



## ORACLE PARTNER NETWORK FULL USE DISTRIBUTION AGREEMENT

This Full Use Distribution Agreement (“agreement”) includes the terms and definitions set out below and any orders you submit. This agreement is not effective until accepted by Oracle. If accepted, Oracle will notify you and the terms of this agreement will govern.

### A. Agreement Definitions

“You” and “your” refer to the entity that has entered into this agreement with *[insert Local Country Oracle Subsidiary]* (“Oracle”) to distribute Oracle’s programs, hardware and/or services with the value added package including your wholly- and majority-owned subsidiaries that you bind to this agreement (“subsidiary”). You warrant that you have the authority to bind your subsidiaries to the terms of this agreement and any applicable order with Oracle and further warrant that you shall be responsible for a breach of such terms by your subsidiaries.

The term “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.

The term “distribution rights” refers to the right to distribute the programs, hardware, learning credits, and/or services to an end user with the value added package under the terms of this agreement.

The term “end user” refers to a third party that is authorized to use the programs and/or hardware for its own internal business operations subject to the terms of an end user license agreement and/or end user hardware agreement as applicable as further provided for in this agreement. End user shall not include any public sector entity.

The term “end user hardware agreement” refers to (a) an Oracle License and Services Agreement (“OLSA”); (b) an existing license agreement between Oracle and the end user which is approved for use by Oracle as described in Section F; or (c) Oracle’s Manufacturer’s Statement of Terms.

The term “end user license agreement” refers to an Oracle License and Services Agreement (“OLSA”) or an existing license agreement between Oracle and the end user which is approved for use by Oracle as described in Section F.

The term “end user agreement” refers to either an end user hardware agreement or an end user license agreement.

The term “full use” refers to unaltered versions of the programs with all functions intact.

The term “hardware” refers to the hardware equipment (including components, options and spare parts), operating system, integrated software and related software media listed in Oracle’s price list. Hardware includes hardware documentation. Operating system and integrated software include any software updates acquired through technical support. Hardware or parts of it may be new or like new.

The term “hardware documentation” refers to the hardware specifications, user manuals, and installation manuals. Hardware documentation is delivered with the hardware and/or provided online.

The term “integrated software” refers to software embedded in the hardware which is essential to hardware functionality (e.g. firmware).

The term “learning credit” is defined in the license definitions and rules, which are incorporated in this agreement and which are available at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies).

The term “media pack” refers to the media on which the programs may be delivered if the programs are not delivered electronically.

The term "Oracle Finance Division Contract" refers to 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 to Oracle under this agreement.

The term "Oracle group company" refers to Oracle Corporation or any local majority owned subsidiary of Oracle Corporation.

The term "Oracle PartnerNetwork" refers to Oracle's partner program that provides access to specified Oracle services, tools and resources. You can access the Oracle PartnerNetwork at <http://partner.oracle.com>.

The term "Partner Ordering Policy" refers to Oracle's Partner Ordering Policy in effect at the time an order is submitted to Oracle which is incorporated into this agreement and is subject to change at Oracle's discretion. You may access the current version of the Partner Ordering Policy at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies).

The term "programs" refers to the software products owned or distributed by Oracle including program documentation, and any program updates acquired through technical support.

The term "program documentation" refers to the program user manual and program installation manuals. Program documentation is delivered with the programs, or documentation may be accessed online at <http://oracle.com/contracts>.

The term "public sector entity" is any government, legislature or decision making body, judiciary, instrumentality, department, or agency at any level (national, local, municipal or otherwise); entities managed, controlled or majority owned by government interests; public organizations or foundations of any kind (including political parties, political organizations, or political candidates); and any public international organization, such as, but not limited to, the International Red Cross, United Nations, or the World Bank.

The term "services" refers to technical support, Oracle On Demand services (excluding CRM On Demand and any software as a service offering), or other services which you have ordered from Oracle.

The term "technical support" consists of annual technical support services you have ordered for the programs and/or hardware consisting of any of the technical support levels defined in Oracle's technical support policies in effect at the time such technical support is ordered.

The term "value added package" refers to the hardware and/or software products and/or services having added value which are developed, sold, provided and/or licensed with the programs and/or hardware to an end user by you or value added sales assistance provided by you.

## **B. Distribution Rights**

In order to distribute programs, hardware, learning credits, and/or services, you and your subsidiaries must be members of the Oracle PartnerNetwork. Oracle grants you a nonexclusive, nontransferable right to distribute to end users the programs and/or hardware identified as available for resale on the Sell tab in the Database Knowledge Zone, the Middleware Knowledge Zone and any other knowledge zone for which you meet the reselling criteria. Oracle grants each subsidiary that is a member of the Oracle PartnerNetwork a nonexclusive, nontransferable right to distribute to end users the programs and/or hardware identified as available for resale on the Sell tab in the Database Knowledge Zone, the Middleware Knowledge Zone, and any other knowledge zone for which each such subsidiary meets the reselling criteria. All reselling criteria are subject to change at Oracle's discretion. Oracle also grants you a nonexclusive, nontransferable right to distribute learning credits and/or services to end users. You may order programs, hardware, learning credits, and/or services from Oracle as provided under this agreement only after you receive an end user's order for such products. Each program, learning credit and any services (excluding technical support for hardware) must be used only for the internal business operations of the end user. You may distribute the programs, hardware, learning credits, and/or services only in conjunction with your value added package. You may not distribute the programs, hardware, learning credits, and/or services to (i) yourself; (ii) to an affiliated entity; or (iii) to end users that are public sector entities unless you have in place a valid public sector addendum to this agreement. You shall not appoint any third party to distribute the programs, hardware, learning credits, and/or services. Oracle also grants you a nonexclusive, nontransferable right to distribute media packs that you order only to end users who have previously obtained a license for the programs. Some programs may also include any source code Oracle may provide as part of its standard shipment of such programs, which

source code shall be governed by the terms of this agreement. Oracle may disclose information about the rights granted to you pursuant to this agreement to an Oracle Value Added Distributor ("Oracle VAD").

Oracle shall inform you of any notices and other instructions that are related to third party components (including open source software) that are included in a program and/or hardware and that Oracle is required to distribute with such programs and/or hardware. These notices and other instructions shall be provided to you in at least one of the following ways, at Oracle's sole discretion: (a) automatically installed with the programs or in the installation details; (b) in the program or hardware documentation; (c) in the readme files; or (d) via a supplemental list. You shall comply with all instructions related to third party software components (including open source software). If you reproduce the programs, operating system and/or integrated software, you shall reproduce all third party notices in an appropriate location in the reproduction and/or in its related documentation and include any associated source code (to the extent such source code is provided by Oracle), as required by the applicable notices or as otherwise directed by Oracle.

Oracle may request that you acquire any third party, royalty-free license offered generally to the public that Oracle, in its reasonable discretion, determines may be necessary to avoid a claim of infringement for distribution of any hardware, program or other Oracle software either by Oracle or by you under the terms of this agreement. In the event you fail to acquire such license, Oracle may terminate this agreement with respect to the relevant hardware, program(s) and/or other software on thirty (30) days written notice, and whether or not this agreement is terminated, Oracle shall have no obligation to indemnify you under Section I (Indemnification) for any claim of infringement that would have been avoided by the acquisition of such license.

Oracle grants you a nonexclusive, nontransferable right to distribute to end users the first year of technical support from Oracle for the programs that you distributed to such end users at the time that you place the order for such programs. Oracle also grants you a nonexclusive, nontransferable right to distribute to end users the first year of technical support from Oracle for the hardware that you distributed to such end users in accordance with the Partner Ordering Policy. If technical support is ordered for the programs, the term of such technical support begins on the date the programs are shipped, or ordered if shipment is not required, or as otherwise stated in your order with Oracle. If technical support is ordered for the hardware, the term of such technical support begins on the date stated in your order with Oracle. When you distribute first year technical support you must inform end users that technical support (including the renewal of such technical support) is subject to 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 programs or hardware during the period for which fees for technical support have been paid. You and the end user should review the policies prior to entering into the order for the applicable services. You and/or the end user may access the current version of the technical support policies for programs and/or hardware at <http://oracle.com/contracts>. If you distribute first year technical support to an end user, you must inform the end user of the annual technical support fees that Oracle would charge for second year technical support if purchased. You may access the current guidelines regarding the pricing of the second year of technical support at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies).

When you or your subsidiary is purchasing programs, hardware, learning credits and/or services from an Oracle group company within the European Union ("EU") or European Free Trade Area ("EFTA"), nothing in this section B is intended to prohibit you or your subsidiary from distributing those programs, hardware, learning credits and/or services that you are authorized to distribute pursuant to this Section B, to other members of the Oracle PartnerNetwork within the EU or EFTA who Oracle has authorized to distribute the same programs, hardware, learning credits and/or services ("OPN EU reseller" or "OPN EFTA reseller" as applicable) for the ultimate purpose of onward distribution to an end user located in the EU or EFTA.

### **C. Trial Licenses for Programs**

You may order trial licenses for the programs for distribution to end users. Oracle grants you a nonexclusive, nontransferable right to distribute trial licenses, to no more than 50 end users at any one time, for the end users' own internal evaluation purposes (and not for development, prototype, training, or technical support purposes) by referring the end users to Oracle's electronic delivery website located at <http://edelivery.oracle.com>. In addition, Oracle may include additional programs with an order that the end user may use for trial, non-production purposes only.

The end user may not use any trial licenses to attend training provided by you or a third party on the content and/or functionality of the programs. The end user has 30 days from the delivery date to evaluate trial programs, subject to the

terms of this agreement and the terms provided in any order. If the end user decides to use any of these programs after the 30 day trial period, the end user must obtain a license for such programs and you must pay Oracle a fee for any trial licenses that you distribute that extend for more than 30 days. If the end user decides not to obtain a license for any programs after the 30 day trial period, the end user will cease using and will delete any such programs from the end user's computer systems. Programs licensed for trial purposes or additional programs included with an order are provided "as is" and Oracle does not provide technical support or offer any warranties for these programs.

#### **D. Ownership and Restrictions**

Oracle or its licensors retain all ownership and intellectual property rights to: (i) the programs, the operating system, the integrated software and learning credits; and (ii) anything developed by Oracle and/or delivered to you under this agreement. In addition, Oracle or its licensors retain all ownership in the intellectual property rights related to the hardware. Each end user may make a sufficient number of copies of each program for the licensed use and one copy of each program media. Each end user may only make copies of the operating system and integrated software for archival purposes, to replace a defective copy or for program verification. All other rights are reserved, and this agreement does not grant any rights, whether by implication, estoppel, or otherwise, other than those rights specifically described in this agreement.

The programs, the operating system and the integrated software may contain third party technology. Third party technology will be licensed to you either under the terms of this agreement or, if specified in the program documentation, the hardware documentation, the readme files, notice files, or the installation details or otherwise as set forth in section B, under separate license terms ("separate terms") and not under the terms of this agreement ("separately licensed third party technology"). Oracle is required in certain cases to provide notices to you and will do so in accordance with section B; however, such a notice will not change the terms under which third party technology is licensed to you.

Your rights to use (including without limitation the right to distribute) separately licensed third party technology under the separate terms are not restricted in any way by this agreement. However, solely with respect to separately licensed third party technology that is part of the program, the operating system or the integrated software and is used: (i) in unmodified form; (ii) as part of the program, the operating system, or the integrated software; (iii) in accordance with the license grant for the relevant program, operating system or integrated software and all other terms and conditions of this agreement, and (iv) in compliance with the separate terms, Oracle will provide indemnification for separately licensed third party technology to the same extent as Oracle is required to provide indemnification for the program, the operating system and/or the integrated software under the terms of this agreement. Oracle will provide indemnification for third party technology that is part of the program, the operating system and/or the integrated software and not separately licensed third party technology to the same extent as Oracle is required to provide indemnification for the program, the operating system and/or the integrated software under the terms of this agreement.

For GPLv2, LGPLv2.1, GPLv3 and LGPLv3 licensed code you receive in binary form on physical media, you may order a copy of the source code ("source code") via postal service, by submitting your written request at <<http://oss.oracle.com/systems-opensourcecode>>. Alternatively, you can mail your written request to Attn: VP of Legal, Development and Engineering, MS-5OP10, Oracle Corporation, 500 Oracle Parkway, Redwood Shores, CA 94065. Your request should include the name and version number of the product, your name, your company name (if applicable), your return mailing address, and your email address. Certain source distributions require a fee for physical media. Should this be the case, you will be sent details on the cost and payment procedure via email. Your request must be sent within three (3) years of the date of our last delivery of the applicable product. This offer only applies if you received your operating system and/or integrated software on physical media.

You may not:

- distribute the programs, hardware or learning credits in any manner except as provided under this agreement;
- use the programs or hardware except as expressly provided in this agreement;
- use the learning credits for your own business operations;
- remove or modify any program or hardware markings or any notice of Oracle's or its licensors' proprietary rights;
- rent, lease, or timeshare the programs or provide subscription services for the programs or permit your end users to do so (unless Oracle expressly permits such access for the specific program license the end user has acquired);
- distribute the hardware for use in the planning, construction, operation or maintenance of any nuclear facility and you acknowledge that the hardware is not designed, manufactured or intended for such use;

- 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);
- disclose results of any program and/or hardware benchmark tests without Oracle's prior written consent;
- engage in any conduct that may be detrimental to Oracle or to the programs, hardware, the learning credits, or the services;
- enter into any agreement which requires you to take any actions that are in conflict with the terms of this agreement;
- refurbish any hardware returned by an end user to you and distribute such remanufactured hardware;
- purchase programs, hardware, learning credits and/or services for distribution pursuant to this agreement from any source other than Oracle, an Oracle group company, an Oracle VAD or, if you or your subsidiary purchases programs, hardware, learning credits and/or services within the EU or EFTA, from an OPN EU reseller or an OPN EFTA reseller (as applicable); and
- supply programs, hardware, learning credits and/or services to any third party if you have reason to believe such party intends to resell such programs, hardware, learning credits and/or services unless you or your subsidiary is purchasing programs, hardware, learning credits and/or services from an Oracle group company in the EU or EFTA, or an Oracle VAD in the EU or EFTA, or an OPN EU reseller or an OPN EFTA reseller, and such third party is an OPN EU reseller or an OPN EFTA reseller with authorization to distribute such programs, hardware, learning credits and/or services within the EU or EFTA.

#### **E. Order Terms**

Prior to submitting an order to Oracle, you must obtain an order from the end user for the programs, hardware, learning credits, and/or services ordered. The end user order must clearly identify (1) the programs including the license metrics and quantity, (2) the hardware, (3) the learning credits, and/or (4) the services being ordered and shall be subject to a valid end user agreement. Each order placed by you must be complete and shall be subject to the terms of this agreement and the terms in the Partner Ordering Policy. You should review the Partner Ordering Policy prior to entering into the order for programs, hardware, learning credits and/or services. All orders for hardware must be placed before the last order date for the hardware as specified in the Oracle global price list or as otherwise specified by Oracle in writing. With each order for programs, hardware, learning credits and/or services you shall provide the information set out in the Partner Ordering Policy or the information in the required fields of any online ordering system and any other information required by Oracle for processing the order. Your order must be complete when submitted to Oracle and may not (a) require any concessions (including requiring Oracle to perform any obligations or to incur any liability not set forth in your order to Oracle) or (b) be changed after it is submitted to Oracle. Oracle reserves the right to accept or reject any order submitted by you in its sole discretion.

Oracle will use commercially reasonable efforts to meet the hardware delivery dates as stated in the Partner Ordering Policies. You agree to comply with the delivery requirements for the country to which the hardware will be delivered as stated in the Partner Ordering Policies. Any changes or cancellations to orders for hardware or any returns of hardware shall be subject to the Partner Ordering Policies. Unless otherwise stated in your order with Oracle, title to hardware, excluding the operating system, integrated software and any other programs, and risk of loss or damages to the hardware will pass from Oracle upon delivery in accordance with the Order and Delivery Policies. The relevant country specific hardware shipping terms can be found in the Order and Delivery Policy which may be accessed at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies). You are responsible for installation of the hardware, unless you purchase installation services from Oracle with respect to such hardware. Acceptance of the hardware occurs on delivery. Oracle may make and invoice you for partial deliveries. Oracle may make product substitutions and modifications that do not cause a material adverse effect in overall hardware performance. Oracle will use its reasonable commercial efforts to deliver the hardware within a timeframe that is consistent with Oracle's past practices regarding the amount and type of hardware that you have ordered.

Upon request, you will provide Oracle with a copy of the end user agreement and any amendments and documents that together with the end user agreement form the complete end user agreement, and any ordering documents or purchase agreements between you and the end user related to the order, with pricing information or any other information reasonably deemed confidential or proprietary removed because the copies you provide Oracle will not be considered confidential information. For programs, hardware and/or services, at a minimum you must provide information related to the programs, hardware and/or services, including but not limited to, the end user's name, the programs, hardware and/or services distributed, the number of users, the license levels, the license grant to the end user, any definitions related to

licensing metrics, the date of the order, and any other information reasonably requested by Oracle. For learning credits, at a minimum, you must provide information related to the learning credits, including but not limited to, the end user's name, the learning credits distributed, the date of the order, and other information reasonably requested by Oracle.

You agree to comply with Oracle's "Third Party Financing Notice – Financing for End-user Customer's Payment Obligation" dated February 15, 2011 whenever: (i) the acquisition of programs, hardware, and/or technical support is financed or leased, (ii) the end user agreement or order refers to any payments other than net 30 day payment terms, or (iii) a funder is placing the end user order with you or is responsible for payment under the end user order with you. You will ensure that the end user and any funder have received the Third Party Financing Notice, and where applicable, have acknowledged that they will comply with those terms. The term "funder" refers to a financial entity that provides financing or leasing to the end user for the programs, hardware and/or services subject to a funding contract between the funder and the end user. Oracle's "Third Party Financing Notice – Financing for End-user Customer's Payment Obligation" dated February 15, 2011 is subject to change at Oracle's discretion and can be accessed at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies).

#### **F. End User Agreement**

It is your responsibility to ensure that any distribution of programs, hardware, learning credits, and/or services to an end user is subject to a legally binding end user agreement. The end user agreement must either be: (1) a legally binding written agreement between Oracle and the end user consisting of either Oracle's current OLSA or an existing license agreement between Oracle and the end user which is approved for use by Oracle; or (2) solely with respect to the distribution of hardware, related technical support and other related services that are identified in Oracle's technical support policies, Oracle's Manufacturer's Statement of Terms. Oracle's Manufacturer's Statement of Terms may not be used with the distribution of programs and related services or with the distribution of hardware technical support if ordered separately from the hardware. Orders for hardware products that consist solely of parts designated by Oracle as Non-IP Parts do not require an end user agreement. You may access the list of Non-IP Parts at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies).

The order between you and the end user shall expressly state that the applicable order is subject to and incorporates the terms and conditions of the end user agreement. Each order submitted by you to Oracle, shall specify whether the end user agreement will be (a) the OLSA accepted by the end user online, (b) the OLSA executed by the end user pursuant to the Partner Ordering Policy, (c) an existing license agreement between Oracle and the end user which Oracle has approved for use in accordance with the Partner Ordering Policy, or (d) Oracle's Manufacturer's Statement of Terms. If the order submitted by you indicates that the OLSA will be executed by the end user, you must provide the signed agreement to Oracle when you submit your order. You may obtain a copy of Oracle's current standard OLSA and Hardware Terms Exhibit at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies). You agree to inform Oracle promptly if you are aware of any breach of an end user agreement.

#### **G. Fees and Taxes**

You may place an order for programs, hardware, learning credits, and/or services with an Oracle group company or an Oracle VAD. If you are placing an order for hardware with an Oracle group company then Oracle will instruct you with which Oracle group company to place your order. You agree to pay the applicable Oracle group company or the appropriate Oracle VAD a fee for programs, hardware, learning credits, and/or services ordered and/or distributed under this agreement as specified in the order. Fees for programs, hardware, learning credits, and/or services will be paid directly to the entity to which you submit the order. You also may place an order for media packs with an Oracle group company provided that the end user has previously obtained a license for the programs and you agree to pay the applicable Oracle group company the fee specified on the Oracle PartnerNetwork web site. You will not be relieved of your obligation to pay any fees owed to the Oracle group company by the nonpayment of such fees by your end user. Oracle VADs and partners are free to determine the fees charged to partners and end users, respectively for program licenses, hardware, learning credits, and services. Any order placed with the Oracle group company will be subject to the applicable Oracle price list and discount terms in effect at the time the order is submitted. To view the applicable Oracle price lists and discount terms, you must log into the Oracle PartnerNetwork web site at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies). It is your responsibility to access the applicable Oracle price lists to obtain current information about pricing and last order dates, where applicable. When an order is placed pursuant to an Oracle enterprise price list you must inform the end user in the applicable end user ordering document that if the end user exceeds the license quantity specified in the applicable end user ordering document, then incremental license and technical support (if technical support is ordered) fees will be due from such end user to Oracle. You agree to quote

incremental license and technical support (if technical support is ordered) fees to the end user in the ordering document in which the applicable programs are originally ordered. In addition, you must include the quoted incremental license and technical support (if technical support is ordered) fees in your order to Oracle. If the applicable Oracle price list changes after you issue a valid written quote for program licenses, hardware, learning credits and/or services to an end user, for 90 days after the date you submit the quote to the end user, subject to any applicable last order date, the fee applicable to the programs, hardware, learning credits, and/or services identified in the quote shall be based on the Oracle price list in effect on the date you submitted the quote to the end user. If Oracle University publishes a price promotion on the Oracle PartnerNetwork website for learning credits, your sole and exclusive discount on the promotional learning credits shall be 15% off the promotion price for the term of the promotion.

All fees payable to the applicable Oracle group company are due within 30 days from the invoice date. You agree to pay any freight charges for hardware in accordance with the Order and Delivery Policies which are available at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies). You also agree to pay any sales, value-added, customs, levies or other similar taxes imposed by applicable law that the applicable Oracle group company must pay based on the programs, hardware, learning credits, and/or services you ordered, except for taxes based on Oracle's income. You agree and you will obtain your end users' written agreement that you and your end users have not relied on the future availability of any programs, hardware, learning credits, services, or updates in entering into the payment obligations in the applicable order, however, (a) if you order technical support for programs and/or hardware for distribution to end users, the preceding sentence does not relieve Oracle of its obligation to provide such technical support to such end users, 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 your end users under the applicable order per the terms of the applicable order and this agreement. Oracle reserves the right to check your credit rating periodically during the term of this agreement and to modify these payment terms in the event that there is a material change in your credit rating. Fees listed in this agreement are exclusive of value added tax and/or similar sales taxes. Such taxes shall be charged at the appropriate rate by the applicable Oracle group company in addition to its stated fees and shall be shown separately on the relevant invoice. Payments shall be in U.S. dollars or in the local currency designated by the applicable Oracle group company. Upon your submission of an order to the applicable Oracle group company, this payment obligation is non-cancelable, and the sum paid is nonrefundable, is not subject to set-off for any reason, and is not subject to the completion or occurrence of any event after the date your order is submitted to Oracle, other than the shipment of programs and/or hardware by Oracle if required and Oracle's obligation to provide annual technical support services to end users if ordered.

The purchase of (a) hardware and/or related hardware technical support, (b) programs and/or related technical support, or (c) other services are all separate offers and separate from any other order for (i) hardware and/or related hardware technical support, (ii) programs and/or related technical support, or (iii) other services you may receive or have received from Oracle. You understand that you may purchase (x) hardware and/or related hardware technical support, (y) programs and/or related technical support, or (z) other services independently of any other product or service. Your obligation to pay for (i) hardware and/or related hardware technical support is not contingent on performance of any other service or delivery of programs, (ii) programs and/or related technical support is not contingent on delivery of hardware or performance of any other service, or (iii) other services is not contingent on delivery of hardware, delivery of programs or performance of any additional/other service.

#### **H. Warranties, Disclaimers and Exclusive Remedies**

Warranties that apply to your licensed use of the programs are provided by Oracle to you pursuant to the Oracle PartnerNetwork agreement between you and Oracle. Warranties that apply to the end user's use of the programs and hardware are provided to the end user pursuant to the end user agreement.

**THE LEARNING CREDITS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND. INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED. YOU UNDERSTAND AND AGREE THAT YOU SHALL NOT MAKE ANY WARRANTY ON ORACLE'S BEHALF WITH RESPECT TO SUCH LEARNING CREDITS.**

**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.**

## **I. Indemnification**

If a third party makes a claim against you that any (i) hardware (excluding the operating system or integrated software); or (ii) programs ((i) and (ii) collectively referred to as the “indemnified material”); infringes their intellectual property rights based on your distribution of the indemnified material in accordance with the terms of this agreement, 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:

- notify the General Counsel, Oracle Legal Department, promptly in writing, not later than 30 days after you receive notice of the claim ( or sooner if required by applicable law);
- give Oracle sole control of the defense and any settlement negotiations; and
- give Oracle the information, authority, and reasonable assistance Oracle needs to defend against or settle the claim.

Provided you distribute Oracle technical support services for the operating system to the end user, the term “indemnified material” shall include the operating system and the integrated software. Notwithstanding the foregoing, with respect solely to the Oracle 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](http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf).

If Oracle believes or it is determined that any of the indemnified material may have violated a third party’s intellectual property rights based on your distribution of the indemnified material, Oracle may choose to either modify the indemnified 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 the applicable indemnified material and refund any fees you may have paid to Oracle for it and any unused, prepaid technical support fees you have paid to Oracle for the applicable product. If Oracle believes or it is determined that the hardware (or portion thereof) may have violated a third party’s intellectual property rights, Oracle 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, Oracle may remove the applicable hardware (or portion thereof) and refund the net book value. Oracle will not indemnify you if you alter indemnified material or if you distribute the indemnified material for purposes outside the scope of use identified in the user documentation or if you distribute a version of the indemnified material which has been superseded, if the infringement claim could have been avoided by distributing an unaltered current version of the indemnified material which was provided to you. Oracle will not indemnify you to the extent an infringement claim is based upon any indemnified material not provided by Oracle. Oracle will not indemnify you to the extent that an infringement claim is based upon the combination of any indemnified material with any products or services not provided by Oracle. Oracle will not indemnify you for infringement caused by your actions against any third party if the Oracle indemnified material as delivered to you and distributed in accordance with the terms of this agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of this agreement (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of this agreement. If a third party makes a claim against Oracle that any indemnified material, when used in combination with any product or services provided by you, infringes their intellectual property rights, and such claim would have been avoided by the exclusive use of the indemnified material, you will indemnify Oracle. This section provides your exclusive remedy for any infringement claims or damages.

## **J. Term and End of Agreement**

This agreement shall begin on the effective date specified herein unless you accept the terms of this agreement online, in which case the effective date shall be as set forth in an email from Oracle confirming Oracle’s acceptance of this agreement. The term of this agreement shall continue for 2 years. If your membership in the Oracle PartnerNetwork expires, you will not be permitted to distribute programs, hardware, learning credits, and/or services until your membership is made current. If Oracle terminates your Oracle Partner Network Agreement and your membership in the Oracle Partner Network, then this agreement will automatically terminate on the same date. When this agreement expires, in order to keep distributing the programs, hardware, learning credits and/or services, you must execute the then current version of Oracle’s distribution agreement and the agreement will be subject to acceptance by Oracle, and Oracle may require you to complete certain training and assessment requirements to Oracle’s satisfaction. 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, then the breaching party is in default and the non-breaching party may terminate this agreement. If Oracle ends this agreement as specified in the preceding sentence, (1) you must pay within 30 days from notification of the termination all amounts which have accrued prior to such end, as well as sums remaining unpaid for programs, hardware, learning



credits, and/or services received under this agreement plus related taxes and expenses, and (2) Oracle may also terminate your Oracle Partner Network Agreement and your membership in the Oracle PartnerNetwork. If Oracle ends the license for a program under the Indemnification section, you must pay within 30 days from notification of the termination all amounts remaining unpaid for services related to such license which have accrued prior to such end 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 this agreement, you may not place orders for and/or distribute the programs, hardware, learning credits, and/or services and Oracle has the right to cancel any orders that you have placed but that have not yet been shipped. You agree that if you have used an Oracle Finance Division Contract to pay for fees due under this agreement and you are in default under that contract, you may not distribute the programs, hardware and/or services that are subject to such contract. The end users' rights to use the programs and or learning credits, properly distributed by you under this agreement shall survive termination of this agreement, unless such rights are otherwise terminated in accordance with the applicable end user agreement. Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment, ethical business practices, and others which by their nature are intended to survive.

**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, and all information clearly identified as confidential at the time of disclosure.

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. In addition, you agree that you may not disclose to investors or potential investors information regarding Oracle's financial performance or your company's financial performance specifically related to Oracle programs and/or services without prior written consent from Oracle's Investor Relations group. Nothing shall prevent (1) 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 the terms of this agreement, (2) Oracle from disclosing to an Oracle VAD information about the status of your membership in the Oracle PartnerNetwork or the programs, hardware, learning credits and/or services you are permitted to distribute under this agreement, or (3) either party from disclosing the confidential information to a federal or state governmental entity as required by law. *[This sentence may be further localized as needed]*

**L. Trademarks and Copyrights**

You are authorized to use Oracle's trademarks and service marks (the "Oracle trademarks") to refer to the associated Oracle products and services. Your use of the Oracle trademarks shall comply with Oracle's Third Party Usage Guidelines for Oracle Trademarks, and all goodwill based upon use of the Oracle trademarks shall inure to Oracle's benefit. Oracle's Third Party Usage Guidelines for Oracle Trademarks, incorporated in this agreement, are subject to change. You may access Oracle's Third Party Usage Guidelines for Oracle Trademarks at <http://www.oracle.com/html/3party.html>. In marketing, promoting or licensing the programs, hardware and/or services, you agree to make it clear that Oracle is the source of the programs, hardware and/or services. You shall retain all notices, including copyright and trademark notices, on the programs, operating system and integrated software and any copies of the programs, operating system and integrated software. You shall not modify the programs and/or hardware and shall deliver the programs and/or hardware exactly as you receive them or have Oracle deliver the programs in the original media.

**M. Relationships between Parties**

In all matters relating to this agreement, you will act as an independent contractor. This agreement does not create a partnership, joint venture, agency, employee/employer, lobbyist/lobbyist employer relationship, or franchisee/franchisor relationship between the parties. Except with regard to your distribution of first year Oracle technical support to the end users and Oracle's obligation to ship programs and/or hardware in connection with orders that comply with the terms of this agreement if requested to do so, neither party will represent that it has any authority to assume or create any

obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity. Nothing in this agreement shall be construed to limit either party's right to independently develop or distribute software or hardware that is functionally similar to the other party's product, so long as proprietary information of the other party is not included in such software or hardware or used to create such software or hardware.

**N. Privacy**

If you provide Oracle with personal information concerning your customers, prospects or employees, Oracle will only use the information in manners consistent with those specified in this agreement to accomplish their purposes, or as otherwise indicated at the time Oracle collects such information. This information may be maintained by Oracle in data centers in the United States and may be accessed by Oracle's global personnel as required for business purposes. You agree to provide all relevant notices and obtain any consents required to share the information with Oracle.

If Oracle provides you with personal information concerning Oracle's partners, customers, prospects or employees, you agree that you will permit access to and use of such information solely in connection with the sale of Oracle products or services and for the limited purpose(s) for which it was provided by Oracle under this agreement. You also agree to comply with all laws that apply to your use of this information for such purposes. The requirements of this section do not apply to either party's relationships with its customers.

From time to time, the parties may exchange information regarding marketing and sales opportunities through Oracle's partner management application. Both parties agree to use any such information in compliance with the terms of this agreement and Oracle's Partner Management Opportunity Routing Policy, the current version of which is located at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies).

**O. URLs**

It is your responsibility to regularly monitor all applicable URLs referenced in this agreement. You confirm that you have access to the Internet and confirm that prior to entering into this agreement you have read the policies on the websites referenced above and agree to the terms and conditions set out in those policies. You undertake that you will visit the websites referenced above on a regular basis so that you are aware of any amendments Oracle may make to those policies from time to time.

**P. Ethical Business Practices**

You acknowledge and agree that you and your owners, directors, officers, employees or agents have not, and will not, make or promise to make corrupt payments of money or anything of value, directly or indirectly, to any government or public international organization officials, political parties, or candidates for political office, or employee of a commercial customer or supplier, for the purpose of obtaining or retaining business or securing any improper advantage. You agree to accurately document all transactions related to this agreement in your financial books, records, statements, and in reports or other documents provided to Oracle. You agree to comply with the terms of the Oracle Partner Code of Conduct and Business Ethics, which is available at <http://partner.oracle.com> (log in, select Membership / Agreements & Policies). You agree that the handling and disbursement of funds related to an Oracle transaction must be pursuant to a duly authorized Oracle written contract with clearly defined procedures. No undisclosed or unrecorded fund or asset related to any Oracle transaction may be established or maintained for any purpose. You agree that any violation of this section constitutes just cause for the immediate termination by Oracle of this agreement without any liability incurred by Oracle to you. You will also indemnify and hold Oracle, Oracle Corporation, and subsidiaries, parents and affiliates harmless from any claims, losses and liabilities resulting from any breach of any of your obligations under this section. The obligations under this section shall survive the termination or expiration of this agreement.

**Q. Entire Agreement**

You agree that this agreement and the information which is expressly incorporated into this agreement by written reference (including reference to information contained in an URL or referenced policy), together with the applicable order, are the complete agreement for each order that you place with Oracle for programs, hardware, learning credits, and/or services, and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such programs, hardware, learning credits, and/or services. Moreover, you agree that any rights you may have to distribute learning credits under any Oracle PartnerNetwork Education Distribution Agreement shall be replaced and superceded by the rights to distribute learning credits under this agreement. If any term of this 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 this agreement. It is expressly agreed that the terms of this agreement and any order with Oracle 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, hardware, learning credits, and/or services ordered. This agreement and any order with Oracle may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through an Oracle online ordering system by authorized representatives of you and of Oracle. Any notice required under this agreement shall be provided to the other party in writing.

**R. 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 (A) THE AMOUNT OF FEES YOU PAID ORACLE UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM YOUR DISTRIBUTION OF PROGRAMS, HARDWARE, SERVICES OR LEARNING CREDITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT PROGRAM, HARDWARE OR SERVICES OR RELEVANT LEARNING CREDITS GIVING RISE TO THE LIABILITY OR (B) IF YOU ORDERED PROGRAMS, HARDWARE, LEARNING CREDITS, AND/OR SERVICES THROUGH AN ORACLE VAD, THE AMOUNT OF FEES THAT YOU WOULD HAVE PAID TO ORACLE UNDER THIS AGREEMENT HAD YOU ORDERED DIRECTLY FROM ORACLE, AND IF SUCH DAMAGES RESULT FROM YOUR DISTRIBUTION OF PROGRAMS, HARDWARE, SERVICES OR LEARNING CREDITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES THAT YOU WOULD HAVE PAID ORACLE FOR THE DEFICIENT PROGRAM, HARDWARE OR SERVICES OR RELEVANT LEARNING CREDITS GIVING RISE TO THE LIABILITY HAD YOU ORDERED DIRECTLY FROM ORACLE.

**S. Export**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the programs and hardware. You agree that such export laws govern your use of the programs (including technical data), hardware 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, hardware 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. You shall include the following notice on packing lists, commercial invoices, shipping documents and other documents involved in the transfer, export or re-export of the programs and hardware: ***"These commodities, technology, software or hardware were exported in accordance with the U.S. Export Administration Regulations and applicable export laws. Diversion contrary to applicable export law is prohibited."***

**T. Other**

1. This agreement is governed by the substantive and procedural laws of ***[insert "the State of California" or local country name]*** 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 agreement. ***[This section may be further localized as needed.]***
2. If you have a dispute with Oracle or if you wish to provide a notice under Section I (Indemnification) of this agreement, or if you become subject to insolvency or other similar legal proceedings, you will promptly send written notice to: ***[insert local Oracle subsidiary name and appropriate mailing address – ok to include "Attn: General Counsel" or something similar.]***
3. You may not assign this agreement or give or transfer the programs, the operating system, the integrated software and/or any services ordered or an interest in them to another individual or entity. If you grant a security interest in the programs, the operating system, the integrated software and/or any services deliverables, the secured party has no right to use or transfer the programs, the operating system, the integrated software and/or any services. 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 separate works licensed under open source or similar license terms.

- 4. 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.
- 5. You agree that you will keep accurate books and records in connection with the activities under this agreement. Upon 45 days written notice, Oracle may audit your distribution of the programs, hardware, learning credits and services and any other activities under this 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 including but not limited to relevant books, records, agreements, servers, technical personnel, and order reporting systems. Upon Oracle's request, you will also provide to Oracle a system generated list of the Oracle program licenses, hardware, learning credits and/or services distributed to end users under this agreement during the time period specified by Oracle and any supporting documentation requested by Oracle pursuant to the terms of Section E Order Terms for the purposes of validating the completeness and accuracy of your obligations under this agreement. You agree to pay within 30 days of written notification any fees applicable to your distribution of the programs, hardware, learning credits and/or services in excess of your rights and any underpaid fees. If you do not pay, Oracle can end your technical support, licenses, services, the validity of any learning credits, and this agreement and/or may choose not to accept your application to renew this agreement at such time of renewal. Upon Oracle's request, you agree to audit end user(s) and report the findings to Oracle, or assign your right to audit end user(s) to Oracle. You agree that Oracle shall not be responsible for any of your costs incurred in cooperating with this audit.
- 6. The Uniform Computer Information Transactions Act does not apply to this agreement or any order hereunder. *[This sentence may be deleted outside the U.S.]*

**U. 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 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 programs delivered, hardware ordered or services and/or learning credits provided.

The effective date of this Agreement shall be \_\_\_\_\_, 200\_ *[to be completed by Oracle]*

PARTNER:

ORACLE *[OR LOCAL ORACLE  
SUBSIDIARY NAME]*

PARTNER ADDRESS: \_\_\_\_\_

PARTNER FAX NO.: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Date: \_\_\_\_\_

Signature Date: \_\_\_\_\_

Agreement No.: \_\_\_\_\_

*[to be completed by Oracle]*