

**UNIVERSITY OF TEXAS SYSTEM
VOLUME PRICING CONTRACT
WITH
ORACLE CORPORATION**

This **VOLUME PRICING CONTRACT** for the acquisition of Oracle Corporation products and related services is entered into between The University of Texas System, an agency and institution of higher education organized under the laws of the State of Texas, and Oracle Corporation (“Oracle”), a Delaware corporation with its principal place of business at 500 Oracle Parkway, Redwood City, California 94065-1677 Federal Tax Identification Number 94-2871189. The University of Texas System represents that it has the authority to enter into this Master Agreement 2004 for the benefit of its Affiliates.

1. CONTRACT SCOPE

This volume pricing contract ("Master Agreement 2004") sets forth the terms and conditions governing Oracle's provision of software technology to Authorized Users, as defined herein, of this Master Agreement 2004 under licenses of Programs available in production release, and includes Documentation, maintenance and incidental professional services and training services related thereto. Such Programs and services shall be delivered and/or licensed by Oracle during the Master Agreement 2004 term in accordance with the rights, obligations and pricing set forth herein.

2. MASTER AGREEMENT 2004 TERM

The term of this Master Agreement 2004 shall be five (5) years commencing on the date that the last signature is affixed hereto (the “primary term”). The parties may mutually agree to renew the Master Agreement 2004, upon approval of the University of Texas System and Oracle, upon expiration of the primary term for an additional two (2) year term (the “renewal term”). The extension, if agreed to, shall be documented as an amendment to the Master Agreement 2004 and be executed at least thirty (30) days prior to the end of the primary term. The primary term and the renewal term are sometimes collectively referred to in this Master Agreement 2004 as the “contract term.” Upon expiration or termination of the Master Agreement 2004, all rights and obligations set forth herein shall survive in accordance with their terms for procurements made or individual licenses granted to Authorized Users prior to such termination.

3. MERGER OF APPENDICES/ORDER OF PRECEDENCE:

This Master Agreement 2004 shall be deemed inclusive of the following documents which shall be incorporated herein as if set forth at length:

- Appendix A – Additional Clauses for Contracts
- Appendix B – Global Price List dated January 23, 2004 (“Price List”)
- Appendix C – Price List Supplement dated January 23, 2004
- Appendix D – Migration Matrix
- Appendix E – Sample Ordering Document
- Appendix F – Professional Services Rates
- Appendix G – Professional Services Ordering Documents
- Appendix H– Education Units Rates
- Appendix I – Affiliates

To the extent that such Appendices furnished by Oracle include inconsistent terms, such terms and conditions shall be of no force and effect as between the parties. In the event that there are conflicts among this Master Agreement 2004 and its Appendices and an Order issued hereunder, this Master Agreement 2004 shall take precedence, except as expressly agreed to by the Authorized User and Oracle and documented in an Ordering Document or in an amendment to this Master Agreement 2004.

4. DEFINITIONS:

All terms used in this Master Agreement 2004 shall be given their usual meaning unless provided with a definition as set forth below.

- a. ADMINISTRATIVE FEE shall mean the fee paid by Oracle to UT used to defray UT's cost of negotiating, executing and administering this Master Agreement 2004.
- b. AFFILIATE(s) shall mean any entity that is controlled by UT. For the purposes of this definition, "control" shall mean the possession of fifty percent (50%) or more of the voting power to elect directors of an entity or the power to direct the management and policies of an entity, whether by contract or otherwise. The entities listed on Appendix I constitute the Affiliates of UT. UT may, from time to time, update this list.
- c. AUTHORIZED USERS shall mean the entities who may purchase under this Master Agreement 2004, which are UT and UT's Affiliates.
- d. COMPTROLLER shall mean the Comptroller of Public Accounts of the State of Texas.
- e. DAY shall mean eight (8) hour business days, Monday through Friday, except for State and Federal holidays. If the Master Agreement 2004 calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- f. DELIVERY DATE shall mean the date on which the Programs are delivered by Oracle to Authorized User, or if no delivery is necessary, the effective date set forth on the relevant Order.
- g. DOCUMENTATION shall mean the complete set of user guides and manuals for use of the licensed Programs generally made available by Oracle to its customers.
- h. EDUCATION UNIT shall mean one day (eight hours) education per student at an Oracle Training Center in the United States, exclusive of travel expenses. Education Units expire if not utilized within one year. At Authorized User's option, Authorized User may require the Education Units to be provided within the State of Texas as set forth in Appendix H and Section 9.02.
- i. EFFECTIVE DATE shall mean the date that the last signature is affixed to the Master Agreement 2004.
- j. LICENSE MIGRATION shall mean the contractual modification of an Authorized User's license(s) which were purchased under older license metrics (e.g., Concurrent Device) to take advantage of current license metrics (e.g., Processor). An Authorized User's new licenses resulting from a license migration will reflect Oracle's current license metrics and product names (as determined by the supported product migrations for the old licenses). A license migration always results in a new Order, and often requires the payment of additional license and support fees.
- k. ORACLE CONTRACT ADMINISTRATOR shall mean the individual as appointed by Oracle to administer this Master Agreement 2004 on behalf of Oracle.
- l. (An) ORDER shall be binding if comprised of an executed Ordering Document and an Authorized User's Purchase Order. The fees for such licenses and services shall be calculated in accordance with the terms of this Master Agreement 2004, or such other more advantageous terms for Authorized User as are agreed to between the parties.
- m. ORDERING DOCUMENT shall mean the official form generated by Oracle which will contain the information set forth in Section 7.01(A). A sample form of Ordering Document is set forth in Appendix E to the Master Agreement 2004; Oracle's standard form of Ordering Document may be updated from time to time to reflect Oracle's standard order processing practices.
- n. PERPETUAL is expressly understood to mean that such license rights shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Master Agreement 2004.
- o. PROGRAM shall mean computer software in object code form, which is licensed pursuant to this Master Agreement 2004, including the media, Documentation and Updates.
- p. PURCHASE ORDER shall mean the Authorized User's standard fiscal processing documents which are used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument), issued in conjunction with an Ordering Document. A Purchase Order shall be placed under the terms of, and shall reference, this Master Agreement 2004; any additional or inconsistent terms contained on Authorized User's fiscal processing documents would be superseded by the terms of the Master Agreement 2004, and binding only upon mutual agreement of Oracle and Authorized User as evidenced by inclusion of such terms in the body of an Ordering Document executed by both parties.
- q. STATE shall mean the state of Texas.
- r. SUPPORTED PROGRAM LICENSE shall mean the licensed Programs for which Technical Support has been ordered under the Master Agreement 2004.

- s. TECHNICAL SUPPORT shall mean Oracle-supplied maintenance for the licensed Programs which is further defined under the Master Agreement 2004, comprised of Software Updates and Product Support. Oracle Software Updates provides Authorized Users with rights to new Oracle releases including product upgrades, maintenance releases and patches.
- t. UT shall mean The University of Texas System, including its Board of Regents.
- u. UPDATES shall mean subsequent releases of the Programs that are generally made available for Supported Program Licenses at no additional charge, provided Authorized User has ordered Technical Support for such licenses for the relevant time period. Updates shall not include any options or future products that Oracle licenses separately.
- v. UT CONTRACT ADMINISTRATOR shall mean the individual as appointed by UT to administer this Master Agreement 2004 on behalf of UT and the Authorized Users.
- w. UT COORDINATOR shall mean the individual appointed by UT to administer and collect the Master Agreement 2004 reporting data.

5. PROGRAM LICENSE

5.01 License Grant

- (A) Upon the issuance of a valid Order, Oracle hereby grants to Authorized User a non-exclusive, perpetual right to use the licensed Programs set forth in that Order solely for Authorized User's business operations, which includes any use in furtherance of its instruction, business/administration, research, patient care and service mission in accordance with the rights and obligations set forth in this Master Agreement 2004, including the Documentation and the license definitions set forth in Appendix B and the applicable Ordering Document. The license shall commence upon the Delivery Date and shall survive termination of the Master Agreement 2004 in perpetuity unless otherwise terminated in accordance with this Master Agreement 2004.
- (B) Program Documentation is either shipped with the Programs or Authorized User may access the documentation online, currently at <http://docs.oracle.com>. Authorized User shall not copy or use the Programs (including the Documentation) except as otherwise specified in this Master Agreement 2004 or an Ordering Document. Authorized User shall have the right to allow its third party agents ("Agents") to use the Programs for Authorized User's internal purposes as long as Authorized User ensures that Agent's use of the Programs is in accordance with the terms of this Master Agreement 2004.
- (C) Authorized User agrees that it shall not: (1) cause or permit to cause the reverse engineering, disassembly or decompilation of the Programs; (2) make the Programs or materials resulting from any Consulting Services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific Program license acquired); and (3) use the Programs to provide third party training on the content and/or functionality of the Programs, except for training of Authorized User's licensed users.
- (D) Oracle shall retain all title, copyright and other proprietary rights in the Programs. Authorized User does not acquire any rights, express or implied, in the Programs, other than those specified in this Master Agreement 2004.
- (E) To use the Program specified on an Ordering Document, the Authorized User may need to use an ancillary Program embedded in or delivered with the ordered Program. The ancillary Program may be used only as described in the Ordering Document or Documentation for implementation of the ordered Program and for no other purpose. Any necessary ancillary or imbedded Program will be listed on the Ordering Document or in the Documentation and will be delivered with the ordered Programs. Authorized User shall have no right to use any other software program that may be delivered with ordered Programs.

- (F) UT and Oracle establish this document, known as Master Agreement 2004, to be a centralized UT contract between the parties. An Authorized User's existing licensing and Technical Support agreements in effect with Oracle prior to the date of this Master Agreement 2004 shall not be extinguished or merged solely by execution and approval of this Master Agreement 2004, or unilateral act of Oracle. Rights and obligations relating to Programs and services licensed or procured through any other contract or agreement already in existence at the time of execution and approval of this Master Agreement 2004 remain unchanged; provided however that the parties acknowledge that any pricing terms for Technical Support renewals ordered by an Authorized User during the contract term shall be governed by the Master Agreement 2004.
- (G) Notwithstanding pre-existing or other current licensing or Technical Support agreements with Oracle for Programs and/or services under any agreement made prior to this Master Agreement 2004, in the event that an Authorized User wishes to convert or migrate pre-existing licenses to another license type or metric or purchase additional licenses, the Authorized User may utilize this Master Agreement 2004 and execute the appropriate documentation which shall clearly set forth the migration of the pre-existing licenses to the new scheme, subject to the then-current Oracle policies relating to migrations. Terms and conditions of Master Agreement 2004 will not apply retroactively to licenses purchased under previous agreements, except for those licenses being migrated. Oracle's current eBusiness Migration Matrix is set forth in Appendix D; Oracle agrees that this migration matrix shall remain in effect without material change for a period of six (6) months from the Effective Date of this Master Agreement 2004.
- (H) Authorized User(s) may change the location of the computer(s) on which a licensed Program is being used to another location in the United States without Oracle's prior written consent. A "license transfer" occurs when an Authorized User discontinues its use of a Program on a specified computer and transfers the same license to a new computer with a different hardware/operating system combination. License transfers as a result of operational transfers, transfer of business functions or user consolidations among and between Authorized Users are authorized transfers under this paragraph, provided the transferee is an Authorized User and agrees in writing to be bound by the terms and conditions of the Master Agreement 2004 and the Ordering Document applicable to the transferred licensed Program(s).
- (I) Authorized User may make a sufficient number of copies of each program for Authorized User's licensed use and one copy of each Program for backup purposes when Authorized User's system is inoperative; Authorized User shall have the right to run Oracle database Programs that it has ordered on an unlicensed spare computer for up to a total of ten separate calendar days in any given calendar year. Any backup or disaster recovery use beyond the rights granted herein must be licensed separately.
- (J) Compliance with the Program license is the responsibility of the Authorized User. UT shall not be responsible for any Authorized User's compliance with the Program license. Notwithstanding the foregoing, if UT purchases software licenses for its own use under this Master Agreement 2004, it shall be responsible for its compliance with the Program license. By executing an Order referencing the Master Agreement 2004, the Authorized User agrees to comply with the terms set forth in the Master Agreement 2004 and the relevant Ordering Document. Each Authorized User who purchases under this Master Agreement 2004 is individually responsible to Oracle for complying with the Master Agreement 2004, the Ordering Document and all license and services terms.
- (K) An Authorized User may change the hardware/operating system combination on which a licensed Program is being used to another hardware/operating system combination without

Oracle's prior written consent and without cost other than any media that Authorized User may need to acquire pursuant to Section 10.07 of the Master Agreement 2004.

- (L) Campus Wide Programs require the licensing of all full-time and part-time students, faculty and staff. For any Program license identified as Campus Wide Program(s), Oracle grants to Authorized User the following rights: (i) an unlimited number of internet users to access any of the Campus Wide Programs licensed under an Ordering Document, provided the access is for viewing, querying, or adding data associated with Authorized User's administrative, teaching, research, patient care or service functions. The Authorized User may charge a fee for such internet access provided the fee is designed to only reimburse an Authorized User for its costs incurred in developing and administering Authorized User's business program; and (ii) teaching departments at the Authorized User's institution may participate in the Oracle Academic Initiative (OAI) and/or the Oracle Workforce Development Program (WDP) or successor programs that may replace OAI/WDP. The OAI/WDP membership fee will be waived for any department that elects to incorporate Oracle Programs into its classroom teaching. Teaching departments may apply for the free membership at <http://oai.oracle.com> or <http://workforce.oracle.com>. Once the teaching department is established as an OAI/WDP member, the department will be licensed to use the Programs available under OAI/WDP for the purposes set forth in the applicable agreement.

5.02 Licensed Programs and Service Offerings

- (A) The full line of Programs covered by this Master Agreement 2004 are set forth in Appendix B. Oracle reserves the right to remove the Programs from Appendix B if it reasonably believes such Programs do not comply with the terms of this Master Agreement 2004.
- (B) Oracle shall offer Technical Support for the Programs as provided in Section 8.
- (C) Professional Services & Training Authorized User(s) may obtain professional services and training (education) services from Oracle as provided in Section 9.
- (D) As an accommodation to Authorized User, Oracle may supply Authorized User with pre-production releases of Programs (which may be labeled "Alpha" or "Beta"). These products are not suitable for production use and are provided "as is", without warranty.
- (E) The parties may, from time to time and upon mutual agreement, amend in writing the scope of products offered under this Master Agreement 2004 at any time during the Master Agreement 2004 term to take advantage of Oracle's new Program offerings.
- (F) UT may, at its sole discretion, remove from this Master Agreement 2004 any services or Programs (and other Programs that are functionally co-dependent upon the removed Program) in violation of, or non-compliant with, any existing State statute. UT shall provide written notice to Oracle of any Programs removed pursuant to this section, identifying the nature of the violation or noncompliance, and in the event that Oracle remedies such violation or noncompliance, UT agrees to restore the removed Programs to this Master Agreement 2004. Provided, however, this section shall not limit or reduce Oracle's obligations with respect to the Technology Access Clause as more specifically set forth in Section 4 of Appendix A.

5.03 Copies of Programs and Documentation

Authorized User may make a sufficient number of copies of licensed Programs and Documentation as necessary to enjoy use of the licensed Programs in accordance with the terms of its license. In such event, Authorized User shall be responsible for insuring that all applicable proprietary, confidentiality or other restricted rights markings are included on all copies.

5.04 Business Operations Transfer (Outsourcing)

Notwithstanding any other provision of this Master Agreement 2004, an Authorized User may contract with a facilities management firm ("Outsourcer") to operate the licensed Programs on behalf of the Authorized User provided such operation is either on the Authorized User's hardware/operating system combination or the same or comparable hardware/operating system combination at Outsourcer's site, and provided further (i) the Authorized User hereby assumes all responsibility for the confidentiality of all confidential information and protection of Oracle's proprietary rights, and (ii) the Authorized User shall give Oracle written notice of all licensed Programs to be managed by Outsourcer at the same time as entering into such a contract, and (iii) the Authorized User assumes all liability for shipping the licensed Programs to Outsourcer's site and return of the licensed Programs to the Authorized User's site and agrees to notify Oracle in writing when the licensed Programs have been returned to Authorized User's site, and (iv) in no event shall Outsourcer be allowed to copy the licensed Programs or be granted general development use access to the licensed Programs except as specified herein and (v) to the extent allowable under Texas Law, the Authorized User agrees to indemnify Oracle against all costs, loss, liability and expense (including court costs and disbursement) incurred as a result of (a) any claims or demands brought against Oracle or its directors, employees or agents arising from or in connection with any such services provided by Outsourcer, or (b) Outsourcer's failure to abide by the terms and conditions of this Master Agreement 2004.

6. DESCRIPTION OF TYPES OF LICENSES AVAILABLE

Oracle's licensing metrics are contained in Appendix B. Any reference to "you", "customer" or "Customer" in Appendix B shall mean the applicable Authorized User. Any reference to the "agreement" or "Agreement" in Appendix B shall mean this Master Agreement 2004. Only perpetual licenses are to be made available to Authorized Users under this Master Agreement 2004.

7. PROGRAM AND SERVICES ACQUISITION/DELIVERY/ACCEPTANCE

7.01 Acquisition

(A) Authorized Users may participate in accordance with the terms and conditions set forth herein, and may directly authorize payment to Oracle by the issuance of an Order. The issuance of an Order (signed Ordering Document and Authorized User's issued Purchase Order) shall indicate the Authorized User's acceptance and agreement to the terms and conditions set forth in this Master Agreement 2004, including applicable copyright restrictions agreed to hereunder by UT on behalf of Authorized User.

- i. Oracle shall provide a written quote of the pricing to Authorized User in the form of an Ordering Document. Authorized User shall submit to Oracle an Order (along with a signed Ordering Document and the Authorized User's issued Purchase Order) in order to obtain a Program license or services. Said Order shall be binding upon execution of the Ordering Document by Oracle. Upon Oracle's receipt of a fully executed Order (along with a signed Ordering Document and the Authorized User's issued Purchase Order) all fees are non-cancellable and the sums paid nonrefundable, except as provided in this Master Agreement 2004.
- ii. All Ordering Documents and Authorized User's Purchase Order must reference this Master Agreement 2004 on the face of such documents and shall be deemed to incorporate the terms and conditions of this Master Agreement 2004.

The Ordering Document, as set forth in Appendix E, specifies the following:

- a) Programs to be acquired;
- b) License Type and Quantity (one type per line) (when licensing by Named User Plus, a non-human operated device, exclusive of printers, will be counted as a Named User Plus in addition to all individuals authorized to use the programs, if such devices can access the programs. If multiplexing hardware or software, e.g., a T.P. monitor or a

- web server product, is used, this number must be measured at the multiplexing front end. When licensing by processor, users may be internal, external or third party);
- c) License fees in accordance with the pricing set forth in this Master Agreement 2004;
 - d) Technical Support and Technical Support fees, if any, in accordance with the pricing set forth in this Master Agreement 2004;
 - e) Number of Education Units and education fees, if any, in accordance with the pricing set forth in this Master Agreement 2004;
 - f) Professional Services and Professional Services fees, if any, in accordance with the pricing set forth in this Master Agreement 2004;
 - g) Applicable Discounts calculated in accordance with the pricing set forth in this Master Agreement 2004;
 - h) Applicable credits as the result of a License Migration, if any; and
 - i) Net fees payable by Authorized User(s).

Any additional terms and conditions contained on the Order which amend, alter, change or modify the terms and conditions set forth in the Master Agreement 2004 shall not be binding notwithstanding the acceptance of Programs or payment of said invoice by Authorized User, unless expressly agreed to in writing by both parties. Oracle may offer more advantageous terms to Authorized User at the time of Order, and such additional offers/incentives shall be set forth on the Ordering Document. Written Orders shall separately itemize requests for Program licensing, Technical Support, training and professional services. Orders for multiple types of licenses shall be itemized by type and number. Authorized Users placing such Orders shall confirm pricing, supported hardware/operating system(s) combination(s) and Program availability with Oracle prior to placement of written Orders. Programs ordered shall be presumed Oracle's most recently released version at time of delivery, unless an earlier version is specifically requested in writing by Authorized User and Oracle is willing to provide such version. The written Ordering Document shall indicate an addressee at the site, which will act as the designated recipient for the Program ordered.

- iii. All Orders will be placed directly by Authorized Users with Oracle. Each Authorized User placing an Order hereunder shall be individually responsible for payments to Oracle pursuant to the terms of this Master Agreement 2004.

(B) UT and its Affiliates make no representation or warranty as to the amount of Programs or services that will be purchased under this Master Agreement 2004.

7.02 Delivery: FCA (Free Carrier) Destination

Oracle shall deliver to the Authorized User one copy of the software media and one complete set of Documentation for each licensed Program for use on the applicable hardware/operating system combination. Delivery shall be FCA Destination. Oracle agrees that it will assume the risk of loss for media through the Delivery Date. The price to the Authorized Users under this Master Agreement 2004 shall include all shipping and handling fees.

7.03 Verification of Receipt of Programs

For each licensed Program for which delivery is required under this Master Agreement 2004, the Authorized User shall have the right to verify that its Order was properly shipped (i.e., that it received the proper media). Such verification shall take place within fifteen (15) days after receipt of the Programs. In the event that Oracle has shipped the incorrect media, the Authorized User shall immediately notify Oracle and Oracle shall ship the proper media. Additionally, Oracle and an Authorized User may agree to include acceptance provisions in a specific Ordering Document.

7.04 Trial License

Oracle may include additional Programs with an Authorized User's Order; these additional Programs may be used for trial/evaluation, non-production purposes only for a period of thirty (30) days from Delivery Date. If the Authorized User decides to use any of these Programs after the thirty (30) day trial period, it must obtain a license from Oracle for each Program. If the Authorized User decides not to obtain a license for any Program after the thirty (30) day trial period, it will cease using and will delete the applicable Programs from its computer systems. Programs licensed for trial purposes are provided "as is" and Oracle does not provide Technical Support or offer any warranties for these trial Programs.

8. TECHNICAL SUPPORT

8.01 Technical Support Policies

Technical Support consists of Software Updates, Product Support and/or other Technical Support services that may be ordered. If ordered, annual Technical Support is provided under Oracle's Technical Support policies in effect at the time the services are provided. The Technical Support policies are incorporated into this Master Agreement 2004, and contain additional terms and are subject to change, provided, however that for the primary term of this Master Agreement 2004 the Oracle Technical Support services provided under this Master Agreement 2004 will not materially degrade, such that Oracle Technical Support provides the equivalent or substantially similar level of Technical Support. The current version of the Technical Support policies can be accessed at <http://oracle.com/support/index.html?policies.html>. Technical Support services are provided on an annual basis ("Support Period") and are billed annually in advance. All Technical Support services ordered for a Support Period shall be non-cancelable and non-refundable, however an Authorized User may receive credit(s) for unused Technical Support for licenses terminated due to mutually agreed upon migration of such licenses. Oracle reserves the right to desupport its Programs. Oracle will use commercially reasonable efforts to provide UT and an Authorized User with written notice of desupport twelve (12) months in advance when a program is being desupported. Such desupport notices, which are posted at Oracle's customer support website, MetaLink (or Oracle's then current customer support web site), contain desupport dates, information about availability of Extended Assistance Support and Extended Support and information about migration paths for certain features. The desupport notices are subject to change and Oracle will provide updated desupport notices on MetaLink as necessary. If an Authorized User desupports a subset of license, it may be required to terminate those licenses. Any cancellation of support may result in the re-pricing of support for the remaining licenses from that particular Order.

9. RELATED SERVICES

Authorized Users may acquire services, including professional services, and Education Units, under this Master Agreement 2004.

9.01 Professional Services

Authorized Users may acquire professional services under this Master Agreement 2004. Professional services shall be charged at the rates set forth in Appendix F. Authorized Users purchasing services under this Master Agreement 2004 will be required to execute an engagement contract and statement of work with Oracle, the forms of which are attached hereto as Appendix G. All rates are inclusive of travel and expenses. No additional amounts can be added to the statement of work for travel and expenses. Professional services provided under this Master Agreement 2004 may be related to an Authorized User's license to use Programs owned or distributed by Oracle, which are acquired by an Authorized User. The agreement referenced in the applicable Order shall govern the use of such licensed Programs. Any Professional Services acquired from Oracle are proposed separately from such Program licenses, and an Authorized User may acquire either services or such Program licenses without acquiring the other.

9.02 Education Units

Education services may be acquired from Oracle separately from Program licenses, and other services at the rates set forth in Appendix H. Authorized Users may acquire either Program licenses or training services without acquiring the other. Authorized User may order Oracle standard Education Units, which are valid for one (1) year from the date of the Ordering Document. Education Units hereunder are for Oracle education only. Each Education Unit may be used to acquire one (1) eight hour day of instruction for one (1) individual at an Oracle Education Center in the U.S. Additionally, Education Units may be acquired for instruction at an Authorized User site in the U.S., for the fees set forth in Appendix H, plus travel and expense reimbursement at the then-current State of Texas Travel Management reimbursement rate for state employees. For training services that will be held in a facility other than an Oracle Education Center, Education Units may be acquired as specified in Appendix H.

9.03 Travel, Meals and Lodging Reimbursement

Rates for professional services and training shall be deemed inclusive of travel, meals and lodging unless expressly stated to the contrary. In any event, reimbursement to Oracle for any travel costs relating to the provision of training and professional services pursuant to the terms hereof shall not exceed the categories and rates specified in the then current Appropriations Act and enforced through the Comptroller's regulations. Expenses, if any, reimbursed by the Authorized User hereunder shall be necessary, approved in advance, in writing by the Authorized User and shall not exceed current State of Texas Travel Guidelines for employees. Unless the Authorized Users otherwise agrees in writing, reimbursement of airfare will not exceed the cost of coach class airfare. No other categories of travel cost are eligible for reimbursement.

10. PRICING/PAYMENT

10.01 Programs, Software Update and Product Support

- (A) During the primary term of the Master Agreement 2004, Authorized User may acquire Program licenses, the first year of Product Support and Software Updates at a fifty (50%) discount off of the fees listed on the Price List in Appendix B provided the Program is in production release when ordered.
- (B) During the primary term of the Master Agreement 2004, Authorized User(s) who qualify as educational providers under §2054.003, Texas Government Code, may acquire Campus Wide Programs in the Named User Plus license metric for only those specific Programs set forth below and the first year of Product Support and Software Updates for such licenses at a minimum of (90%) discount off of the fees listed on the Price List in Appendix B provided the Program is in production release when ordered. The user minimum table and license rules in Appendix B do not apply to Campus Wide Programs. Additionally, during the primary term of the Master Agreement 2004, Authorized Users who have acquired licenses for Campus Wide Programs under an Order placed under the terms of the Master Agreement 2004 may acquire additional licenses of such Campus Wide Programs at the same pricing as the Authorized User's initial order, provided the Authorized User has continuously maintained Software Updates and Product Support for the Programs licensed on its initial order.

ORACLE PROGRAMS ELIGIBLE FOR CAMPUS LICENSES

Oracle Database:

Oracle Database Standard Edition
Oracle Database Enterprise Edition
Oracle Database Personal Edition
Oracle Database Lite

Enterprise Managers:

Diagnostics Pack
Tuning Pack
Change Management Pack
Configuration Management Pack

Enterprise Edition Options:

Real Application Clusters
Partitioning
OLAP
Data Mining
Spatial
Advanced Security
Label Security

Internet Application Server:

Internet Application Server Standard Edition
Internet Application Server Enterprise Edition
Java Edition
Top Link

Internet Application Server Enterprise Edition Options:

Identity Management

Collaboration

Collaboration Suite

Availability of Programs on this list to Authorized Users is subject to any availability restrictions set forth in Appendix B, including restrictions pursuant to compliance with the Technology Access Clause in Section 4 of Appendix A.

- (C) The Price List and discount(s) shall be updated on an annual basis. The parties agree to work in a good faith effort towards a mutual agreement to update the Price List and discount(s) under the Master Agreement 2004 by UT's fiscal year end, August 31, of each contract year. In the event that an amendment to update the Price List and discount(s) is not executed by UT's fiscal year end, and until such amendment is executed during the term of the Master Agreement 2004, the parties agree that Orders submitted by Authorized Users will be quoted by Oracle, based on the Price List and discount(s) in effect at that time. This provision shall not be construed to provide a refund of fees paid for any orders submitted prior to the execution of such an amendment.
- (D) Software Updates and Product Support for licenses acquired under the terms of the Master Agreement 2004 may be renewed annually, and during the primary term of this Master Agreement 2004 the service fees for Software Updates and Product Support for such licenses will not increase over the prior year's fees. Should the parties agree to renew the Master Agreement 2004 prior to the expiration of the primary term, renewal of Product Support and Software Updates for this additional two years, the service fees for Software Updates and Product Support for such licenses will not increase by more than 3% over the prior year's fees. Thereafter (7 years from the Effective Date of the Master Agreement 2004), renewal of Software Updates and Product Support shall be in accordance with the policies and fees in effect at the time such services are renewed.
- (E) Any credits due under this Master Agreement 2004, whether from billing adjustments, billing errors, or any other reason, shall be in the form of a credit memorandum or, at the Authorized

User's written request, a refund check will be issued by Oracle to Authorized User. Authorized User may at its sole discretion, apply the credit memorandum amount toward any service invoice or product invoice issued pursuant to this Master Agreement 2004. This subsection 10.01 (E) shall not apply to any license credits or services credits that apply as a result of a License Migration.

10.02 Oracle Special Offers

Oracle may offer more advantageous special promotions or discount packages as Oracle may generally or individually offer during the contract term of Master Agreement 2004, in addition to the discounts/rates as set forth in this Master Agreement 2004, so that Authorized User receives such maximum discount by adding to its normally applicable discount hereunder the excess of such other discounts or promotions.

10.03 Contract Payment Schedule

(A) Authorized Users(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Oracle for license fees, which among other things provides for payment within thirty (30) days after receipt of a correct invoice. Payment under this Master Agreement 2004 shall not foreclose the right to recover payments made for incorrect billings. License fees may be structured and paid over such longer period of time ("license payment term") as the parties mutually agree, which payment term may survive termination of the Master Agreement 2004 as set forth on the Ordering Document; provided however, that nothing herein shall be deemed to waive the power of non-appropriation by Authorized Users, as more specifically set forth in Section 15.

(B) In the event that Technical Support coverage for the licensed Programs is acquired, fees for such support shall be paid in annualized pre-payments; provided, however, that nothing herein shall be deemed to waive the power of non-appropriation by Authorized Users, as more specifically set forth in Section 15. Technical Support Fees shall be calculated as set forth in Section 10 Payments/Pricing.

(C) Payments for Education Units shall be billed in advance.

(D) Payments for professional services shall be billed monthly in arrears, payable net thirty days from receipt of an invoice from Oracle covering the prior monthly period.

(E) Oracle shall comply with Chapter 2251, Texas Government Code in its invoicing practices. Invoices shall track the structure and detail of the Ordering Document.

10.04 Responsibility for Payments

(A) Payment for products and/or services shall be the sole, individual responsibility of the Authorized User. Oracle shall bill each Authorized User in accordance with the then-applicable pricing set forth herein, including credits, if any. Each Authorized User shall make separate application for Programs and/or services and is responsible for payment for those products and/or services, subject to legislative appropriations, as more particularly described in Section 15.

(B) UT is the lead office in awarding this Master Agreement 2004 and assumes no liability for payment for products and/or services rendered by Oracle under this Master Agreement 2004, except as UT may itself order Oracle's products and services under this Master Agreement 2004, in which case it shall be liable directly for such Order, subject to legislative appropriations.

10.05 Taxes

Authorized Users represent that, per Section 151.309, Texas Tax Code, under this Master Agreement 2004 they are exempt from the assessment of State sales, use and excise taxes. Further, Authorized Users represent that under this Master Agreement 2004 they are exempt from Federal Excise Taxes, 26 USC Secs. 4253(i) and (j). An Authorized Users shall provide Oracle with a certificate of its tax exempt status, as appropriate. In the event that Oracle bills for taxes for which an Authorized User is exempt, then the Authorized User shall promptly notify Oracle of such error and the basis for such exemption and Oracle shall take steps to correct such invoice.

10.06 Internet Access to Master Agreement 2004 & Pricing Information

Access by Authorized Users to Master Agreement 2004 terms and pricing information may be made available and posted on the Internet. Notwithstanding anything contrary in this Master Agreement 2004, the parties agree and consent to UT posting and updating the entire Master Agreement 2004, including all appendices and pricing for the full term of the Master Agreement 2004.

10.07 License Transfers/Fees

In the event the Authorized User desires to add a different hardware/operating system combination requiring shipment of new media, the Authorized User may acquire the additional set(s) of CD Packs for the Programs for the specific hardware/operating system combination, provided the Authorized User has continuously maintained Technical Support for the relevant license set and the programs are available in production release for the applicable hardware/operating system combination. Fees for media packs will be assessed at the then-current published rates charged by Oracle for media packs. In certain cases, Oracle may designate supported migration paths for which media will be provided to supported Authorized Users at no additional charge.

10.08 Administrative Fee

Oracle agrees that any prices quoted to Authorized Users by Oracle under this Master Agreement 2004 shall include the Administrative Fee. The Administrative Fee shall be included in the pricing set forth on the applicable Ordering Document. The Administrative Fee shall not be broken out as a separate line item when pricing or invoice is provided to Authorized Users. Oracle will pay UT, on the thirtieth (30th) day of the close of the previous month period, a two percent (2%) Administrative Fee based on the dollar value of all sales to Authorized Users pursuant to this Master Agreement 2004. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

11. WARRANTIES/INDEMNITIES

11.01 Product Performance Warranty

THE WARRANTIES BELOW ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(A) Oracle warrants for a period of one (1) year from the Delivery Date that each unmodified Program for which the Authorized User has a Supported Program license will substantially perform the functions described in the Documentation. Oracle does not warrant that the Programs will meet the Authorized User's requirements, that the Programs will operate in the combinations, which the Authorized User may select for use, that the operation of the Programs will be uninterrupted or error-free, or that all Program errors will be corrected. Limited Production Programs, pre-production releases of the Programs, and computer-based training products are distributed "as is". For breach of the Program warranty the exclusive remedy and Oracle's entire liability shall be the correction of Program errors that caused the breach of the warranty, or if Oracle is unable to make the Program operate as warranted, the Authorized User shall be entitled to recover the fees paid to Oracle for the Program license.

- (B) Oracle warrants the tapes, diskettes or other media to be free of defects in materials and workmanship under normal use for ninety (90) days from the Delivery Date. For breach of the warranty the exclusive remedy and Oracle's entire liability shall be replacement of defective media returned within ninety (90) days of the Delivery Date.
- (C) Oracle warrants that its Technical Support and consulting services will be performed consistent with generally accepted industry standards. This warranty shall be valid for 90 days from performance of service. For breach of the warranty the exclusive remedy and Oracle's entire liability shall be re-performance of the services, or if Oracle is unable to perform the services as warranted, the Authorized Users shall be entitled to recover the fees paid to Oracle for the unsatisfactory services.

11.02 Title, Patent, Copyright and Trademark Warranty

- (A) Oracle warrants and covenants: (1) that it has valid title to or right to license the Oracle products and rights being transferred to Authorized Users pursuant to this Master Agreement 2004, and (2) that it will fully defend and indemnify Authorized Users, at its sole expense, from any claim or action, loss, damage or liability based on any patent, trademark or copyright laws of the United States, and worldwide provided Oracle is notified in writing within thirty (30) days of such claim or action, loss, damage or liability, given all assistance it requires, and (subject to the exercise by the Texas Attorney General of his statutory duties) is permitted to control the defense and/or settlement negotiations, in consultation with the Attorney General. Provided, however, nothing in this paragraph shall prohibit Oracle from participating in such defense any settlement negotiations to the fullest extent authorized by the laws and Constitution of the State of Texas. All parties to this Master Agreement 2004 agree to cooperate reasonably in the event of litigation or settlement negotiations, and all parties shall be entitled, in connection with any such litigation or settlement negotiations, to be represented by counsel at their own expense. Oracle will pay any final judgment based on such infringement of a court of last resort.
- (B) No indemnity shall apply to any infringement arising from use or sale of current Oracle product in combination with any software or device not provided hereunder by Oracle or to any infringement caused by modification of Oracle product by the Authorized User(s). No indemnity shall apply to software made or modified to the Authorized User's specifications or design, including copyright, trademark or patent infringement claims related to images or work produced by the Authorized User(s).
- (C) If the Authorized User's use of Oracle product is enjoined pursuant to this Section, or in the event the products are held or believed by Oracle to infringe, Oracle shall, at its option, either stipulate other equally suitable software, modify the Oracle product so that it no longer infringes, obtain for the Authorized Users the right to continue its use, or accept return of the Oracle product. If Oracle accepts the return of the licensed Oracle product, which has been paid in full, Oracle will refund the Authorized Users the amounts paid for licensing and unused Technical Support.
- (D) This section states the entire liability of Oracle, and the exclusive remedy of the Authorized Users, with respect to any infringement by the product or any part thereof.
- (E) In the event that an action at law or in equity is commenced against an Authorized User arising out of a claim that its use of a product under this Master Agreement 2004 infringes any patent, copyright or proprietary right and Oracle is of the opinion that the allegations in such action in whole or in part are not covered by the indemnification and defense provisions set forth in this Master Agreement 2004, Oracle shall immediately notify the applicable Authorized User in writing, specifying to what extent Oracle believes it is obligated to defend and indemnify under the terms and conditions of this Master Agreement 2004. Oracle shall in such

event protect the interests of the applicable Authorized User and secure a continuance to permit the applicable Authorized User to appear and defend its interests in cooperation with Oracle as is appropriate, including any jurisdictional defenses the applicable Authorized User may have.

11.03 Virus Warranty

Oracle will use reasonable efforts to test Programs for viruses ("Viruses"). Oracle will also maintain a master copy of the appropriate versions of the Programs, free of Viruses. If Authorized User believes a Virus may be present in the delivered Programs, then upon Authorized User's request, Oracle will provide a master copy to Authorized User for comparison with and correction of Authorized User's copy of the Programs.

11.04 Limitation of Liabilities

(A) Oracle hereby fully indemnifies and saves harmless the applicable Authorized User(s) from suits, actions, claims, damages and costs relating to personal injury or damage to real or tangible personal property (as used above, the term "tangible personal property" shall not include software, documentation, data or data files. Oracle's liability shall not apply to damages incurred from use of any software.) Subject to the express limitations of this Section 11.04, Oracle hereby fully indemnifies and saves harmless the Authorized User(s) from suits, actions, claims, damages and costs arising under or connected to Oracle's licensing of Program(s) or performance of services under this Master Agreement 2004, and except as may be provided in Section 11.02, the total liability, if any, of Oracle and its subsidiaries shall not exceed the fees paid by the applicable Authorized User(s) or Authorized User(s) for the applicable Programs or services which gave rise to the liability.

(B) If a suit, action, claim, damages or costs arise under or are connected to the title, patent and copyright warranty under Section 11.02, Oracle shall be fully liable for damages without limitation.

(C) In no event shall Oracle and its subsidiaries and licensors be liable for damages for loss of profits, revenue, loss of data, loss of use or indirect, special, incidental or consequential damages incurred by UT, Authorized Users or any third party, whether in an action in contract or tort, even if such party had been advised of the possibility of such damages.

12. REPORTING/MONITORING MASTER AGREEMENT 2004 PERFORMANCE

12.01 Monthly Usage Reports

Oracle shall be responsible for reporting all Programs and services purchased under this Master Agreement 2004. The failure to file the monthly reports and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the Master Agreement 2004 for cause. In the event that Oracle submits three (3) consecutive monthly reports that are materially incorrect, UT reserves the right to suspend or terminate this Master Agreement 2004 for cause, provided however that UT shall provide Oracle with prompt written notice of any delinquent or materially noncompliant reports that it receives from Oracle and Oracle shall have ten business days after receipt to such notice to file such report or correct such noncompliance. In the event that Oracle cures the non-delinquent filing or noncompliant report within the ten (10) day period, such delinquent filing or noncompliant report shall not count toward the three monthly reports required to suspend or terminate this Master Agreement 2004 for cause. Oracle's liability for any breach of this section is limited to the amount of administrative fees owed to UT by Oracle that remain unpaid. UT shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Oracle's applicable contract books.

12.02 Detailed Monthly Report

Oracle shall electronically provide UT with a detailed monthly report in the format required by UT showing the dollar volume of any and all sales under this Master Agreement 2004 for the previous month period. Reports shall be submitted to the UT Coordinator. Reports are due on the thirtieth (30th) day after the close of the previous month period. The monthly report shall include the sales for the period, each Authorized Users name, Order date, ship date, description, part numbers, quantity, unit price, extended price, Authorized Users Purchase Order number, contact name, Authorized User's complete billing address, and other information as required by UT. Each line item sale must contain all information listed above or the report will be rejected and returned to Oracle for correction.

12.03 Historically Underutilized Business Subcontract Reports

Oracle shall electronically provide UT with its relevant Historically Underutilized Business Subcontracting Report, pursuant to this Master Agreement 2004, as required by Chapter 2161, Texas Government Code. Reports shall be due quarterly in compliance with the following schedule, or as requested by UT:

September – November: due by December 5th

December – February: due by March 5th

March – May: due June 5th

June – August: due September 5th

12.04 License Verification

For licenses granted pursuant to this Master Agreement 2004, the parties agree to the following provisions regarding license verification: (i) At Oracle's written request, not more frequently than annually, Authorized User shall furnish Oracle with a signed certification (a) verifying that the Programs are being used pursuant to the provisions of this Master Agreement 2004, including the applicable license metric; and (b) listing the locations, types and serial numbers on the hardware/operating system combinations on which the Programs are run. (ii) Oracle may, at its expense, audit no more than once annually Authorized User's use of the Programs. Any such audit shall be conducted during regular business hours at Authorized User's facilities and shall not unreasonably interfere with Authorized User's business activities. Oracle shall provide a thirty (30) day written notice of the intent to audit, delivered by certified mail.

12.05 Oracle Contract Administrator

Oracle shall designate an Oracle Contract Administrator. UT reserves the right to require a change in Oracle's then-current Oracle Contract Administrator if that person is not, in the opinion of UT, adequately serving the needs of UT.

13. LICENSE MONITORING DEVICES AND DISABLING DEVICES

Oracle reserves the right to incorporate into its Programs license monitoring devices which are designed to monitor software license usage, including use of a Program beyond the quantity for which a Authorized User is licensed. The parties agree and acknowledge that Oracle may use license monitoring devices in connection with the exercise of its audit rights under this Master Agreement 2004.

Additionally, Oracle reserves the right to incorporate into its Programs disabling devices that are capable of electronically disabling the Programs that are licensed to an Authorized User. Oracle agrees that it may use such disabling devices only in the event of termination for the Authorized User's material breach subject to section 14.02(B) and after the expiration of the written notice period provided to user without cure of the breach.

14. CANCELLATION/TERMINATION

14.01 Cancellation

This Master Agreement 2004 may be canceled at any time by UT upon thirty (30) days written notice without penalty or other early termination charges due. Any fees due Oracle under an Order issued by any Authorized Users prior to cancellation shall remain due and payable.

14.02 Termination

- (A) Authorized User may terminate any Program license or service upon thirty (30) days written notice to Oracle. Termination of a license, support services, training services or consulting services by an Authorized User applies to that Authorized User only and applies prospectively to that specific Program or service only and does not terminate the Master Agreement 2004 for other Authorized Users of this Master Agreement 2004, or for other Program(s) or services, provided, however, that such termination by an Authorized User shall not relieve Authorized User's obligations for Programs or services delivered.
- (B) Oracle may terminate any Program license or Technical Support agreement upon written notice if Authorized User materially breaches that agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach. Such termination shall not relieve Authorized User's obligation to pay all fees accrued or sums due and remaining unpaid for Programs or services delivered.
- (C) In the event this Master Agreement 2004 expires or is terminated or cancelled for any reason, an Authorized User shall pay all amounts due for Programs or services ordered prior to the effective termination date. Termination of this Master Agreement 2004 or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas. In the event of a termination of the Master Agreement 2004, all obligations under Sections 5.01 (A) through 5.01(L), 5.04, 10.04, 11., 14., 17. and 21. shall survive termination of the Master Agreement 2004 in accordance with those sections. Individual Ordering Document(s) issued prior to such termination of the Master Agreement 2004 shall survive in accordance with their terms for any applicable period stated therein.
- (D) If a license granted under this Master Agreement 2004 expires or otherwise terminates, Authorized User shall (a) cease using the applicable programs, and (b) certify to Oracle within one month after expiration or termination that Authorized User has destroyed or has returned to Oracle the Programs and all copies, subject to Authorized User's compliance with applicable Texas record retention laws and policies. This requirement applies to copies in all forms, partial and complete, in all types of media and computer memory, and whether or not modified or merged into other materials. Before returning Programs to Oracle, Authorized User shall acquire a Return Material Authorization ("RMA") number from Oracle.

15. NON-APPROPRIATION

Performance by UT and the other Authorized Users under this Master Agreement 2004 may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of The University of Texas System (the "Board"). Authorized Users may terminate Purchase Orders and UT may terminate this Master Agreement 2004, without recourse, if the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds. In such event, UT and/or the applicable Authorized User(s) will provide Oracle ten (10) days written notice of intent to terminate. No Authorized User shall issue a Purchase Order unless the funds reflected thereon have been fully appropriated, allotted, and allocated.

16. CORPORATE MERGER/ACQUISITION/TAKEOVER

16.01 Transfer by Oracle

Any assignment or other transfer of this Master Agreement 2004 by Oracle arising from merger, acquisition, takeover or any change in corporate form shall be subject to: 1) the pricing, terms and conditions inuring to the benefit of UT and the Authorized Users under this Master Agreement

2004 continuing to be at least as favorable to UT and the Authorized Users for a period of not less than the contract term, and 2) the successor organization, being in good standing with the Comptroller and authorized to do business in Texas. Oracle agrees that it will promptly notify UT of any merger in accordance with this paragraph, and further agrees that it and any successor organization will use commercially reasonable efforts to assist UT and all Authorized Users with licenses acquired or ongoing services being performed under this Master Agreement 2004 with the transition from Oracle to the successor organization.

16.02 Transfer by UT

In the event the duties and obligations of UT, including the administration of this Master Agreement 2004, are transferred to another state agency, this Master Agreement 2004 shall be transferred to such successor entity without the prior approval of Oracle.

17. SECURITY/CONFIDENTIALITY

17.01 Security

Oracle shall at all times comply with all Authorized User security regulations in effect at any Authorized User premises, provided that Oracle has been provided reasonable prior written notice of such security regulations.

17.02 Confidentiality

(A) The parties may provide to one another information that is confidential ("Confidential Information"). Confidential Information means all information and material to which each party has access in connection with the performance of their obligations hereunder, including pricing, source code, Programs, program logic, Documentation and benchmark results of either party, and all material or information that is either marked as confidential. Confidential Information may include nonpublic information relating to the technical, marketing, product and/or business affairs of either party. Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure and had not been obtained by the receiving party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party; (e) is disclosed by operation of law; or (f) is determined to be public under the Texas Public Information Act. The parties agree to hold each other's Confidential Information in confidence while the Services are being performed and for a period of three years thereafter. Either party shall release either party's confidential information only to employees and subcontractors who have themselves agreed not to disclose it and to use it only in the performance of this Master Agreement 2004. Oracle and the Authorized Users shall take appropriate action with respect to their employees to insure that the obligations of non-use and non-disclosure of confidential information under this Master Agreement 2004 can be fully satisfied. The parties shall maintain the confidentiality of both parties and third party confidential information that is marked as confidential subject to compliance with the Texas Public Information Act.

(B) Notwithstanding the foregoing, benchmark results from any testing that is run independently of any benchmark testing performed by UT shall not be subject to the restrictions of this confidentiality section; provided, however, that UT shall not endorse the release of any such benchmark results associated with the Oracle Programs. The foregoing restrictions shall not apply to benchmark results of an application which accesses the Oracle Programs, provided that such results are released only as the benchmark results of such application and do not make any reference to Oracle Programs. With respect to the release of any benchmark results pursuant to this clause, UT shall provide Oracle with reasonable prior notice of such release and give Oracle an opportunity to review and comment on the results prior to their release.

18. ENTIRE AGREEMENT

This documents and all Appendices constitute the entire agreement between the parties thereto and no prior or contemporaneous statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Master Agreement 2004 shall not be changed, modified or altered in any manner except by an instrument in writing executed by authorized representatives of both Oracle and UT. Authorized Users other than UT shall not have the authority to modify the terms of the Master Agreement 2004.

19. NOTICES

All notices given pursuant to this Master Agreement 2004 shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, registered or certified mail, or hand delivered, or (ii) three (3) business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Master Agreement 2004 by giving fifteen (15) days written notice to the other party.

If sent to UT:

Philip R. Aldridge
Interim Vice Chancellor for Business Affairs
601 Colorado Street
Austin, Texas 78701
Fax: (512) 499-4289
Email: LegalNotices@utsystem.edu

C. W. Goldsmith
Associate Vice Chancellor and CIO
University of Texas System
201 West 6th Street CTJ 2.2.18
Austin, Texas 78701
Fax: (512)-494-3456
Email: cgoldsmith@utsystem.edu

If sent to Oracle:

Joan M. George
Vice President
Oracle Corporation
1910 Oracle Way
Reston, VA 20190
Phone: (703) 364-2722
Fax: (703) 364 -3029
Email: joan.george@oracle.com

Notwithstanding any other requirements for notices given by a party under this Master Agreement 2004, if Oracle intends to deliver written notice to an Authorized User pursuant to Section 2251.054, *Texas Government Code*, then Oracle shall send that notice to the Authorized User at the address set forth in the applicable Ordering Document, with copy to Philip R. Aldridge and C. W. Goldsmith at the addresses above, however, if the Authorized User is UT, Oracle shall send notice only to Philip R. Aldridge and C. W. Goldsmith at the addresses above.

20. CAPTIONS

The captions contained in this Master Agreement 2004 are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

21. APPLICABLE LAW

The law of the State of Texas shall govern the construction and interpretation of this Master Agreement 2004. UT represents that it has statutory authority to enter into this Master Agreement 2004. UT further represents that there are or could be constitutional and statutory limitations on the ability of UT and the Authorized Users to enter into certain terms and conditions of this Master Agreement 2004, including, but not limited to, those relating to limitations of liability or damages, indemnities, and the inability to cancel and obtain refunds of fees. Notwithstanding the foregoing, all of the provisions of this Master Agreement 2004 shall be enforceable to the full extent authorized by the laws and Constitution of the State of Texas. Nothing herein shall be construed to waive the sovereign immunity of the State.

22. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

If an Authorized User has determined that it is a Covered Entity (as defined in HIPAA), and if the Authorized User and Oracle jointly agree in writing (a) that Oracle will have access to Protected Health Information (as defined by HIPAA) held or created by the Authorized User and (b) that they need to enter into a Business Associate (BA) agreement (as provided by HIPAA), the Authorized User and Oracle will, in good faith, make reasonable efforts to negotiate and enter into such an agreement. Notwithstanding the foregoing, Oracle and the Authorized Users will comply with all applicable laws and regulations regarding the protection of Protected Health Information (as defined in HIPAA).

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this Master Agreement 2004, to be effective the date that the last signature is affixed below.

ORACLE CORPORATION

UNIVERSITY OF TEXAS SYSTEM

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: <u>February 28, 2004</u>	Date: <u>February 28, 2004</u>

**APPENDIX A
ADDITIONAL CLAUSES
UNIVERSITY OF TEXAS CONTRACTS**

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**APPENDIX A
STANDARD CLAUSES**

The word "Contract" as used in this Appendix A shall mean the Master Agreement 2004. The parties agree to be bound by the following clauses:

1. **CUSTOMER INFORMATION CLAUSE.** Oracle acknowledges that UT is a government agency subject to the Texas Public Information Act. Oracle also acknowledges that UT will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act. Under the terms of this Contract, Authorized Users may provide Oracle with information related to the Authorized Users. Oracle shall not re-sell or otherwise distribute or release to any party in any manner any such Authorized User information.
2. **ORACLE CERTIFICATIONS.** Oracle certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §231.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from UT, an Authorized User, or any of their employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of Oracle's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting Oracle, which if determined adversely to Oracle will have a material adverse effect on the ability of Oracle to fulfill its obligations under this Contract.
3. **EQUAL OPPORTUNITY COMPLIANCE.** Oracle agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, Oracle agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Oracle under this Contract. If Oracle is found to be not in compliance with these requirements during the term of this Contract, Oracle agrees to take appropriate steps to correct these deficiencies. Upon request, Oracle will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.
4. **TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE.** Oracle expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Oracle represents and warrants to UT and each Authorized User purchasing automated information systems under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or

services that would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance. The sole remedy for breach of this warranty is return of the copy of the software for such visually impaired users and refund of the license fee paid for such copy.

5. **RECORDS.** Oracle shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all compliance checks or litigation issues that arise under this Contract. Such records shall include identification of the procuring Authorized User, documentation of the Authorized User's ordering date, Authorized User's Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, unit price, extended price, participating Reseller invoice number, record of procuring Authorized User's payment and/or balance due, the calculations supporting each administrative fee owed UT under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as UT may request. Oracle shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items directly related to the performance of this Contract to UT, the auditors designated by UT (which must be independent third parties and not a competitor to Oracle), including auditors of the State Auditor' Office and of the United States, and such other persons or entities designated by UT for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by UT shall be provided by Oracle without charge. UT shall provide Oracle ten (10) business days' notice prior to inspecting, auditing, and/or copying Oracle's records. Oracle's records, whether paper or electronic, shall be made available during regular office hours. Oracle personnel familiar with Oracle's books and records shall be available to UT staff and designees as needed. Oracle shall provide adequate office space to UT staff during the performance of a compliance check. If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Authorized User of .5% or greater, or an aggregate underpayment to UT of its administrative fee of .5% or greater, then such overcharge or underpayment shall be a basis for a termination for cause by UT, if Oracle fails to cure the underpayment or overcharge within thirty (30) days of receipt of written notice of such underpayment or overcharge. For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Oracle through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Oracle can demonstrate to UT's satisfaction that Oracle's calculation of UT's administrative fee is correct.
6. **ABILITY TO CONDUCT BUSINESS IN TEXAS.** Oracle is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas.
7. **INVALID TERM OR CONDITION.** If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.
8. **ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION.** Oracle and UT agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii), for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.
9. **MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS.** The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users under this Contract. The Contract may only be modified or amended upon mutual agreement of UT and Oracle. No preprinted terms and conditions appearing on a Purchase Order shall have any force or effect. For individual Purchase Orders, however, Oracle may offer Authorized Users more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Oracle shall furnish a copy of such better offerings to UT upon request.
10. **ORACLE LOGO.** UT may use Oracle's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Authorized Users. Use of the logo may be on the UT Web Site or on printed materials. Any use of Oracle's Logo by UT must comply with and be solely related

to the purposes of this Contract and any usage guidelines communicated to UT from time to time. Nothing contained in this Contract will give UT any right, title, or interest in or to Oracle's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Oracle.

- 11. USE OF SUBCONTRACTORS.** Oracle may subcontract services. However, Oracle shall remain solely responsible for the performance of its obligations under this Contract. If Oracle uses any subcontractors, Oracle shall satisfy the Authorized User that it has complied and maintains compliance with the Authorized User's HUB Subcontracting Plan, if any, including the inclusion of applicable language in the Ordering Document to ensure such compliance by Oracle.
- 12. FORCE MAJEURE.** UT, Authorized Users, or Oracle may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance or epidemic, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.
- 13. HANDLING OF WRITTEN COMPLAINTS.** In addition to other remedies contained in this Contract, a person contracting with UT may direct their written complaints as set forth in Section 19.0 of the Contract.