



**ORACLE TECHNICAL SUPPORT SERVICES  
NASA SEWP V SUPPLEMENTAL TERMS AND CONDITIONS v011519**

**THESE ORACLE TECHNICAL SUPPORT SERVICES NASA SEWP V SUPPLEMENTAL TERMS AND CONDITIONS (“SUPPORT STCs”) SHALL APPLY TO THE ORACLE TECHNICAL SUPPORT SERVICES THAT YOU ORDER FROM THE CONTRACTOR (THE “CONTRACTOR”). THESE SUPPORT STCs SHALL BE EXPRESSLY INCORPORATED INTO YOUR ORDER WITH THE CONTRACTOR. THESE SUPPORT STCs ARE CONSIDERED PART OF THE SCHEDULE OF SUPPLIES/SERVICES IN YOUR ORDER TO THE CONTRACTOR.**

**1. DEFINITIONS**

1.1 **“contract”** refers to the Contractor’s NASA SEWP V contract.

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 release).

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, readmes 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 these Support STCs.

1.10 **“Technical Support Services”** refers to technical support services which You have ordered in accordance with these Support STCs.

1.11 **“You”** and **“your”** refers to the ordering activity that has ordered programs, and/or services from an authorized distributor (“Contractor”) under the contract.

1.12 **“order”** refers to the order placed against the contract inclusive of the expressly incorporated Support STCs.

## 2. TECHNICAL SUPPORT

2.1 Technical support consists of annual technical support services you have ordered, or will order, for the Programs or Hardware, including support renewals. Bug fixes, security fixes and any updates received shall be provided under the terms of the end user license agreement that You accepted upon ordering the Programs.

2.2 If ordered, annual technical support (including first year and all subsequent years) for Programs is provided under Oracle's technical support policies in effect at the time the services are provided. The technical support policies, incorporated herein, are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of services provided for supported Programs during the period for which technical support has been ordered. You should review the policies prior to entering into an order for the applicable services. You may access the current version of the technical support policies at <http://www.oracle.com/us/support/policies/index.html>. The technical support policies state that, "global customer support services and systems are not designed to accommodate special security controls that may be required to store or process certain types of sensitive data." Accordingly, as stated in the technical support policies, You agree not to submit any health, payment card, CUI or other controlled or sensitive data that require protections greater [such as those in DFARS 252.204-7012 or substantively similar requirements] than those specified in the Oracle Global Customer Support Security Practices to Oracle as part of any service request. Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with your order may be renewed annually through a reseller that is expressly authorized to distribute support renewals. The order with Contractor will specify your SULS fee for the first renewal year should you renew SULS for the same number of licenses for the same programs as contained in the original order; the fee for SULS for the second renewal year will not increase by more than 4% over the prior year's fees. If you elect not to purchase technical support at the time that the Program is ordered, then you may be required to pay reinstatement fees in accordance with Oracle's technical support policies in effect at the time of reinstatement if you decide to purchase technical support at a later date. Technical support for Programs is effective upon shipment of tangible media or upon the effective date of the order if shipment of tangible media is not required.

2.3 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 these Support STCs 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>.

2.4 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.

2.5 Invoices for Technical Support Services shall be submitted by Contractor on a quarterly basis (unless otherwise specified in the order) after the completion of such period. Technical Support Services charges for SULS (or any successor technical support offering to SULS) are classified as service and must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

2.6 Notwithstanding anything in Oracle's technical support policies to the contrary, you may discontinue technical support at the end of any current technical support term and, at any time thereafter, reinstate technical support by executing an order for such services with Contractor. If you decide to reinstate technical support, you must pay a reinstatement fee. The reinstatement fee shall be the amount that would have been paid by the ordering activity for the past support period had technical support not lapsed. In addition to the reinstatement fee described in the preceding sentence, you must pay the technical support fee for the new support period. This technical support fee for the new support period is computed as follows: (i) if technical support lapsed, then the technical support fee for a twelve month support period shall be the last annual technical support fee you paid for the relevant program; (ii) if you never acquired

technical support for the relevant program, then the annual technical support fee shall be the fee that would have been charged if support had been ordered originally for the relevant program per Oracle's Support pricing policies in effect at the time of reinstatement. Renewal adjustments may be applied to the annual support fee described in (i) and (ii) above.

### **3. 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 your order and these Support STCs.

### **4. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES**

4.1 Oracle warrants that the Technical Support Services ordered and provided under these Support STCs 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.

**4.2 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 COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT TECHNICAL SUPPORT SERVICES AND RECOVER THE FEES YOU PAID TO CONTRACTOR FOR THE DEFICIENT TECHNICAL SUPPORT SERVICES.**

**4.3 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.**

### **5. INDEMNIFICATION**

5.1 To the extent not prohibited by law and subject to sections 5.5, 5.6 and 5.7 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; provided that for the U.S. Government, the control of the defense and settlement is subject to 28 U.S.C. 516; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

5.2 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.. 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.

5.3 Notwithstanding the provisions of section 5.2 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.

5.4 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.

5.5 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 5.1 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 5 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>.

5.6 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 these Support STCs, 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 these Support STCs. 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 these Support STCs 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.

5.7 Oracle's right to end an order in accordance with this Section 5 shall not apply if You authorize or consent to use of the Material, and in such cases, Oracle shall have no obligation to indemnify or other liability whatsoever, to You or to third parties for infringement, and the exclusive cause of action and remedy for infringement shall be in accordance with 28 U.S.C. 1498, as set forth in 48 C.F.R. 27.201-1(a).

5.8. With respect to the U.S. Government, the foregoing indemnification shall not apply as to the United States indemnifying Oracle or any other party; however, Oracle reserves the right to seek indemnification from the U.S. Government in accordance with the preceding paragraphs should Federal statute permit such indemnification.

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

## **6. ACCESSIBILITY**

The extent to which an Oracle product is, prior to any customizations, capable of providing comparable access to individuals with disabilities consistent with the applicable provisions of the Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as 'Section 508') effective as of June, 2001, or the Revised version in Appendix A (known as 'Revised Section 508') effective as of January, 2018 and the Web Content Accessibility Guidelines (WCAG) version 2.0 level AA, respectively, is indicated by the dependencies, comments and

exceptions (some of which may be significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT) available at [www.oracle.com/us/corporate/accessibility](http://www.oracle.com/us/corporate/accessibility) for each product, when they are used in accordance with Oracle's associated documents and other written information, and provided that any assistive technologies and any other products used with them properly interoperate with them. In the event that no VPAT is available for a particular Oracle product, please contact the Oracle Accessibility Program Office at [accessible\\_ww@oracle.com](mailto:accessible_ww@oracle.com). In some cases, the outcome may be that a product is still being evaluated for accessibility, may be scheduled to meet accessibility standards in a future release, or may not be scheduled to meet accessibility standards at all. Oracle customers may call Oracle Support at 1.800.223.1711. Hearing-impaired customers in the U.S. who wish to speak to an Oracle Support representative may use a telecommunications relay service (TRS). Information about the TRS is available at <http://www.fcc.gov/cgb/consumerfacts/trs.html>, and a list of telephone numbers is available at <https://www.fcc.gov/general/telecommunications-relay-services-directory>. International hearing-impaired customers should use the TRS at +1.605.224.1837. An Oracle Support engineer will respond to technical issues according to the standard service request process. Oracle cannot make any commitments about future product directions, including plans to address accessibility or the availability of VPATs. Product direction remains at the sole discretion of Oracle. No other terms, conditions, statements or any other such representations regarding or related to accessibility shall apply to the Oracle products provided under these Support STCs.

## 7. INTERNET PROTOCOL VERSION 6 (IPv6).

The Oracle technical support services specified in the order are capable of accommodating Internet Protocol version 6 (IPv6) to the extent described in the applicable Oracle product/service documentation available at [oracle.com](http://oracle.com). If the product/service documentation is silent on IPv6, then Oracle makes no representation regarding IPv6 capability for that product/service. No other contract or order terms related to IPv6 apply to the Oracle product/service.

## 8. NONDISCLOSURE

8.1 By virtue of your order for Technical Support Services, Oracle and you (hereinafter in this Section 8 "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 your order and these Support STCs. Confidential Information shall be limited to the terms under these Support STCs and all information clearly identified as confidential at the time of disclosure.

8.2 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 lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

8.3 Subject to the Freedom of Information Act ("FOIA") (5 U.S.C. §552), 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, including Contractor, who are required to protect it against unauthorized disclosure in a manner no less protective than under these Support STCs. Nothing shall prevent either party from disclosing the terms or pricing under these Support STCs or orders submitted under these Support STCs in any legal proceeding arising from or in connection with these Support STCs 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 FOIA, You will provide Oracle with reasonable notice of such request and give Oracle an opportunity to object to or limit any such disclosure.

## 9. ENTIRE AGREEMENT

9.1 You agree that these Support STCs and the information which is incorporated into these Support STCs 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.

9.2 It is expressly agreed that 1) the terms of these Support STCs and 2) any Oracle terms distributed to you by Contractor and expressly included in your 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 unless expressly agreed to in writing by the parties. In the event of any inconsistencies between the terms of an order and these Support STCs, these Support STCs shall take precedence unless expressly indicated otherwise. These Support STCs and orders 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 the Contractor. Any notice required under these Support STCs shall be provided to the other party in writing.

## **10. 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 THESE SUPPORT STCS OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID CONTRACTOR 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 CONTRACTOR FOR THE DEFICIENT TECHNICAL SUPPORT SERVICES GIVING RISE TO THE LIABILITY.**

## **11. 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 these Support STCs, 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.

## **12. FORCE MAJEURE**

Neither Oracle, You or the Contractor 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 all will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, the affected order(s) will be terminated for the government's convenience unless the parties otherwise agree in writing. This section does not excuse any 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.

## **13. NOTICE**

If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification section of these Support STCs, 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.

## **14. ASSIGNMENT**

You may not assign your order, inclusive of these Support STCs, 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 or transfer the Technical Support Service 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.

## 15. OTHER

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

15.2 If any term of these Support STCs 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 these Support STCs.

15.3 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 Technical Support Services deliverables in such applications.

15.4 The Uniform Computer Information Transactions Act does not apply to these Support STCs or orders placed incorporating them.

15.5 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 these Support STCs and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle resources under that order.

15.6 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.

15.7 Oracle, as the owner of the intellectual property of the Technical Support Services, is a third party beneficiary of the contract and the orders for Oracle products issued pursuant to the contract, but does not assume any of the Contractor's obligations thereunder.