Customer Service Support Website, pre-existing fixes, and major product and technology releases. Sustaining Support does not include Updates, fixes, and security alerts; Tax, legal, and regulatory updates; Certification with new third-party products/versions; and Certification with other Oracle products.

Migration Path: If Oracle discontinues Updates, future releases and Support Services for any Supportable Module and determines to replace such Software module with another software module(s) with substantially similar functionality, Oracle shall provide a direct migration path for Customer from the discontinued Software module to the applicable replacement software module(s), provided: (i) the replacement module(s) are available in production release, (ii) Customer has continuously maintained Support Services for the discontinued Program pursuant to Oracle's Support Services policies, and (iii) Oracle makes such migration Program generally available to all of its customers who have maintained Support Services for the Software module. Customer has not relied on potential availability in entering into the payment obligations in this Schedule

Rights to Updates: In the event any Updates of the Supportable Modules licensed under this Schedule include the same or substantially similar functionality and features of existing Software licenses that were licensed under this Schedule, then provided Oracle makes such Updates generally available at no additional license fee to all of its customers who have maintained Support Services, and provided the Software module(s) are available in production release and provided Customer has continuously maintained Support Services for such Software Module(s) (or reinstated Support Services pursuant to the

then current Support Services policies). Oracle shall also provide the Customer with such Updates. Oracle intends that its Update practices will be generally consistent with Oracle's previous policies and practices.

These support policies in this Section H are subject to change at Oracle's discretion, however the services provided will not be materially reduced during the support period.

3. Add to the Agreement the following Nonappropriations clause:

Lexington-Fayette Urban County Government reserves the right to cancel any contract in whole or in part without penalty due to nonappropriation of funds, provided, however, that such nonappropriation shall not relieve Lexington-Fayette Urban County Government of its obligations to pay for Programs delivered and Services provided.

4. OLSA Section O. Other: The first paragraph of Section O of the OLSA is replaced in its entirety with the following:

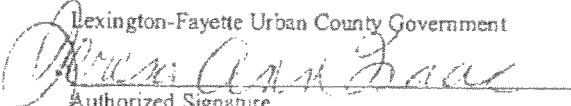
O. Other

This agreement is governed by the substantive and procedural laws of Kentucky.

5. K. Nondisclosure. Addendum to this section: add the following after the last paragraph in the OLSA for this section:

Public Records Act. You and Oracle acknowledge that Lexington-Fayette County Urban Government is subject to the Kentucky Open Records Act (KRS 61.870, et seq.) and/or the Freedom of Information Act. Should information marked as confidential or proprietary be requested by a third party, under any applicable open records law, Lexington-Fayette County Urban Government shall provide notice to Oracle within a reasonable time period of the request. Oracle shall maintain sole responsibility to defend the confidentiality of its information (i.e. prevent the release under the applicable law). You and Oracle acknowledge that the parties' obligations described elsewhere in the Agreement under this Section K. Nondisclosure are superceded by obligations under applicable open records act laws and the obligations in this Public Records Act section.

Except for those parts of the Agreement specifically modified by this Amendment, and those that would be rendered prohibitive by law or statute, the Agreement remains in full force and effect.

Lexington-Fayette Urban County Government  
  
Authorized Signature

Teresa Ann Isaac, Mayor  
Printed Name and Title

10/24/2005  
Date

ORACLE USA, INC.  
  
Authorized Signature

DOUGLAS W. DORAN  
Printed Name and Title DIRECTOR, LICENSE CONTRACTS

10/21/2005  
Date

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

ATTEST:

  
LIZ DAMRELL, COUNCIL CLERK

BY: TERESA ANN ISAAC, MAYOR  
