Summary Title: Two-Year Renewal of Oracle Technical Support Services

Title: Approval of Contract Number C20178071 With Oracle America, Inc., for Two-Year Term for Software Program Technical Support Services in the Amount of $262,986; and Authorize the City Manager to Authorize and Execute a Contract Amendment of up to a 10 Percent Contingency in the Event Additional Services are Required, Up to an Amount Not-to-Exceed $26,298, for a Total Not-to-Exceed Amount of $289,284

From: City Manager

Lead Department: IT Department

Recommended Motion
Staff recommends that Council approve the following motions:

1. Authorize the City Manager or designee to execute the attached two-year license and support agreement with Oracle America, Inc., in an amount not to exceed $262,986 subject to the annual appropriation of funds (Attachment A); and,

2. Approve and authorize the City Manager or designee to authorize and execute a contract amendment of up to a 10% contingency amount in the event additional services are required up to a maximum amount of $26,298, for a total not-to-exceed amount of $289,284.

Discussion
The City has been using Oracle databases since 2000 for various data systems, such as our SAP and SCADA systems. This contract is necessary to continue receiving updates to software, software patches, and technical support for the Oracle products licensed under this agreement. Last fiscal year, Council approved a one-year contract for Oracle support, contract C19174703 (CMR:10117).

Each year, staff reviews the existing Oracle license count for accuracy to ensure that we are licensed appropriately.

A solicitation would be impractical and unavailing at this time as the Oracle licenses are
required to run some of the City’s most critical and necessary applications, and staff has
determined the costs to be reasonable. The absence of these licenses at this time would
not allow core City systems to be accessed and business processes would stop. For
these reasons, staff is requesting an exemption from competitive solicitation as being
impractical and unavailing under PAMC 2.30.360(b)(2).

**Resource Impact**
Funding for this contract is available in the FY 2020 Operating Budget for the IT
Department in the Technology Fund. Funding for subsequent years of the contract will
be subject to approval through the annual appropriation of funds.

**Stakeholder Engagement**
This agreement has been reviewed and negotiated by the City Attorney Office, the
Administrative Services Purchasing Division, and Oracle. All parties have agreed to the
terms and conditions set forth in the agreement.

**Environmental Review**
Approval of these contracts do not constitute a project under the California
Environmental Quality Act (CEQA); therefore, an Environmental Assessment is not
required.

**Attachments:**
- Attachment A: Oracle Support Service Number 1844903 Two-Year Renewal
**Vendor Address**

ORACLE AMERICA, INC.
500 ORACLE PARKWAY
REDWOOD SHORES CA 94065
Tel: 408-642-2847 Fax: 408-642-2847

**Ship To:**  
Information Technology Services  
City of Palo Alto  
250 Hamilton Ave., 2nd Floor  
Palo Alto CA 94301

**Bill To:**  
Information Technology Services  
City of Palo Alto  
250 Hamilton Ave., 2nd Floor  
Palo Alto CA 94301

---

**Council Approved Purchase Order**

P.O. NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES, SHIPPING PAPERS AND CORRESPONDENCE PERTAINING TO THIS ORDER

<table>
<thead>
<tr>
<th>Item</th>
<th>Material/Description</th>
<th>Quantity</th>
<th>UM</th>
<th>Net Price</th>
<th>Net Amount</th>
</tr>
</thead>
</table>
| 0010 | License and Technical Support Services  
Renewal of Oracle Licenses and Technical Support for in the Amount of $248,712.16, Support Service Number #1844903  
Start Date: March 17, 2020  
End Date: March 16, 2022 | 1.00 | | 248,712.16 USD | 248,712.16 |
| 0020 | Hardware Technical Support Services  
$3,787.06  
Start Date: Nov. 16, 2019  
End Date: March 16, 2022 | 1.00 | | 3,787.06 USD | 3,787.06 |
| 0030 | Program Technical Support Services  
$10,486.74  
Start Date: Nov. 26, 2019  
End Date: March 26, 2022 | 1.00 | | 10,486.74 USD | 10,486.74 |

The attached Service Details document provides further detail on the services and pricing, and is hereby attached and incorporated into this Purchase Order by reference as though fully set forth herein.

This Purchase Order is subject to the Oracle Public Sector Technical Support Services Agreement between City of Palo Alto and Oracle America, Inc., Agreement No. US-PS-TSSA-2103261, effective date 21-MAY-2019, as amended by Amendment One to Agreement No. US-PS-TSSA-2103261, which are hereby attached and incorporated into this Purchase Order by reference as though fully set forth herein.

City’s project manager: Sherrie Wong  
email: Sherrie.Wong@CityofPaloAlto.org

**Total 262,985.96**

SIGNATURE BLOCK follows on the next page.
City of Palo Alto
Purchasing and Contract Administration
P.O.Box 10250
Palo Alto CA 94303
Tel:(650)329-2271 Fax:(650)329-2468

Council Approved
Purchase Order

PURCHASE ORDER NUMBER C20178071 SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Purchase Order effective as of March 16, 2020.

CITY OF PALO ALTO

____________________________
Ed Shikada
City Manager

ORACLE AMERICA, INC.

Officer 1
By: Alex Strayer
Name: Alex Strayer
Title: Director, Deal Management, Americas SSC

Officer 2 (Required for Corp. or LLC)
By: Jake Camarillo
Name: Jake Camarillo
Title: Centralized Workflow Manager

APPROVED AS TO FORM:

____________________________
City Attorney or designee
(Required on Contracts over $25,000)

Attachments:
Service Details
Agreement No. US-PS-TSSA-2103261, effective date 21-MAY-2019, as amended by Amendment One to Agreement No. US-PS-TSSA-2103261
SERVICE DETAILS

<table>
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<tr>
<th>Product Description</th>
<th>CSI #</th>
<th>Qty</th>
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Support Service Number: 1844903
## Program Technical Support Services

### Software Update License & Support

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<th>Product Description</th>
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**Program Technical Support Fees:** USD 248,712.16

## Hardware Technical Support Services

### Oracle Premier Support for Systems

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**Hardware Technical Support Fees:** USD 3,787.06

## Program Technical Support Services

### Software Update License & Support

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<th>End Date</th>
<th>Price</th>
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**Program Technical Support Fees:** USD 10,486.74

**Total Price:** USD 262,985.96

Plus applicable tax

**NOTES**
- If Oracle accepts Your renewal order, the start date set forth in the Service Details table above shall serve as the commencement date of the technical support services and the technical support services ordered under this renewal order will be provided through the end date specified in the table.

Support Service Number: 1844903
for the applicable programs and/or hardware ("Support Period").

- If any of the fields listed in the Service Details table above are blank, then such fields do not apply to Your renewal.
AMENDMENT ONE
TO THE
ORACLE PUBLIC SECTOR TECHNICAL SUPPORT SERVICES AGREEMENT
BETWEEN
CITY OF PALO ALTO
AND
ORACLE AMERICA, INC.

This Oracle Public Sector Technical Support Services Agreement Amendment One (this “Amendment One”) amends the Oracle Public Sector Technical Support Services Agreement, US-PS-TSSA-2103261 dated 21-MAY-2019 (To be completed by Oracle) and all amendments and addenda thereto (the “Agreement”) between City of Palo Alto (“You”) and Oracle America, Inc. ("Oracle").

The parties agree to amend the Agreement as follows:

1. Section 9. NONDISCLOSURE
   a. Delete Subsection 9.1 of section 9 Nondisclosure in its entirety and replace with the following:

   “9.1 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 information clearly identified as confidential at the time of disclosure and “Personal Information” of a California resident as defined in California Civil Code section 1798.81.5 provided, that You follow all operational instructions in the Oracle My Oracle Support (“MOS”) customer portal regarding the provision of Personal Information when submitting a Support Request. The Global Customer Support Business Associate Agreement is attached as Exhibit A.”

   b. Delete Subsection 9.3 of section 9 Nondisclosure in its entirety and replace with the following:

   “9.3 Subject to the applicable law, we each agree not to disclose each other’s Confidential Information to any third party other than those set forth in this Section 9.3 for a period of three years from the date of the disclosing party’s disclosure of the Confidential Information to the receiving party, except for Personal Information, which shall be treated as Confidential Information for as long as the receiving party retains the Personal Information, provided that You follow all operational instructions in the Oracle My Oracle Support (“MOS”) customer portal regarding the provision of Personal Information when submitting a Support Request. You agree to disclose to Oracle only such Personal Information as is reasonably believed to be necessary for Oracle to perform its obligations under this Agreement. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement. 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 Confidential Information to a governmental entity as required by law. In the event You receive a valid request for Oracle’s Confidential Information pursuant to applicable open records law(s), You will provide Oracle with reasonable notice of such request and give Oracle an opportunity to object to or limit any such disclosure. If either party is required to disclose Confidential Information pursuant to a court order, subpoena, search warrant, summons or other operation of law, prior to disclosing Confidential Information, such party shall, if permitted by law, give reasonable notice to the disclosing party of such order of law and an opportunity to object to or limit such production.”

2. Global Customer Support Business Associate Agreement

The Global Customer Support Business Associate Agreement, attached to this Amendment One as Exhibit A, is incorporated into the Agreement.
Subject to the modifications herein, the Agreement shall remain in full force and effect.

The Effective Date of this Amendment One is 21-MAY-2019. (to be completed by Oracle)

City of Palo Alto
Authorized Signature: [Signature]
Name: Ed Shikada
Title: City Manager
Signature Date: 6/14/2019

Oracle America, Inc.
Authorized Signature: [Signature]
Name: Jake Camarillo
Title: Centralized Workflow Manager
Signature Date: 5/21/2019

APPROVED AS TO FORM:
By: [Signature]
Cassie Coleman
Assistant City Attorney
Date: 6/13/2019
EXHIBIT A TO
AMENDMENT ONE
OF THE
ORACLE PUBLIC SECTOR TECHNICAL SUPPORT
SERVICES AGREEMENT
BETWEEN
CITY OF PALO ALTO
AND
ORACLE AMERICA, INC.

Global Customer Support
Business Associate Agreement

This Exhibit A to Amendment One of the Oracle Public Sector Technical Support Services Agreement is incorporated into the Oracle Public Sector Technical Support Services Agreement, US-PS-TSSA-2103261, and all amendments and addenda thereto (the “Agreement”) between City of Palo Alto (“You”) and Oracle America, Inc. (“Oracle”).

WHEREAS in order to receive technical support services from Oracle, You would like to provide Oracle with electronic protected health information (as defined by 45 C.F.R. § 160.103) (“PHI”) that is subject to the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 and all implementing regulations of the U.S. Department of Health & Human Services (collectively “HIPAA”);

WHEREAS Oracle recognizes that You may have obligations under HIPAA to require service providers that create, receive, maintain or transmit PHI to agree to certain contractual terms and conditions in a Business Associate Agreement (“BAA”) designed to maintain the privacy and security of such PHI;

THEREFORE, the parties agree to the following:

I. This BAA applies only to PHI that You provide to Oracle in order to receive standard technical support services for licensed Oracle Programs and Hardware and not other Oracle service offerings including cloud services, consulting, or advanced customer services. You will not provide Oracle with any PHI under this BAA unless You follow the operational requirements specified in Section II.

II. When You provide Oracle with PHI under this BAA, Oracle will protect the privacy and security of such PHI in accordance with the terms specified in Section III provided that You:

A. Submit PHI only in service request (“SR”) attachments on the Oracle My Oracle Support (“MOS”) customer portal (or if renamed, its successor);

B. Do not include PHI in the body of the SR; and

C. When prompted in MOS, indicate that the SR attachment may contain PHI.

III. When You follow the operational requirements specified in Section II, Oracle will take the following measures designed to protect the privacy and security of PHI You submit, unless otherwise required by law:

A. Not use or further disclose such PHI other than as permitted or required by this BAA.

B. Use appropriate administrative, physical, and technical safeguards designed to protect the confidentiality, integrity, and availability of such PHI and comply, where applicable to Oracle in its performance of the technical support services, with 45 C.F.R. § 164 Subpart C, to prevent the use or disclosure of such PHI other than as provided under this BAA; additional information concerning such measures may be specified in this BAA.

C. Report to You any use or disclosure of such PHI/PHI in violation of the terms of this BAA of which Oracle becomes aware, including Breaches of Unsecured Protected Health Information as required by 45 C.F.R. § 164.410 (as those terms are
defined by 45 C.F.R. § 164.402) and Security Incidents (as defined by 45 CFR 164.304). Such report shall include the identification of each individual, to the extent known by Oracle, whose unsecured protected health information has been, or is reasonably believed by Oracle to have been, accessed, acquired or disclosed during such breach. To the extent known, Oracle shall also provide you with: a brief description of what happened, including the date of the breach and the date of the discovery of the breach; a description of the types of unsecured PHI that were involved in the breach; and a brief description of what Oracle is doing to investigate the breach, remediate its cause, and protect against any further breaches of the same or similar nature.

D. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and § 164.308(b)(2), ensure that any subcontractors that access, receive, maintain, or transmit such PHI on Oracle’s behalf in its provision of technical support services under this BAA agree in all material respects to the same restrictions and conditions that apply to Oracle with respect to such PHI under this BAA.

E. Make available to You any requests received by Oracle from individuals to inspect or obtain a copy of their PHI in accordance with 45 C.F.R. § 164.524.

F. Make available to You any requests received by Oracle from individuals to have their PHI amended in accordance with 45 C.F.R. § 164.526.

G. Make available to You any requests received by Oracle from individuals for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

H. Make its internal practices, books and records relating to the use and disclosure of such PHI available to the Secretary of the United States Department of Health and Human Services or his or her designee for purposes of determining Your compliance with 45 C.F.R. § 164 Subpart E.

I. At the end of the term of the Technical Support Services Agreement or upon termination thereof in accordance with its terms, if feasible and at Your request, Oracle shall return or destroy any such PHI then in its possession in any form, and retain no copies of such PHI. If such return or destruction is not feasible, Oracle will extend the protections specified in the order under which the technical support services were acquired to such PHI and limit further uses and disclosures to those purposes that make its return or destruction of such PHI infeasible.

IV. Additional Terms

A. You may terminate this BAA if Oracle is in material breach of the obligations stated herein and fails to correct the breach within 30 days of written specification of the breach.

B. If Oracle knows of a pattern of activity or practice of a subcontractor that constitutes a material breach of the subcontractor’s obligation of the contract executed with Oracle in accordance with Section III.D above, Oracle will promptly require the subcontractor to cure the breach or end the violation, as applicable, and if such steps are unsuccessful, terminate the contract, if feasible.

C. The terms and conditions of this BAA shall survive termination of the Technical Support Services Agreement.

D. When using or disclosing such PHI or when requesting such PHI from You, the parties shall make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purposes of the use, disclosure or request.
ORACLE PUBLIC SECTOR TECHNICAL SUPPORT SERVICES AGREEMENT

This Oracle Public Sector Technical Support Services Agreement (this "Agreement") is between Oracle America, Inc. ("Oracle") and the entity identified below in the signature block ("You").

1. DEFINITIONS

1.1 "Agreement" refers to this Oracle Public Sector Technical Support Services Agreement (including any amendments thereto). This Agreement governs Your use of the Technical Support Services (defined below) ordered from Oracle.

1.2 "Hardware" refers to the computer equipment, including components, options and spare parts.

1.3 "Integrated Software" refers to any software or programmable code that is (a) embedded or integrated in the Hardware and enables the functionality of the Hardware or (b) specifically provided to You by Oracle and specifically listed (i) in accompanying documentation, (ii) on an Oracle webpage or (iii) via a mechanism that facilitates installation for use with Your Hardware. Integrated Software does not include and You do not have rights to (a) code or functionality for diagnostic, maintenance, repair or technical support services; or (b) separately licensed applications, operating systems, development tools, or system management software or other code that is separately licensed by Oracle. For specific Hardware, Integrated Software includes Integrated Software Options separately ordered.

1.4 "Operating System" refers to the software that manages Hardware for Programs and other software.

1.5 "Products" refers to Programs, Hardware, Integrated Software and Operating System.

1.6 "Programs" refers to (a) the software owned or distributed by Oracle that You have ordered, (b) Program Documentation and (c) any Program updates acquired through technical support. Programs do not include Integrated Software or any Operating System or any software release prior to general availability (e.g., beta releases).

1.7 "Program Documentation" refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. You may access the documentation online at http://oracle.com/documentation.

1.8 "Separate Terms" refers to separate license terms that are specified in the Program Documentation, readme files or notice files and that apply to Separately Licensed Third Party Technology.

1.9 "Separately Licensed Third Party Technology" refers to third party technology that is licensed under Separate Terms and not under the terms of this Agreement.

1.10 "Technical Support Services" refers to technical support services which You have ordered in accordance with this Agreement.

1.11 "You" and "Your" refers to the entity that has executed these General Terms.

2. AGREEMENT TERM

Orders may be placed under this Agreement for five years from the Effective Date (indicated below in Section 18).

3. TECHNICAL SUPPORT

3.1 If ordered, annual Technical Support Services (including first year and all subsequent years) for Programs is provided under Oracle’s Software Technical Support Policies in effect at the time the Technical Support Services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information and consents that Oracle may require in order to perform the Technical Support Services. The
Oracle Software Technical Support Policies are incorporated in this Agreement and are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of Technical Support Services provided for supported Programs during the period for which fees for Technical Support Services have been paid. You should review the policies prior to entering into the order for the applicable Technical Support Services. You may access the current version of the Oracle Software Technical Support policies at http://oracle.com/contracts. If you decide to purchase Technical Support Services for any Program license within a license set, you are required to purchase Technical Support Services 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.

3.2 If ordered, annual Technical Support Services (including first year and all subsequent years) for Hardware is provided under Oracle's Hardware and Systems Support Policies in effect at the time the Technical Support Services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information, and consents that Oracle may require in order to perform the Technical Support Services. The Oracle Hardware and Systems Support Policies are incorporated in this Agreement and are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of Technical Support Services provided during the period for which fees for Technical Support Services have been paid. You should review the policies prior to entering into the order for Technical Support Services. You may access the current version of the Oracle Hardware and Systems Support Policies at http://oracle.com/contracts.

3.3 The Technical Support Services start date set forth in your order shall serve as the commencement date of the Technical Support Services and the Technical Support Services ordered will be provided through the end date specified in your order for the applicable Programs and/or Hardware.

4. OWNERSHIP

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

5. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

5.1 Oracle warrants that the Technical Support Services ordered and provided under this Agreement will be provided in a professional manner consistent with industry standards. You must notify Oracle of any Technical Support Service warranty deficiencies within 90 days from performance of the deficient Technical Support Services.

5.2 For any breach of the above warranty, your exclusive remedy and Oracle's entire liability shall be reperformance of the deficient Technical Support Services; or, if Oracle cannot substantially correct the deficiency in a commercially reasonable manner, you may end the deficient Technical Support Services and recover the fees you paid to Oracle for the deficient Technical Support Services.

5.3 To the extent not prohibited by law, this warranty is exclusive and there are no other express or implied warranties or conditions, including warranties or conditions of merchantability and fitness for a particular purpose.

6. INDEMNIFICATION

6.1 To the extent not prohibited by law and subject to sections 6.5, 6.6 and 6.7 below, if a third party makes a claim against either you or Oracle ("Recipient" which may refer to you or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, hardware, or material (collectively, "Material") furnished by either You or Oracle ("Provider" which may refer to you or Oracle depending on which party provided the Material) and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
b. gives the Provider sole control of the defense and any settlement negotiations, to the extent permitted by law; and
c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

6.2 If the Provider believes or it is determined that any of the Material may have violated a third party’s intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it and, if Oracle is the Provider of an infringing Program, any unused, prepaid technical support fees You have paid to Oracle for the license of the infringing Program, if any. If such return materially affects Oracle’s ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

6.3 Notwithstanding the provisions of section 6.2 and with respect to hardware only, if the Provider believes or it is determined that the hardware (or portion thereof) may have violated a third party’s intellectual property rights, the Provider may choose to either replace or modify the hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality) or obtain a right to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may remove the applicable hardware (or portion thereof) and refund the net book value and, if Oracle is the Provider of infringing Hardware, any unused, prepaid technical support fees You have paid to Oracle for the Hardware, if any.

6.4 In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, Oracle may end the license for, and require return of, the Program associated with that Separately Licensed Third Party Technology and shall refund any Program license fees You may have paid to Oracle for the Program.

6.5 Provided You are a current subscriber to Oracle Technical Support Services for the Operating System (e.g., Oracle Premier Support for Systems, Oracle Premier Support for Operating Systems or Oracle Linux Premier Support), then for the period of time for which You were a subscriber to the applicable Oracle Technical Support Services (a) the phrase “Material” above in section 6.1 shall include the Operating System and the Integrated Software and any Integrated Software Options that You have licensed and (b) the phrase “Program(s)” in this section 6 is replaced by the phrase “Program(s) or the Operating System or Integrated Software or Integrated Software Options (as applicable)” (i.e., Oracle will not indemnify You for Your use of the Operating System and/or Integrated Software and/or Integrated Software Options when You were not a subscriber to the applicable Oracle Technical Support Services). Notwithstanding the foregoing, with respect solely to the Linux operating system, Oracle will not indemnify You for Materials that are not part of the Oracle Linux covered files as defined at http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf.

6.6 The Provider will not indemnify the Recipient if the Recipient alters Material or uses it outside the scope of use identified in the Provider’s user documentation or if the Recipient uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material after the end of the license to use that Material. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by Oracle. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of this Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for the Program under the terms of this Agreement. Oracle will not indemnify You for infringement caused by Your actions against any third party if the Program(s) as delivered to You and used in accordance with the terms of this Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time license rights are obtained.

6.7 This section provides the parties' exclusive remedy for any infringement claims or damages.
7. TERMINATION

7.1 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 terminates this Agreement as specified in the preceding sentence, You must pay within 30 days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Technical Support Services received under this Agreement plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if You are in default under this Agreement, You may not use those Technical Support Service ordered.

7.2 You may terminate this Agreement at any time without cause by giving Oracle 30 days prior written notice of such termination. If You end this Agreement as specified in the preceding sentence, You agree You must pay within 30 days all amounts which have accrued prior to the end of this Agreement, as well as all sums remaining unpaid for Technical Support Services received under this Agreement plus applicable related taxes and expenses (if any).

7.3 If You have used a contract with Oracle or an affiliate of Oracle to pay for the fees due under an order and You are in default under that contract, You may not use the Technical Support Services that are subject to such contract.

7.4 Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

8. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION

8.1 All fees payable to Oracle are due within 30 days from the invoice date. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the Technical Support Services You ordered, except for taxes based on Oracle’s income. Reimbursement of expenses related to the provision of any Technical Support Services, if any, will be addressed in the relevant order and/or statement of work for such Technical Support Services.

8.2 You understand that You may receive multiple invoices for the Technical Support Services You ordered. Invoices will be submitted to You pursuant to Oracle’s Invoicing Standards Policy, which may be accessed at http://oracle.com/contracts.

9. NONDISCLOSURE

9.1 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 information clearly identified as confidential at the time of disclosure.

9.2 A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is rightfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

9.3 Subject to the applicable law, we each agree not to disclose each other’s Confidential Information to any third party other than those set forth in the following sentence for a period of three years from the date of the disclosing party’s disclosure of the Confidential Information to the receiving party. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under this Agreement. 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 Confidential Information to a governmental entity as required by law. In the event You receive a valid request for Oracle’s Confidential Information pursuant to applicable law, You will provide Oracle with reasonable notice of such request and give Oracle an opportunity to object to or limit any such disclosure.
10. ENTIRE AGREEMENT

10.1 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 Technical Support Services ordered by You and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Technical Support Services.

10.2 It is expressly agreed that the terms of this Agreement and any Oracle order shall supersede the terms in any purchase order, procurement Internet portal or any other similar non-Oracle document and no terms included in any such purchase order, portal or other non-Oracle document shall apply to the Technical Support Services ordered. In the event of any inconsistencies between the terms of an order and this Agreement, the order shall take precedence. This Agreement and orders may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of You and of Oracle. Any notice required under this Agreement shall be provided to the other party in writing.

11. 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 THE ORDER GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF TECHNICAL SUPPORT SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT TECHNICAL SUPPORT SERVICES GIVING RISE TO THE LIABILITY.

12. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Technical Support Services. You agree that such export laws govern Your use of any Technical Support 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, Product and/or materials resulting from Technical Support 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.

13. FORCE MAJEURE

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of us may cancel unperformed Technical Support Service and affected orders upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for Technical Support Services ordered or delivered.

14. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of State of California.

15. NOTICE

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 America, Inc., 500 Oracle Parkway, Redwood City, California, United States, 94065, Attention: General Counsel, Legal Department.
16. ASSIGNMENT

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

17. OTHER

17.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.

17.2 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.

17.3 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.

17.4 Products and Technical Support Services deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Technical Support Services deliverables in such applications.

17.5 The Uniform Computer Information Transactions Act does not apply to this Agreement or orders placed under it.

17.6 You understand that Oracle's business partners, including any third party firms retained by You to provide consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner unless (i) the business partner is providing services as an Oracle subcontractor in furtherance of an order placed under this Agreement and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle resources under that order.

17.7 For software (i) that is part of Programs, Operating Systems, Integrated Software or Integrated Software Options (or all four) and (ii) that You receive from Oracle in binary form and (iii) that is licensed under an open source license that gives You the right to receive the source code for that binary, You may obtain a copy of the applicable source code from https://oss.oracle.com/sources/ or http://www.oracle.com/goto/opensourcecode. If the source code for such software was not provided to You with the binary, You may also receive a copy of the source code on physical media by submitting a written request pursuant to the instructions in the “Written Offer for Source Code” section of the latter website.
18. AGREEMENT EFFECTIVE DATE
The Effective Date of this Agreement is 21-MAHY-2019. (DATE TO BE COMPLETED BY ORACLE)

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