



**ORACLE NASA SEWP V ORACLE LINUX AND ORACLE VM SUPPORT SERVICES (“OLOVM”)
SUPPLEMENTAL TERMS AND CONDITIONS v090616_OLOVM**

THESE OLOVM GOVERNMENT SUPPLEMENTAL TERMS AND CONDITIONS FOR NASA SEWP V SHALL APPLY TO OLOVM THAT YOU ORDER FROM THE CONTRACTOR. THESE OLOVM GOVERNMENT SUPPLEMENTAL TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN THE CONTRACT OR ANY ORDER ISSUED PURSUANT TO THE CONTRACT.

A. Definitions

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

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.

The term “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.

The term “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.)

The term “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.

The term “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.

The term “term” is defined as the duration for which you have acquired the services.

B. Support Services

The services are provided at a support level and for a term identified 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 Contractor’s acceptance of your order and subject to these Oracle NASA SEWP V OLOVM Government Supplemental Terms and Conditions vTBD_OLOVM (“OLOVM Government Supplemental Terms and Conditions “), you have the limited right to receive the services solely for your ordering activity operations and subject to the terms of the contract, including these OLOVM Government Supplemental Terms and Conditions, and the order.

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 by Oracle 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, incorporated herein, are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of services provided during the period for which services have been ordered. 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 an order 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-linux-support-policies-069172.pdf> and the "Lifetime Support Policy: Coverage for Oracle Linux and Oracle VM" document for specific Oracle Linux and Oracle VM program releases that are, or will be covered by the Lifetime Support Policy at <http://www.oracle.com/us/support/library/elsp-lifetime-069338.pdf>.

The services are effective upon the effective date of your order unless otherwise stated in your order.

The services provided under your order, and the contract, are in support of licenses you acquired separately. Patches, bug fixes and other code received as part of the services that you order 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).

C. Protection in Event of Infringement

Provided you are a current subscriber to the services, if a third party makes a claim against you, including the U.S. Government, and its officers, employees and agents, that any covered programs furnished by Oracle ("material" or "materials"), and used by you for your ordering activity operations infringes its intellectual property rights (including U.S. or foreign patent, trademark and copyright), Oracle will indemnify you against the claim to the extent permitted by law 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 control of the defense, with input from you, 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
- 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. 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.

D. Fees

For the first term for which Oracle Linux and/or Oracle VM support services are ordered, 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, additional fees are required 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 prior to increasing the number of supported systems.

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.

In entering into an order under the contract, you agree and acknowledge that you have not relied on the future availability of any, program or updates.

Invoices for services shall be submitted by Contractor on a quarterly basis (unless otherwise specified in the order) after the completion of the services period covered by the invoice. All service fees are invoiced after the performance of the services. Fees for all services must be paid in arrears (31.U.S.C. 3324).

E. Warranties, Disclaimers and Exclusive Remedies

For the sake of clarity, this is the Oracle manufacturer's warranty; nevertheless, it shall be accessed by you through the Contractor.

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 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.

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 WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE REPERFORMANCE OF THE DEFICIENT SERVICES PROVIDED BY ORACLE; 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 PROVIDED BY ORACLE TO YOU.

F. Export

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the services deliverables. You agree that such export laws govern your use of any services deliverables provided under the contract, 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.

G. Other

1. Oracle is an independent contractor and you agree that no partnership, joint venture, or agency relationship exists between you and Oracle or between Contractor and Oracle. Each party will be responsible for paying its 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. You may not assign orders or give or transfer the services deliverables 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.
3. Unless otherwise agreed in an order, upon 45 days written notice, and no more than once annually, 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. Oracle shall comply with reasonable security and safety rules, policies, and procedures ("security rules") while performing any such audit, provided that such security rules are applicable to the performance of the audit; you make such security rules available to Oracle prior to the commencement of the audit; and such security rules do not modify or amend the terms and conditions of the contract or the applicable order. You shall be responsible for either A) paying any underpaid fees related to use of the services and Oracle or the Contractor, as the case may be, shall submit a contract modification to document the amount of such fees, or B) for discontinuing noncompliant use. Oracle shall not be responsible for any costs incurred by you in cooperating with the audit.
4. The Uniform Computer Information Transactions Act does not apply to these OLOVM Government Supplemental Terms and Conditions nor any order placed pursuant to them.
5. If any document incorporated by reference into these OLOVM Government Supplemental Terms and Conditions contains a provision (a) allowing for the automatic termination of your services; (b) allowing for the automatic renewal of services and/or fees; and/or (c) requiring the governing law to be anything other than Federal law, then, such terms shall not apply. If any document incorporated by reference into these OLOVM Government Supplemental Terms and Conditions contains an indemnification provision, such provision 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 such provision(s) should Federal statute permit such indemnification

H. Force Majeure

Oracle shall not 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 Oracle; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of Oracle. Oracle will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, you will terminate for convenience the contract unless the parties agree otherwise in writing. This section does not excuse Oracle's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for services provided.