



### A. Agreement/Definitions

This Agreement is between you and Mythics, Inc. ("Mythics"), an authorized Oracle Value Added Reseller. "You" and "your" refers to the individual or legal entity that has executed this agreement ("agreement") and ordered Programs and/or Services from Mythics. The term "ancillary programs" refers to third party materials specified in the program documentation which may only be used for the purposes of installing or operating the Programs with which the ancillary Programs are delivered. The term "Program documentation" refers to the Program user manual and program installation manuals. The term "Programs" refers to the software owned or distributed by Oracle America, Inc. ("Oracle") which you have ordered, Program documentation, and any Program updates acquired through technical support. For all program licenses, the "commencement date" is the date of shipment of tangible media or upon the effective date of the order if shipment of tangible media is not required. The period of performance for all services for the Programs is effective upon shipment of tangible media or upon the effective date of the order if shipment of tangible media is not required. The term "Services" refers to technical support, education, hosted/outsourcing services, consulting or other services which you have ordered. Oracle is a third party beneficiary of this agreement.

### B. Applicability of Agreement

This agreement is valid for the order to which this agreement accompanies or to which it is specifically incorporated into by reference.

### C. Rights Granted

Upon Mythics' acceptance of your order, you have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the ordering document), limited right to use the Programs, receive any services you ordered solely for your internal business operations and subject to the terms of this agreement, including the definitions and rules set forth in the order and the program documentation. You may allow your agents and contractors (including, without limitation, outsourcers) to use the Programs on your behalf for the purposes set forth in this agreement, subject to the terms of this agreement, and you are responsible for their compliance with this agreement in such use. For Programs that are specifically designed to allow your customers and suppliers to interact with you in the furtherance of your internal business operations, such use is allowed under this agreement. Oracle may deliver source code as part of its standard shipment for particular Programs; all Oracle source code is subject to the terms of the agreement. Your use of the Programs is limited to use by the legal entity that executes this Agreement. If accepted, Mythics will notify you and this notice will include a copy of your agreement. Program documentation is delivered with the Programs, or you may access the documentation online at <http://oracle.com/contracts>. Services are provided based on Oracle's policies for the applicable Services ordered, which are subject to change, and the specific policies applicable to you, and how to access them, will be specified on your order (except technical support Services, which are as specified in section H of this agreement). Upon payment for Services, you have the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for your internal business operations anything developed by Oracle or Mythics and delivered to you under this agreement; however, certain deliverables may be subject to additional license terms provided in the ordering document.

The Services provided under this agreement may be related to your license to use Programs which you acquire under a separate order. The agreement referenced in that order shall govern your use of such Programs. Any Services acquired from Oracle or Mythics are bid separately from such program licenses, and you may acquire either Services or such Program licenses without acquiring the other.

### D. Ownership and Restrictions

Oracle or its licensors retain all ownership in the intellectual property rights to the Programs. Oracle retains all ownership and intellectual property rights to anything developed and delivered under this agreement resulting from Services provided by Oracle. Title to the Programs is retained by Oracle and



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## Mythics License and Services Agreement – MLSA Version 0319

shall not pass to you or any third party. You are prohibited from duplicating the Programs except that you may make a sufficient number of copies of each Program for your licensed use and one copy of each program media.

Third party technology that may be appropriate or necessary for use with some Oracle Programs is specified in the Program documentation. Such third party technology is licensed to you under the terms of the third party technology license agreement specified in the Program documentation, readme files, notice files, and installation details and not under the terms of this agreement.

You may not:

- remove or modify any Program markings or any notice of Oracle's or its licensors' proprietary rights;
- make the Programs or materials resulting from the 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 or materials from the Services you have acquired) and you may not provide any timesharing, hosting, outsourcing, subscription service, leasing, or rental use of the Programs;
- cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the Programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by Programs);
- publish results of any Program benchmark tests run on the Programs;

### E. Warranties, Disclaimers and Exclusive Remedies

#### 1. Program Warranty

Mythics warrants that a Program licensed to you will operate in all material respects as described in the applicable Program documentation for one year from delivery (i.e., via physical shipment or electronic download). You must notify Mythics and Oracle of any Program warranty deficiency within one year from delivery. Mythics and Oracle also warrant that Services ordered will be provided in a professional manner consistent with industry standards. You must notify Mythics and Oracle of any Services warranty deficiencies within 90 days from performance of the deficient Services.

**MYTHICS AND ORACLE DO NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT MYTHICS OR ORACLE WILL CORRECT ALL PROGRAM ERRORS.**

**FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY, AND MYTHICS' AND ORACLE'S ENTIRE LIABILITY, SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE OR MYTHICS CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER, AND YOU END YOUR PROGRAM LICENSE, YOU MAY RECOVER THE FEES PAID TO MYTHICS FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES PROVIDED BY ORACLE, OR IF MYTHICS OR ORACLE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER AND YOU END THOSE SERVICES, YOU MAY RECOVER THE FEES PAID TO MYTHICS FOR THE DEFICIENT SERVICES PROVIDED BY ORACLE.**



**THE LEARNING CREDITS ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTY, WHETHER EXPRESSED OR IMPLIED.**

**TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

### **F. Trial Programs**

You may order additional and/or trial Programs, or Mythics or Oracle may include additional Programs with your order and you are not authorized to use those Programs unless you have a license specifically granting you the right to do so; however, you may use those additional Programs only for trial, non-production purposes for up to 30 days from the date of delivery provided that you may not use the additional and/or trial Programs to provide or attend third party training on the content and/or functionality of the Programs. You have 30 days from the delivery date to evaluate these Programs, subject to the terms of this agreement. If you decide to use any of these Programs after the 30 day trial period, you must obtain a license for such Programs from Mythics or Oracle. If you decide not to obtain a license for any additional and/or trial Program after the 30 day trial period, you will cease using and will delete any such Programs from your computer systems. Additional and/or trial Programs included with an order are provided "as is" and Oracle and Mythics do not provide technical support or offer any warranties for these Programs.

### **G. Indemnification**

Notwithstanding anything to the contrary in this agreement, if a third party makes a claim against either you, Mythics and/or Oracle ("Recipient" which may refer to you, Mythics and/or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, or material ("Material") furnished by either you, Mythics and/or Oracle ("Provider" which may refer to you, Mythics and/or Oracle depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider if the Recipient does the following:

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

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



## Mythics License and Services Agreement – MLSA Version 0319

the scope of use identified in the Provider's user documentation or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Mythics or Oracle will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or Services not provided by Mythics or Oracle. Mythics or Oracle will not indemnify you for infringement caused by your actions against any third party if the Oracle Program(s) as delivered to you and used in accordance with the terms of this agreement would not otherwise infringe any third party intellectual property rights. Mythics or Oracle will not indemnify you for any claim that is based on: (1) a patent that you were made aware of prior to the effective date of this agreement (pursuant to a claim, demand or notice); or (2) your actions prior to the effective date of this agreement. This section provides the parties' exclusive remedy for any infringement claims or damages.

### H. Technical Support

For purposes of the ordering document, technical support consists of annual technical support Services you may have ordered for the Programs. If ordered, annual technical support (including first year and all subsequent years) is provided under Oracle's technical support policies in effect at the time the Services are provided. You acknowledge that the technical support policies are incorporated in this agreement and are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of Services provided for supported Programs during the period for which fees for technical support have been paid. You should review the policies prior to entering into the ordering document for the applicable Services. You may access the current version of the technical support policies at <http://oracle.com/contracts>. Technical support is effective upon the effective date of the ordering document unless otherwise stated in your order. Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with your order may be renewed annually.

If you decide to purchase technical support for any license within a license set, you are required to purchase technical support at the same level for all licenses within that license set. You may desupport a subset of licenses in a license set only if you agree to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If you decide not to purchase technical support at the time that you purchase the licenses, you may not update any unsupported program licenses with new versions of the program and you will be required to pay reinstatement fees in accordance with Oracle's current technical support policies if you decide to purchase support at a later date.

### I. End of Agreement

If either of us breaches a material term of this agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate this agreement. If Mythics ends this agreement as specified in the preceding sentence, you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for Programs ordered and/or Services received under this agreement plus related taxes and expenses. If Mythics or Oracle ends the license for a program under the Indemnification section, you must pay within 30 days all amounts remaining unpaid for Services related to such license plus related taxes and expenses. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under this agreement, you may not use the Programs and/or Services ordered. You further agree that if you have used an Oracle Financing Division



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## Mythics License and Services Agreement – MLSA Version 0319

contract to pay for the fees due under an order and you are in default under that contract, you may not use the Programs and/or Services that are subject to such contract. Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment, and others that by their nature are intended to survive. Upon the termination of this agreement you shall discontinue use and destroy or return to Mythics all copies of Programs and documentation.

In reliance on your order Mythics will place a non-cancellable order with Oracle; therefore all orders from you are non-cancellable.

### J. Fees and Taxes

Program fees are invoiced as of the commencement date for the Programs. All fees payable to Mythics are due within 30 days from the invoice date unless otherwise stated on your ordering document accepted by Mythics. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Mythics must pay based on the Programs and/or Services you ordered, except for taxes based on Mythics' income. Also, you will reimburse Mythics for pre-approved reasonable expenses related to providing the Services. Fees for Services listed in an ordering document are exclusive of taxes and expenses. You agree that you have not relied on the future availability of any Programs or updates in entering into this agreement and the payment obligations in your ordering document; however, (a) if you order technical support for Programs, the preceding sentence does not relieve Oracle of its obligation to provide updates under such order, if-and-when available, in accordance with Oracle's then current technical support policies and (b) the preceding sentence does not change the rights granted to you for any Program licensed under this agreement.

You agree to pay finance charges of 18% annually (1.5% monthly), or the highest rate permitted by applicable law, whichever is lower, on any amount, which becomes past due after the payment due date. In the event that any legal action is taken in order to collect any outstanding amount due, you agree, subject to applicable law, to pay for any reasonable costs of collection, including reasonable attorney fees. Failure to make payments in the manner set forth above shall constitute a default, which shall constitute grounds for an immediate injunction prohibiting the continued use of the Programs and/or Services. You agree that Mythics has the right to cancel your support due to non-payment.

### K. Nondisclosure

By virtue of this agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under this agreement. Confidential information shall be limited to the terms and pricing under this agreement and all information clearly identified as confidential at the time of disclosure.

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

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent either party from disclosing the terms or pricing under this agreement or orders submitted under this agreement in any legal proceeding arising from or in connection with this agreement or disclosing the confidential information to a federal or state governmental entity as required by law.





### L. Entire Agreement

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

### M. Limitation of Liability

**SUBJECT TO THE INDEMNIFICATION PROVISIONS HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE ARISING FROM USE OF THE PROGRAMS. SUBJECT TO THE INDEMNIFICATION PROVISIONS HEREIN, MYTHICS' MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID MYTHICS UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PROGRAMS, OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID MYTHICS FOR THE DEFICIENT PROGRAM, OR SERVICES GIVING RISE TO THE LIABILITY.**

### N. Export

Export laws and regulations of the United States and any other relevant local export and import laws and regulations apply to the Programs. You agree that such export and import laws govern your use of the Programs (including technical data), and any Services deliverables provided under this agreement, and you agree to comply with all such export and import 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. You shall include the following notice on packing lists, commercial invoices, shipping documents and other documents involved in the transfer, export or re-export of the Programs: 'These commodities, technology, or software were exported in accordance with U.S. Export Administration Regulations and applicable export laws. Diversion contrary to applicable export laws is prohibited.

### O. Other

1. This agreement is governed by the substantive and procedural laws of Virginia, and you and Mythics agree to submit to the exclusive jurisdiction of, and venue in, the federal courts in the Eastern District of Virginia, or the state courts in Virginia Beach, VA in any dispute arising out of or relating to this agreement.
2. If you have a dispute with Mythics or if you wish to provide a notice under the Indemnification section of this agreement, you will promptly send written notice to: Mythics, Inc., 4525 Main Street, Suite 1500, Virginia Beach, VA 23462, Attention: General Counsel, Legal Department.



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## Mythics License and Services Agreement – MLSA Version 0319

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3. You may not assign this agreement or give or transfer the Programs and/or any Services or an interest in them to another individual or entity. If you grant a security interest in the Programs and/or any Services, the secured party has no right to use or transfer the Programs and/or any Services, and if you decide to finance your acquisition of the Programs and/or any Services, you will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights you may otherwise have with respect to the Linux operating system, third party technology or separate works licensed under open source or similar license terms.
4. Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this agreement may be brought by either party more than two years after the cause of action has accrued.
5. Upon 45 days written notice, Mythics (or Oracle, who may be assigned Mythics' audit rights or be provided with the audit results) may audit your use of the Programs. You agree to cooperate with Mythics' or Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You agree to pay within 30 days of written notification any fees applicable to your use of the Programs in excess of your license rights. If you do not pay, Mythics or Oracle can end your technical support, licenses and/or this agreement. You agree that Mythics and Oracle shall not be responsible for any of your costs incurred in cooperating with the audit.
6. The Uniform Computer Information Transactions Act does not apply to this agreement or orders placed under it.
7. Oracle shall not be required to perform any obligations or incur any liability not expressly set forth herein. Oracle is not liable for nor bound by the acts of any third party firm, including Mythics, that is retained by you to provide computer consulting Services. Such firms are independent of Oracle and not Oracle's agents.
8. Oracle Programs, including documentation, delivered to U.S. Government end users are "commercial computer software" as defined in the applicable Federal Acquisition Regulation ("FAR"). As such, use, duplication, disclosure, modification, and adaptation of the Programs, including documentation, shall be subject to the license and license restrictions set forth in this agreement.
9. By executing and/or referencing this agreement Oracle disclaims, to the extent permitted by applicable law, liability for (a) any damages, whether direct, indirect, incidental, special, punitive, or consequential, and (b) any loss of profits, revenue, data or data use, arising from the use of the Programs.

### **P. Force Majeure**

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



## Mythics License and Services Agreement – MLSA Version 0319

### Q. License Definitions and Rules

This Agreement incorporates by reference the most recent Oracle License Definitions and Rules which may be viewed at <http://www.oracle.com/contracts>. To fully understand Your license, You need to review the definitions for the licensing metric and term designation as well as the licensing rules. Oracle's license rules and definitions are subject to change for future purchases referencing this agreement

The effective date of this agreement shall be \_\_\_\_\_.  
(to be completed by Mythics)

**MYTHICS, INC.**

**Company Name:**

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Printed Name and Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_