CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: INFORMATION TECHNOLOGY

AGENDA DATE: May 19, 2009

CONTACT PERSON/PHONE: GERALD GORDIER (915) 541-4288
TERRENCE FREIBURG, PURCHASING MANAGER, 541-4313

DISTRICT(S) AFFECTED: ALL

SUBJECT:
Request that the Director of Purchasing be authorized to issue Purchase Orders to Oracle Corporation in the amount of $202,443.16 for the remainder of Fiscal Year 2009 and $673,142.17 for Fiscal Year 2010. The total for the a 16-month period is $875,585.33. Oracle Corporation a State Department of Information Resources (DIR) contractor under DIR State Contract DIR-VPC-02-018 for a various Oracle software components including PeopleSoft ERP Services and support. Participation by the City of El Paso in the DIR Program was approved by Mayor and Council on March 6, 2007.

Further, that the City Manager be authorized and directed to execute any other required documentation. (All Districts) [Financial Services, Carmen Arrieta-Candelaria (915) 541-4293 and Information Technology, Gerald Gordier, (915) 541-4288]

BACKGROUND / DISCUSSION:
This request is for the annual maintenance contract for numerous Oracle software components used by the City of El Paso. These software components include: PeopleSoft Asset Management, Project Costing & Reporting, Enterprise Portal & Billing, Cash Management, Human Resources, Compensation, Talent Acquisition Manager, Pension Administration, Benefits, Planning and Budgeting, Accounts Payable, Accounts Receivable, Purchasing, Inventory, General Ledger, Identity & Access Management, & Multiple Processor Oracle Enterprise Database Processors.

The request is for approval for a 16 month period to enable the City to co-terminate our contracts near the city's fiscal year. This will be accomplished by the issuance of two purchase orders to (a) cover the period from May 2009 to September 2009 to co-terminate our contracts near the city's fiscal year, and (b) cover the period for Fiscal Year 2010. Oracle Corporation will bill the City quarterly in arrears to comply with Texas law.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?
Yes, in prior years for the maintenance contracts for core infrastructure software that spans the enterprise.

AMOUNT AND SOURCE OF FUNDING:
$202,443.16. Funding is available in FY2009 Information Technology General Fund:
502202-01101-39010351 (Data Processing Services Contracts).
Similarly, the FY2010 operating budget will provide funding for that portion of the overall maintenance contracts.

BOARD / COMMISSION ACTION: Enter appropriate comments or N/A
NA/

**********REQUIRED AUTHORIZATION**********

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

FINANCIAL SERVICES, PURCHASING DIVISION

DATE: MAY 7, 2009

TO: Municipal Clerk

FROM: Terrence Freiburg — Ray Heredia

FINANCIAL SERVICES, PURCHASING DIVISION — PROCUREMENT ANALYST

MWP

Please place the following item on the Regular Agenda for the Council Meeting of **MAY 19, 2009**.

Item should read as follows: That the Purchasing Manager be authorized to issue a Purchase Order to Oracle Corporation in the amount of $202,443.16 for the remainder of Fiscal Year 09 and an amount of $673,142.17 for Fiscal Year 2010 for a Total Award $875,585.33. Oracle Corporation a State Department of Information Resources (DIR) contractor under DIR State Contract DIR-VPC-03-018) for various software components including PeopleSoft ERP services and support. Participation by the City of El Paso in the DIR Program was approved by Mayor and Council on March 6, 2007.

Further, that the City Manager be authorized and directed to execute any other required documentation.

Award amount is $202,443.16 FY09
Funds available in: 39010351-502202-01101
Fund Source - Information Services, Data Processing Contracts, Operating Account and $673,142.17 FY 2010
Funds available in: 39010351-502202-01101
Fund Source - Information Services, Data Processing Contracts, Operating Account

Total Award: $875,585.33

Department: Information Technology

SPECIAL INSTRUCTIONS: _____

City Clerk's Use ITEM NO._____

State of Texas
Department of Information Resources
Leadership for Texas Government Technology

DIR Store - Products and Services

- Buyer Alerts
- Overview
- Go DIRect Program
- Customer Eligibility
- Customer FAQs
- Vendor FAQs

Related Information

- Contracting and Procurement Services Division
- Current Contracting Initiatives

Search DIR

Enter text here

Search

Advanced Search

Go DIRect

for Oracle Software and Servic

Oracle Corporation and its named resellers offer Oracle software, technical support, professional services, and learning credits to Tex governmental entities at discounted prices through DIR's Go DIRec Program.

- Product and Pricing Information
- How to Order
- Contract Information
- Contacts

Product and Pricing Information

- Visit the Oracle website for more information. Contact an Ora or reseller representative for information or to place an order.
- The representative will issue an order form which reflects the discounts and DIR administrative fee defined in the contract. Discounts vary based on the dollar amount of the transaction. transaction, there is no difference in price, whether you choos Oracle or a reseller.

How to Order

- Generate a purchase order, made payable to **the party from whom you order.**
  Note: You must reference Contract Number **DIR-VPC-03-018** your purchase order.
- Fax your purchase order to the party from whom you order.

Contract Information

To access PDF files use the free Adobe Acrobat Reader.

Contract DIR-VPC-03-018 expires 04/20/2010 (4.69 MB)
Amendment 3 (17 KB)
Amendment 4 (17 KB)
Amendment 5 (14 KB)
Amendment 6 (14 KB)

Amendment 7 (14 KB)
Amendment 8 (88 KB)
Appendix B, E-Business Suite Price List (238 KB)
Appendix B, Oracle Technology Price List (328 KB)
Appendix B, Business Intelligence Price List (121 KB)
Appendix B, On Demand Price List (273 KB)
Additional Appendix B, Oracle Price Lists (Not currently available.)
Appendix E, License and Support Ordering Document (127 KB)
Appendix F, Oracle Service Rates (18 KB)
Appendix G, Technical Services Ordering Document (51 KB)
Appendix G, Exhibit 1, T&M Ordering Document (33 KB)
Appendix G, Exhibit 2, FPE Ordering Document (44 KB)
Amendment 9 (16 KB)
HUB Subcontracting Plan (79 KB)

Contacts

Vendor Contacts

Vendor	HUB	Contact	Address
Oracle Corporation Vendor ID: 194-287-1189-900	No	Application License Sales: Juan-Carlos Martinez Phone: 512-632-6680 Support Renewals: Derek Bishop Phone: 512-671-5163 Education Sales: Karen Ferguson Phone: 916-315-4527 Consulting Sales: Vic Bentley Phone: 972-740-2917 Technology License Sales: Craig DeAngelis Phone: 214-621-9180	1910 Oracle Way Reston, VA 20190
DLT Solutions Vendor ID: 154-159-9882-000	No	Ben Henning Phone: 703-708-9137	13861 Sunrise Valley Drive Suite 400

CONTRACT NUMBER DIR-VPC-03-018

STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
VOLUME PRICING CONTRACT
Oracle Corporation

This **VOLUME PRICING CONTRACT** for the acquisition of Oracle Corporation products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (DIR) with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Oracle Corporation ("Oracle"), with its principal place of business at 500 Oracle Parkway, Redwood City, California 94065-1677.

WITNESSETH

WHEREAS, DIR and Oracle entered into a Master Agreement, Software License and Services Agreement, effective March 7, 2000 (hereinafter referred to as "Master Agreement 2000"),

WHEREAS, Master Agreement 2000 was subsequently modified on March 7, 2000 (known as Amendment 1), modified on May 12, 2000 (known as Amendment 2) and was modified on November 20, 2001 (known as Amendment 3), until an expiration date of March 7, 2003, and;

WHEREAS, DIR and Oracle establish this document, DIR-VPC-03-018, known as Master Agreement 2003, to be a centralized, statewide contract between the parties as the aforesaid "new contract" to replace the Master Agreement 2000;

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties agree as follows:

1. CONTRACT SCOPE
This contract ("Master Agreement 2003") sets forth the terms and conditions governing the Oracle's provision of software technology to Authorized Users, as defined herein, of this Master Agreement 2003 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 contract term in accordance with the rights, obligations and pricing set forth herein.

Notwithstanding any other provision or other unilateral license terms which may be issued by Oracle after the Effective Date of this Master Agreement 2003, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Order Form for products licensed under this Master Agreement 2003, the terms and conditions set forth in this Master Agreement 2003 shall supersede and govern the contract terms between Authorized Users and Oracle, except that with respect to Technical Support renewals, the governing terms and conditions shall be those contained in the agreement then in place between DIR and Oracle.

2. CONTRACT TERM
The term of this Master Agreement 2003 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 2003, upon approval of the DIR and Oracle, upon expiration of the primary term for an additional two (2) year term. The extension, if agreed to, shall be documented as an amendment to the Master Agreement 2003 and be executed at least thirty (30) days prior to the end of the primary term. Upon expiration or termination of the Master Agreement 2003, 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 2003 shall be deemed inclusive of the following documents which shall be incorporated herein as if set forth at length:

Appendix A – Standard Clauses for Texas Contracts
Appendix B – Global Price List
Appendix C – Price List Supplement
Appendix D – Migration Matrix
Appendix E – Sample Order Form
Appendix F – Professional Services Rates
Appendix G – Professional Services Order Forms
Appendix H– Learning Credits Rates

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 2003 and its Appendices and an Order Form issued hereunder, this Master Agreement shall take precedence, except as expressly agreed to by the Authorized User and Oracle.

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

a. Where licenses are defined herein as "perpetual", it is expressly understood that such license rights shall exist in perpetuity unless otherwise terminated in accordance with the applicable provisions of the Master Agreement 2003.

b. ADMINISTRATIVE FEE The fee used to defray DIR's cost of negotiating, executing and administering this Master Agreement 2003.

c. AUTHORIZED USERS any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.

d. ATTORNEY GENERAL the Attorney General of the State of Texas.

e. COMPTROLLER Comptroller of Public Accounts of the State of Texas.

f. DAY shall mean eight (8) hour business days, Monday through Friday, except for State and Federal holidays. If the Master Agreement 2003 calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.

g. DIR The Department of Information Resources, a state agency of the state of Texas, authorized to contract for the provision of Information Resource Technologies as set forth in Chapter 2054, Texas Government Code, and includes its successors.

h. DOCUMENTATION The complete set of user guides and manuals for use of the Licensed Programs generally made available by Oracle to its customers.

i. EFFECTIVE DATE – for the Master Agreement 2003 is the date that the last signature is affixed hereto, to supercede and replace Master Agreement 2000.

j. GO DIRECT COORDINATOR refers to the individual appointed by DIR to administer and collect the contract reporting data on behalf of the State and the Authorized Users.

k. LICENSE A grant of perpetual use rights for Oracle programs more specifically set forth in Section 5.01.

l. LICENSE MIGRATION A license migration is a means of contractually modifying a customer's Oracle licenses purchased under older license metrics (e.g., Concurrent Device) to take advantage of current license metrics (e.g., Processor). A customer'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 Form, and often requires the payment of additional license and support fees.

m. LICENSED PROGRAMS Computer software programs in object code form, which are offered and delivered by Oracle to Authorized User, including the media, user guides, manuals, and Updates.

n. LICENSEE Authorized User(s) who acquire(s) Licensed Programs, services and/or Documentation from Oracle by means of the issuance of an Order Form and associated Purchase Order in accordance with the terms and conditions of this Master Agreement 2003.

o. ORDER FORM The official form set forth in Appendix E to the Master Agreement 2003 which constitutes a binding order of Programs or services when issued with Authorized User's standard Purchase Order or other ordering document and sets forth the terms of License or acquisition. Authorized User may include its standard fiscal processing documents attached thereto, provided that any additional or inconsistent terms contained on Authorized User's fiscal processing documents would be superseded by the terms of the Master Agreement 2003, or binding only upon mutual agreement of Oracle and Licensee. The Order Form shall set forth the Program license and service fee(s) that apply to the order calculated in accordance with the terms of this Master Agreement 2003, or such other more advantageous terms for Licensee as are agreed to between the parties.

p. ORACLE CONTRACT ADMINISTRATOR The individual as appointed by Oracle to administer this Master Agreement 2003 on behalf of Oracle.

q. PROGRAM Computer software in object code form, which is licensed pursuant to this Master Agreement 2003, including the media, Documentation and Updates.

r. PURCHASE ORDER The Authorized User's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).

s. SUPPORTED PROGRAM LICENSE Licensed Programs for which Technical Support has been ordered under the Master Agreement 2003.

t. STATE shall mean the state of Texas, and as the context requires, includes the Authorized Users eligible to use this 2003 Master Agreement.

u. STATE CONTRACT ADMINISTRATOR The individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Authorized Users.

v. TECHNICAL SUPPORT Oracle-supplied maintenance for the Licensed Programs which maintenance service is defined under the Master Agreement 2003, 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.

w. LEARNING CREDIT One day (eight hours) education per student at an Oracle Training Center in the United States, exclusive of travel expenses. Learning Credits expire if not utilized within one year. At

Licensee's option, Licensee may require the Learning Credits to be provided within the State of Texas as set forth in Appendix H and Section 10.02.

x. UPDATES 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.

5. PROGRAM LICENSE

5.01 License Grant

(A) Scope Upon the issuance of a valid Order Form, Oracle hereby grants to Licensee a non-exclusive, perpetual right to use the Licensed Programs set forth herein solely for Licensee's business operations, in accordance with the rights and obligations set forth in this Master Agreement 2003, including the Documentation and the license definitions set forth in Appendix B. The License shall commence upon delivery of the Licensed Program to Licensee and shall survive termination of the Master Agreement 2003 in perpetuity unless otherwise terminated in accordance with this Master Agreement 2003.

(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 2003 or an Order Form. Authorized User shall have the right to allow Authorized User's third party agents ("Agents") to use the Programs for Authorized User's internal purposes as long as Authorized User ensures that Agents use of the Programs is in accordance with the terms of this Master Agreement 2003.

(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).
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 2003.

(E) To use the Program specified on an Order Form, 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 Order Form or Documentation for implementation of the ordered Program and for no other purpose. Any necessary ancillary or imbedded Program will be listed on the Order Form and 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) DIR and Oracle establish this document, known as Master Agreement 2003, to be a centralized, statewide contract between the parties replacing the Master Agreement 2000, which expires March 7, 2003. An Authorized User's existing licensing and Technical Support agreements in effect with Oracle prior to the date of this Agreement shall not be extinguished or merged solely by execution and approval of this Master Agreement, or unilateral act of Oracle. Rights and obligations relating to products 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 2003 remain unchanged; provided however that the parties acknowledge that any Technical Support renewals ordered by an Authorized User during the Term shall be governed by the Master Agreement 2003.

(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 2003, 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 2003 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 2003 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 2003.

(H) Authorized License Transfers Licensee 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 Designated System and transfers the same license to a new hardware system. Inter-Authorized User license transfers as a result of operational transfers, transfer of business functions or User consolidations are authorized transfers under this paragraph.

(I) Archival Back-Up and Disaster Copies of Licensed Programs 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. DIR shall not be responsible for any Authorized User's compliance with the Program License. If DIR purchases software licenses for its own use under this Master Agreement 2003, it shall be responsible for its compliance with the Program License terms and conditions.

5.02 Licensed Programs and Service Offerings
(A) Programs The full line of Programs covered by this Master Agreement 2003 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 2003.

(B) Technical Services Oracle shall offer Technical Support for the Programs as provided in Section 9.0.

(C) Professional Services & Training Authorized User(s) may obtain professional services and training (education) services from Oracle as provided in Section 10.0.

(D) Pre-Production Releases As an accommodation to Licensee, 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) New Program Offerings The parties may, from time to time and upon mutual agreement, amend the scope of products offered under this Master Agreement 2003 at any time during the contract term to take advantage of Oracle's new Program offerings.

(F) Removal of Services/Programs DIR may, at its sole discretion, remove from this Master Agreement 2003 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. DIR 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, DIR agrees to restore the removed Programs to this Master Agreement 2003.

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 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 2003, 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 and operating system or the same or comparable hardware and operating system 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 2003.

6. DESCRIPTION OF TYPES OF LICENSES AVAILABLE

Oracle's Licensing Metrics are contained in Appendix B.

Only perpetual licenses are to be made available to Authorized Users under this Master Agreement 2003.

7. PRODUCT AND SERVICES ACQUISITION/DELIVERY/ACCEPTANCE

7.01 Acquisition

(A) Order Placement. 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 Form and Authorized User's Purchase Order or standard ordering documents for Products or Services. The issuance of an Order Form and Authorized User's Purchase Order or standard ordering documents shall indicate the Authorized User's acceptance and agreement to the terms and conditions set forth in this Master Agreement 2003, including applicable copyright restrictions agreed to hereunder by the State on behalf of Authorized User.

i. Issuing a Valid Order Form

Oracle shall provide a written quote of the pricing to Authorized User. Authorized User shall submit to Oracle an Order Form along with the Authorized User's Purchase Order or standard ordering document in order to obtain a Program License or Services. Said Order shall be binding upon execution of the Order Form by Oracle. Upon receipt of fully executed Order Form and issuance of Purchase Order, all fees are non-cancellable and the sums paid nonrefundable, except as provided in this Master Agreement 2003.

ii. Content of Order Form All Order Forms and Authorized User's Purchase Order or standard ordering document must reference this Master Agreement 2003, DIR-VPC-03-018, on the face of the Order Form and Authorized User's Purchase Order or standard ordering document and shall be deemed to incorporate the terms and conditions of this Master Agreement 2003.

The Order Form, 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, a non-human operated device will be counted as a Named User 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 2003;

d) Technical Support, if any, in accordance with the pricing set forth in this Master Agreement 2003

e) Number of Learning Credits, if any, in accordance with the pricing set forth in this Master Agreement 2003

f) Professional Services Fees, if any, in accordance with the pricing set forth in this Master Agreement 2003;

g) Applicable Discounts calculated in accordance with the pricing set forth in this Master Agreement 2003

h) Applicable Credits, if any, calculated in accordance with Section 11.03 below; and

i) Net Price Payable by Authorized User(s).

Any additional terms and conditions contained on the Order Form which amend, alter, change or modify the terms and conditions set forth in the Master Agreement 2003 shall not be binding notwithstanding the acceptance of Programs or payment of said invoice by Authorized User, unless expressly agreed to by both parties. Oracle may offer more advantageous terms to Licensee at the time of Order, and such additional offers/incentives shall be set forth on the Order Form.

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 platforms/operating systems combinations 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 Licensee and Oracle is willing to provide such version. The written Order Form shall indicate an addressee at the site, which will act as the designated recipient for the Program ordered.

iii. Responsibility for Order Placement 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 2003.

(B) No Minimum Quantity Guaranty
DIR makes no representation or warranty as to the amount of Programs or Services that will be purchased under this Master Agreement 2003.

7.02 Delivery: FCA (Free Carrier) Shipping Point
Oracle shall deliver to the Licensee one copy of the software media and one complete set of Documentation for each Licensed Program for use on the applicable hardware platform. Delivery shall be FCA Shipping Point. Oracle agrees that it will assume the risk of loss for media through the Delivery Date. Delivery Date shall mean the date of physical delivery to Authorized User's designated address. The price to the Authorized Users under this Master Agreement 2003 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 2003, the Licensee 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 Order Form.

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.

8.0 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 2003, and contain additional terms and are subject to change, provided, however that for a period of five (5) years the Oracle Technical Support services provided under this Agreement 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.

Oracle reserves the right to desupport its Programs. Oracle will use commercially reasonable efforts to provide DIR 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 Maintenance 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.

9.0 RELATED SERVICES
Authorized Users may acquire services, including professional services, and Learning Credits, under this Master Agreement 2003.

9.01 Professional Services
Authorized Users may acquire professional services under this Master Agreement 2003. Professional services shall be charged at the rates set forth in Appendix F. Authorized Users purchasing services under this Master Agreement 2003 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 Agreement 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 Learning Credits
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 Learning Credits, which are valid for one (1) year from the date of the Order Form. Learning Credits hereunder are for Oracle products only.

Each Learning Credit 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, training 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, Learning Credits 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 State employees. For state agency Authorized Users, such rates for fiscal years 2002 and 2003 shall not exceed eighty dollars ($80.00) per night for hotel expenses, thirty dollars ($30.00) per day for meal expenses, and will not include reimbursements for tips and/or gratuities. 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.

10.0 PAYMENTS/PRICING

The following Discount Schedule shall apply to fees listed on the February 7, 2003 Global Price List for Program licenses, Software Updates and/or Product Support acquired pursuant to the terms of the Agreement and shall be the basis for quotes issued under Section 7.01 (A) (i) (the Transaction Band amount shall be determined per order):

Transaction Band (List License + List Support)	Price List Discounts
$1.00 to $100,000	25%
$100,001 to $250,000	30%
$250,001 to $375,000	35%
$375,001 +	40%

The State of Texas License and Support Discounts (also referred to herein as the "Price List Discounts")

set forth above are consistent with the discount percentages provided in Oracle's General Services Administration Federal Supply Service ("GSA") Contract Number GS-35F-0108J ("Schedule") between GSA and Oracle in effect as of the Effective Date of this Agreement.

Price List Discounts shall be updated on an annual basis, and shall reflect any changes to the discount percentages in the Schedule. The parties agree to work in a good faith effort towards a mutual agreement to update the Price List Discounts under the Agreement by the State of Texas' fiscal year end, August 31, of each contract year. In the event that discount percentages for the GSA Schedule are modified via an approved modification to the GSA Schedule prior to the State of Texas fiscal year end, Oracle and the State of Texas, acting through DIR, agree to renegotiate the Price List Discounts in good faith within 30 days of such GSA Schedule modifications. In the event that an amendment to update the Price List Discounts is not executed by the State of Texas' fiscal year end, and until such amendment is executed during the term of the Agreement, the parties agree that orders submitted by Customers will be quoted by Oracle, based on the Price List Discounts 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.

During the term of the Agreement, Oracle may, at its sole discretion, offer general promotions that are available to all of its worldwide customers.

Prices shall be calculated in accordance with the pricing set forth in this Master Agreement 2003 Pricing set forth in Appendix B includes all applicable documentation, shipping, delivery and handling charges. Oracle may, however, upon mutual agreement of the Authorized User, negotiate more advantageous pricing for particular orders.

10.01 Credits/DIR Net Price
Any credits due under this Master Agreement 2003, 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 or product offered under this Master Agreement 2003.

The Discounted Price, less credits if any which are to be applied pursuant to the foregoing paragraph, shall be payable as the "DIR Net Price", on the Order Form.

10.02 Higher Education Pricing
Oracle shall extend Higher Education pricing to all Authorized Users of the Master Agreement 2003 who qualify as educational providers under the terms of Oracle's standard Academic Practices policies and are eligible under §2054.003, Texas Government Code. Notwithstanding the existence of separate license pricing terms for educational programs, the remaining terms and conditions of this Master Agreement 2003 shall apply to all purchases of Oracle software and associated products offered herein under educational licenses. Higher Education institutions purchasing under this Master Agreement 2003 may acquire Campus Wide Program licenses, which license all full-time and part-time students, faculty and staff in accordance with the following:

Campus Wide Programs. In consideration for licensing all full-time and part-time students, faculty and staff, Oracle grants to Authorized User the following rights:

(i.) Internet Access. Authorized User may allow an unlimited number of internet users to access any of the Campus Wide Programs licensed under an Oracle Order Form, provided the access is for viewing, querying, or adding data associated with Authorized User's administrative, teaching, research or community service functions. The Authorized User may charge a fee for such internet access provided the fee is designed to only reimburse Authorized User for its costs incurred in developing and administering Customer's business program.

(ii.) OAI and WDP Membership. As of the Effective Date of this Ordering Document, teaching departments at the Authorized User's institution may participate in the Oracle Academic