



Enterprise Linux and Oracle VM Ordering Document

Oracle America, Inc.
500 Oracle Parkway
Redwood Shores, CA 94065

Your Name: City of Columbus
Your Location: Jerry Hammond Center
1111 East Broad Street Suite 300
Columbus, OH 43205

Your Contact: Mark Freeman
Phone Number: 614724.1521
Email Address: MAFreeman@columbus.gov

ORACLE CONTRACT INFORMATION

Agreement: Oracle Linux and Oracle VM Services Agreement
Agreement Name: Oracle Linux and Oracle VM Services Agreement v092010
This ordering document incorporates by reference the terms of the agreement specified above ("agreement").

A. Description and Fees for Ordered Services

All fees on this ordering document are in US Dollars.

Table with 5 columns: Service Description, Quantity, List Fee, Discount %, Net Fee. Row 1: Oracle Linux Premier Limited Support, 5, 6,995.00, 10.00, 6,295.50. Row 2: Oracle Linux Premier Limited Support 1 year, 6,995.00, 6,295.50.

Summary table with 4 columns: List Fee, Discount %, Net Fee. Row 1: Oracle Support Fees, 6,995.00, 10.00, 6,295.50. Row 2: Total Fees, 6,295.50.

B. General Terms

1. Commencement Date

The term for all services is effective upon the effective date of this ordering document.

2. Term

Section A lists the service duration of the Oracle Linux support services, which are described below.

3. Fees, Invoicing, and Payment Obligation

a. All fees due under this ordering document shall be non-cancellable and the sums paid nonrefundable, except as provided in the agreement.

b. Services fees are invoiced in advance of the services term.

c. In addition to the fees listed in section A, Oracle will invoice you for any applicable taxes.

4. Order of Precedence

In the event of any inconsistencies between the agreement and this ordering document, this ordering document shall take precedence.

5. Segmentation

The Enterprise Linux and/or Oracle VM support services provided in this ordering document are offered separately from any other proposal for other Oracle software licenses (e.g., Oracle software other than Oracle Enterprise Linux, Oracle VM-Manager or Oracle VM-Server programs) you may receive or have received from Oracle. You understand that you may obtain the Enterprise Linux and/or Oracle VM support services without accepting a proposal for other Oracle software licenses and the fee for any other Oracle software license or the Enterprise Linux and/or Oracle VM support services shall be as shown in the applicable ordering document for that other Oracle software license or the Enterprise Linux and/or Oracle VM support services.

6. Customer Reference

In consideration of the discounts granted to you under this ordering document, Oracle may refer to you as a customer in sales presentations, marketing vehicles and activities. In addition you agree to become part of Oracle's reference program by working with a representative from Oracle Marketing to develop a customer profile for use on Oracle.com and for other promotional activities at Oracle's discretion. The profile will include a quote from an executive of your company and your company's logo.

C. Modifications to the Terms of the Agreement

1. Section H (Nondisclosure)

Add the following language to the beginning of this Section:

"This Section H (Nondisclosure) does not apply to the extent that confidential information, as defined below, is required to be disclosed by applicable law, including the Ohio Public Records Law. Notwithstanding the foregoing, if you receive a request for disclosure of Oracle confidential information, you agree to promptly notify Oracle in writing and give Oracle an opportunity to request confidentiality protection for any information to which you may deny access under law."

2. Section L (Other)

Delete subsection number two in its entirety and replace with the following:

"This agreement is governed by the substantive and procedural laws of the State of Ohio."

9. Add as new Section N (Equal Opportunity Clause)

The provisions of this Section [] (Equal Opportunity Clause) shall be applicable only with respect to services of Oracle (the "contractor") ordered under this agreement and provided from locations within the city of Columbus (the "City"). The City's access to reports and documents under this Section [] shall be limited to one request during the term of this agreement, at the City's cost, and provided that such request does not unreasonably interfere with the contractor's normal business operations. Confidential information and documents shall be protected under the terms of Section H of this agreement. If the City believes that the contractor has breached any of the provisions of this Section [] and contractor fails to correct such breach within 30 days of written specification of the breach, the City's exclusive remedy for such breach shall be to terminate this agreement for the City's convenience and pay within 30 days all amounts remaining unpaid for the technical support services performed prior to such termination.

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment up-grading, demotion, or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.
- (3) It is the policy of the city of Columbus that business concerns owned and operated by minority and female persons shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the city.

- (4) The contractor shall permit access to any relevant and pertinent reports and documents by the Executive Director of the Equal Business Opportunity Commission Office (EBOCO) for the sole purpose of verifying compliance with this Article, and with the regulations of the Contract Compliance Office. All such materials provided to the Executive Director of the Equal Business Opportunity Commission Office (EBOCO) by the contractor shall be considered confidential.
- (5) The contractor will not obstruct or hinder the Executive Director of the Equal Business Opportunity Commission Office (EBOCO) or his deputies, staff and assistants in the fulfillment of the duties and responsibilities imposed by Article I, Title 39.
- (6) The contractor and each subcontractor will include a summary of this Equal Opportunity Clause in every subcontract. The contractor will take such action with respect to any subcontractor as is necessary as a means of enforcing the provisions of the Equal Opportunity Clause.
- (7) The contractor agrees to refrain from subcontracting any part of this contract or contract modification thereto to a contractor not holding a valid certification number as provided for in Article I, Title 39.

The offer is valid through **30-NOV-2010** and shall become binding upon execution by you and acceptance by Oracle.

City of Columbus

Oracle America, Inc.

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

Signature Date _____

Signature Date _____

Effective Date

(to be completed by Oracle) _____

ORACLE LINUX AND ORACLE VM SERVICES AGREEMENT

A. Agreement Definitions

"You" and "your" refers to the individual or entity that has executed this agreement ("agreement") and ordered services from Oracle America, Inc. ("Oracle") or an authorized distributor.

For purposes of this agreement, the term "services" refers to Oracle Linux and/or Oracle VM support services and other services as defined under the Oracle Linux and Oracle VM support policies. Other services such as education, hosting/outsourcing, consulting or any other services that may be available from Oracle must be ordered under a separate Oracle agreement.

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

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

"supported system" is defined as (i) a system to which you intend to apply or have applied services received from Oracle at the specified service level in your order including updates, patches, fixes, security alerts, work arounds, configuration, installation assistance (for Oracle VM, supported system includes Oracle VM-Manager) or (ii) a system to which you intend to submit or have submitted information to Oracle seeking service at the service level specified in your order.

"physical CPU" is defined as each monolithic integrated circuit responsible for executing a system's programs. A monolithic integrated circuit with multiple cores or hyperthreading is counted as a single physical CPU when determining the total number of physical CPUs in a system.

"term" is defined as the duration for which you have acquired the services.

B. Applicability of Agreement

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

C. Support Services

The services are provided at the support level and for the term defined in your order.

When ordering services you must comply with the following availability rules:

- Oracle Linux Premier Limited, Oracle Linux Basic Limited, and Oracle VM Premier Limited support services are available only for systems with no more than 2 physical CPUs per system.
- Oracle Linux Premier, Oracle Linux Basic, Oracle Linux Network, and Oracle VM Premier support services are available for systems with any number of physical CPUs per system.

Upon Oracle's acceptance of your order, you have the limited right to receive the services solely for your business operations and subject to the terms of this agreement.

For purposes of the ordering document, Oracle Linux support services consist of the Oracle Linux support services level you may have ordered for the Oracle Linux programs; and Oracle VM support services consist of the Oracle VM support services level you may have ordered for the Oracle VM programs. If ordered, the services (including first year and all subsequent years) are provided under the Oracle Linux and Oracle VM support policies in effect at the time the services are provided. The Oracle Linux and Oracle VM support policies, which are incorporated in this agreement, are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of services provided during the period for which fees for the services have been paid. Services are available for certain systems, and may be subject to additional restrictions as set forth in the policies. You should review the policies prior to entering into the ordering document for the applicable services. You may access the current version of the Oracle Linux and Oracle VM support policies at <http://www.oracle.com/us/support/library/enterprise-support-policies-soc-069349.pdf>.

The services are effective upon the effective date of the ordering document unless otherwise stated in your order. If your order was placed through the Oracle Store, the effective date is the date your order was accepted by Oracle.

The services provided under this agreement are in support of licenses you acquired separately. Patches, bug fixes and other code received as part of the services under this agreement shall be provided under the terms of the appropriate license agreement that you accepted upon downloading and/or installing the Oracle Linux and/or Oracle VM program(s).

D. Protection in Event of Infringement

Provided you are a current subscriber to the services, if a third party makes a claim against you that any covered programs furnished by Oracle ("material" or "materials"), and used by you for your business operations infringes its intellectual property rights, Oracle, at its sole cost and expense, will defend you against the claim and indemnify you from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Oracle, if you do the following:

- Notify Oracle 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 assistance it needs to defend against or settle the claim.

If Oracle believes or it is determined that any of the material may have violated a third party's intellectual property rights, Oracle may choose to either modify the material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, then Oracle may, upon 30 days notice to you terminate your right to receive indemnification for your further use of the materials specified; and refund any unused, prepaid service fees, you have paid for the covered programs. Notwithstanding the above, Oracle will not defend or indemnify you in connection with claims, damages, liabilities, costs or expenses arising out of, or caused by, or related to: (a) your distribution of the material; (b) your alteration of the material; (c) your use of a version of the material which has been superseded, if the infringement claim could have been avoided by using the current version of the material; (d) your use of the material outside the scope of use identified in the user documentation or the Oracle Linux and Oracle VM Support Policies; (e) your use of the material when you were not a subscriber to the services; (f) any information, design, specification, instruction, software, data, or material not furnished by Oracle (g) the combination of any material with any products or services not provided by Oracle; (h) your claim, lawsuit, or action against a third party. Oracle will not indemnify you for materials that are not part of the Oracle Linux and Oracle VM covered files as defined at <http://www.oracle.com/us/support/library/enterprise-linux-indemnification-069347.pdf>. **This section provides your exclusive remedy for any infringement claims or damages, liabilities, costs or expenses.**

E. Fees and Taxes

For the first term for which fees are to be paid for the Oracle Linux and/or Oracle VM support services, the initial fees due will be calculated based upon the number of systems to be supported that are in existence as of the date of your order. For the second and all subsequent terms, the fees due will be calculated based on the total number of systems supported that are in existence as of the first day of the term(s).

In addition to the initial fees specified above, you agree to pay additional fees for the level of Oracle Linux and/or Oracle VM support services ordered based on the maximum number of supported systems that exist simultaneously at any time during the term and in accordance with the Oracle Linux and Oracle VM support policies for the level of support you are ordering. In that regard, in the event that you decide to increase the number of supported systems, you agree that you will promptly place an order for Oracle Linux and/or Oracle VM support services for these systems and pay the additional relevant fees.

For services sold in conjunction with Oracle Linux and/or Oracle VM support services, the fees due for the initial term and all subsequent terms will be based on Oracle's then current Oracle Linux and Oracle VM support services pricing policies.

All fees payable to Oracle are due within 30 days from the invoice date. Multi-year term service orders are payable in advance for the entire term of the service. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the services you ordered, except for taxes based on Oracle's income. Your order may reflect estimated taxes; the actual tax will be included on your invoice or credit card charge, as appropriate. You agree that you have not relied on the future availability of any programs or updates in entering into the payment obligations in this agreement and your order.

F. Warranties, Disclaimers, and Exclusive Remedies

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

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

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

G. End of Agreement

If either of us breaches a material term of this agreement and fails to correct the breach within 30 days of written specification of the breach, the other party may terminate this agreement. If services are ended as specified in the preceding sentence, you must pay within 30 days all amounts which have accrued as well as all sums remaining unpaid for services received under this agreement plus related taxes and expenses. Except for nonpayment of fees, we each agree to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. Provisions that survive termination or expiration include those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

H. 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. 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 federal or state governmental entity as required by law.

I. Entire Agreement

You agree that this agreement and the information which is incorporated into this agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable exhibit, is the complete agreement for services ordered by you and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of this agreement is found to be invalid or unenforceable, the remaining provisions will remain effective. It is expressly agreed that the terms of this agreement shall supersede the terms in any purchase order or other non-Oracle document and no terms included in any such purchase order or other non-Oracle document shall apply to the services. This agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of you and Oracle. Any notice required under this agreement shall be provided to the other party in writing.

J. Limitation of Liability

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM DEFICIENT SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT SERVICES GIVING RISE TO THE LIABILITY. THIS SECTION SHALL NOT LIMIT ORACLE'S INDEMNIFICATION OBLIGATION OR YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT CLAIMS OR DAMAGES, LIABILITIES, COSTS OR EXPENSES UNDER SECTION D ABOVE.

K. Export

Export laws and regulations of the United States and any other relevant local export laws and regulations may apply to the service deliverables. You agree that such export control laws govern your use of any services deliverables provided under this agreement, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, program and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

L. Other

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. If while performing services Oracle requires access to other vendors' products that are part of your system, you will be responsible for acquiring all such products and the appropriate license rights necessary for Oracle to access such products on your behalf.
2. This agreement is governed by the substantive and procedural laws of California and you and Oracle agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco, San Mateo, or Santa Clara counties in California in any dispute arising out of or relating to this agreement.
3. If you have a dispute with Oracle or if you wish to provide a notice under the Protection in Event of Infringement 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, 94065, United States, Attention: General Counsel, Legal Department.
4. You may not assign this agreement or give or transfer the services deliverable or an interest in them to another individual or entity. If you grant a security interest in the services deliverables, the secured party has no right to use or transfer those services deliverables.
5. 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.
6. Upon 45 days written notice, Oracle may audit your use of the services. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You agree to pay within 30 days of written notification any fees applicable to your use of the services in excess of your service rights. If you do not pay, Oracle can end your services or this agreement. You agree that Oracle shall not be responsible for any of your costs incurred in cooperating with the audit.
7. The Uniform Computer Information Transactions Act does not apply to this agreement.

M. Force Majeure

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for services provided.

The offer is valid through 30-NOV-2010 and shall become binding upon execution by you and acceptance by Oracle.	
City of Columbus	Oracle America, Inc.
Signature _____	Signature _____
Name _____	Name _____
Title _____	Title _____
Signature Date _____	Signature Date _____
Effective Date (to be completed by Oracle) _____	

