# Third Party Terms for ASFU Oracle Software

## 1. Definitions and Interpretation

**1.1** Unless otherwise defined in these Third Party Terms, terms used in these Third Party Terms shall have the meaning given to them in Schedule 1 (Definitions and Interpretation) of the Terms and Conditions.

**1.2** For the avoidance of doubt, the ASFU Oracle Software constitutes Additional Third Party Software and these terms are the Third Party Terms applicable to such ASFU Oracle Software referenced in Clause 9.1 of Section B (Software and Software Support Services) of the Contract.

**1.3** In respect of the use of the ASFU Oracle Software only, the definition of Customer shall be extended to include Affiliates and other related parties ("Customer Affiliates") provided such Customer Affiliates (together with the Customer and KCS) have first entered into and remain a party to a valid Customer Affiliate End User Licence Agreement.

## 2. Software Licence

**2.1** Where the Customer has ordered ASFU Oracle Software pursuant to the Quotation, the following licence terms shall apply:

(a) in consideration of the Charges paid by the Customer to KCS in respect of the ASFU Oracle Software licence, KCS hereby grants to the Customer a non-exclusive, non-transferable, non-sub-licensable, licence to use such ASFU Oracle Software in object code form in accordance with the terms of the Contract for the duration of the term of the licence granted by KCS under this Contract to use the K8 Software supplied in conjunction with such ASFU Oracle Software; and

(b) the Customer may make a reasonable number of back-up copies of the ASFU Oracle Software for the licensed use which must at all times remain under the secure control of the Customer or a hosting services provider authorised by KCS.

## 3. ASFU Oracle Software – Customer Obligations

**3.1** The Customer shall not allow the ASFU Oracle Software to be used by more than the number of processors specified in the Quotation or any other licence count restriction specified in the Quotation which number the parties may increase by agreement in writing from time to time, provided that the applicable additional Charges are paid to KCS before such use.

**3.2** The Customer shall:

(a) only use the ASFU Oracle Software solely in conjunction with the K8 Software supplied and in accordance with the terms of this Contract;

(b) only use the ASFU Oracle Software for the purposes of its own internal business operations and in accordance with the scope of use for such K8 Software coupled with the ASFU Oracle Software such as has been agreed between KCS and Oracle and notified in writing by KCS to the Customer ("**Scope**");

(c) comply fully with all relevant export laws and regulations of the United States and other applicable export and import laws to assure that neither the ASFU Oracle Software, nor any direct product thereof, are exported, directly or indirectly, in violation of applicable laws;

(d) on termination of the relevant agreement between KCS and Oracle for any reason, discontinue use of the ASFU Oracle Software and return all copies of, including all back up copies, of the ASFU Oracle Software and other associated documentation and materials to KCS. Alternatively, the Customer may destroy all copies thereof and associated documentation and materials and certify the same in writing to KCS; and

(e) have no right to any services from Oracle save as expressly (if at all) provided by the Contract.

**3.3** Only the Customer may use the ASFU Oracle Software except that:

(a) the Customer may allow its agents and contractors (including without limitation outsourcers) to use the K8 Software supplied coupled with the ASFU Oracle Software on the Customer's behalf for the Scope subject to the Contract Terms; and/or

(b) where the K8 Software supplied coupled with the ASFU Oracle Software includes programs that are specifically designed to facilitate interactions between the Customer and its customers and suppliers, the Customer may permit its customers and suppliers to use the K8 Software supplied coupled with the ASFU Oracle Software in furtherance of such interactions subject to the Contract Terms,

but in each case the foregoing is subject to the Customer ensuring that all such agents, contractors, outsourcers, customers and suppliers comply with the Contract Terms and provided that the Customer shall remain liable for the acts and omissions of any and all such users as if they were its own.

**3.4** The Customer shall not (and shall not permit any third party to):

(a) assign, give, or transfer the ASFU Oracle Software and/or any services provided in connection therewith or an interest in them to another individual or entity. Without prejudice to the foregoing, in the event that the Customer grants a security interest in the ASFU Oracle Software and/or any services provided in connection therewith the person taking the benefit of such security shall have no right to use or transfer the ASFU Oracle Software and/or any such services;

(b) use the ASFU Oracle Software to provide bureau, timesharing, rental, subscription, hosting, outsourcing or other services;

(c) remove or modify any ASFU Oracle Software markings or any notice of Oracle's or its licensors' proprietary rights;

(d) make the ASFU Oracle Software available in any manner to any third party for use in the third party's business operations (except to the extent (if any) that the same may be permitted under this Contract);

(e) reverse engineer (unless required by law for interoperability), disassemble or decompile the ASFU Oracle Software (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by ASFU Oracle Software);

(f) copy or duplicate the ASFU Oracle Software except for a sufficient number of copies for the Customer's licensed use and one copy of each ASFU Oracle Software media and the Customer shall retain the same under its control;

(g) publish any results of benchmark tests run on the ASFU Oracle Software; or

(h) sub-license, hire or lease out, or grant rights to third parties with respect to the ASFU Oracle Software.

**3.5** Neither the Customer nor any third party shall acquire any title to the ASFU Oracle Software. Oracle or its licensors shall retain all ownership and Intellectual Property Rights in and to the ASFU Oracle Software.

**3.6** The Customer agrees that:

(a) Oracle shall not, to the fullest extent permitted by applicable law, be liable 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 ASFU Oracle Software; and

(b) Oracle shall not be required to perform any obligations or incur any liability not previously agreed between KCS and Oracle.

**3.7** KCS shall have the right to audit the Customer's use of the ASFU Oracle Software either through its own deployed monitoring tools or otherwise and report the audit results to Oracle or other relevant third parties and the Customer shall provide reasonable assistance and access to information in the course of any such audit. KCS may assign the foregoing right to audit the Customer's use of the ASFU Oracle Software to Oracle and the Customer agrees that Oracle shall not be responsible for any of KCS' or the Customer's costs incurred in co-operating with the audit.

**3.8** KCS hereby notifies and informs the Customer that:

(a) the ASFU Oracle Software is subject to a restricted licence and can only be used in conjunction with the K8 Software supplied; and

(b) some ASFU Oracle Software may include source code that Oracle may provide as part of its standard shipment of such ASFU Oracle Software, which source code shall be governed by the Contract Terms.

**3.9** Where any third party technology is appropriate or necessary for use with the ASFU Oracle Software in accordance with any K8 Software and/or ASFU Oracle Software documentation or as otherwise notified to the Customer by KCS, such technology shall be licensed to the Customer for use only with the K8 Software supplied coupled with the ASFU Oracle Software and shall be licensed under the terms of the third party licence agreement specified in the K8 Software and/or or ASFU Oracle Software documentation or as otherwise notified to the Customer by KCS and not under the terms of the Contract.

**3.10** Notwithstanding any provision to the contrary, KCS may disclose the Contract and the details of the Customer's licence to use the ASFU Oracle Software to Oracle.

**3.11** Other than as expressly provided otherwise under the Contract, it is not a term of the Contract (whether a condition, warranty or other term) that the use or operation of the ASFU Oracle Software will be uninterrupted or error-free.