



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia Contract

Order Date: 05-27-2022

CORRECT ORDER NUMBER MUST APPEAR
ON ALL PACKAGES, INVOICES, AND
SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

Order Number:	CCT 0704 7882 INS2200000001 1	Procurement Folder:	1034533
Document Name:	Oracle Software Maintenance And Support	Reason for Modification:	
Document Description:	Oracle Software Maintenance And Support		
Procurement Type:	Central Contract - Fixed Amt		
Buyer Name:	Joseph E Hager III		
Telephone:	(304) 558-2306		
Email:	joseph.e.hageriii@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2022-07-15
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-07-14

VENDOR				DEPARTMENT CONTACT	
Vendor Customer Code: VS0000020347 CAPITAL CONSULTING LLC 1205 GOOD HOPE RD SE STE 203 WASHINGTON DC 20020 US Vendor Contact Phone: 7039309509 Extension:				Requestor Name: John L Hannan Requestor Phone: (304) 558-6279 Requestor Email: John.L.Hannan@wv.gov	
Discount Details:				22 FILE LOCATION _____	
	Discount Allowed	Discount Percentage	Discount Days		
#1	No	0.0000	0		
#2	Not Entered				
#3	Not Entered				
#4	Not Entered				

INVOICE TO	SHIP TO
ACCOUNTS PAYABLE MANAGER OFFICES OF THE INSURANCE COMMISSIONER PO BOX 50540 CHARLESTON WV 25305-0540 US	OFFICES OF THE INSURANCE COMMISSIONER 900 PENNSYLVANIA AVE CHARLESTON WV 25302 US

6-22-22 Bpr

Purchasing Division's File Copy

Total Order Amount: \$99,406.96

ENTERED

PURCHASING DIVISION AUTHORIZATION <i>Linda Harper</i> DATE: 6-22-2022 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM <i>John S. Granger</i> DATE: 6/22/2022 ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION <i>[Signature]</i> 6/23/2022 DATE: 6/23/2022 ELECTRONIC SIGNATURE ON FILE
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Extended Description:

The vendor, Capital Consulting, agrees to enter into this contract with the agency, The West Virginia Offices of the Insurance Commissioner, for the following Oracle Software Diagnostic Pack, Database Enterprise Edition, Tuning Pack and Lifecycle Management software maintenance and support for CIS numbers 14725998, 15901615 and 23678900 per the specifications, terms and conditions, and the vendors submitted bid response dated 5/12/2022 all incorporated herein by reference and made apart hereof.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81112200	8.00000	EA	819.360000	\$6,554.88
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Oracle Diagnostics Pack Maintenance & Support

Extended Description:

See attached Exhibit A Pricing Page

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	81112200	8.00000	EA	9180.860000	\$73,446.88
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Oracle Data Base Enterprise Edition Maintenance & Support

Extended Description:

See attached Exhibit A Pricing Page

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
3	81112200	8.00000	EA	736.310000	\$5,890.48
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Oracle Database Tuning Pack Maintenance & Support

Extended Description:

See attached Exhibit A Pricing Page

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
4	81112200	8.00000	EA	1689.340000	\$13,514.72
Service From	Service To	Manufacturer	Model No		

Commodity Line Description: Oracle Lifecycle Management Software Maintenance & Support

Extended Description:

See attached Exhibit A Pricing Page

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

Initial Contract Term: The Initial Contract Term will be for a period of _____
One (1) Year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to Four (4) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for _____ years;

☐ the contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney

General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** Contract Term specified in _____

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

Revised 04/01/2022

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: One Million Dollars per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: _____ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

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Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

9. WORKERS' COMPENSATION INSURANCE: Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. [Reserved]

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence regarding all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. NO DEBT CERTIFICATION: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

38. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

39. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.

- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

44. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

45. VOID CONTRACT CLAUSES – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

46. ISRAEL BOYCOTT: Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Name, Title) Eric Wimer ; CEO

(Printed Name and Title) Eric Wimer ; CEO

(Address) 1205 Good Hope Rd SE. STE 203 Washington, DC 20020-6935

(Phone Number) / (Fax Number) 202.993.3972

(email address) ewimer@tharseoit.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

Capital Consulting LLC D/B/A Tharseo IT

(Company) 

(Authorized Signature) (Representative Name, Title)

Eric Wimer ; CEO 05/12/2022

(Printed Name and Title of Authorized Representative) (Date)

703.674.9628

(Phone Number) (Fax Number)

ewimer@tharseoit.com

(Email Address)

Oracle Software Maintenance and Support

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of Offices of the Insurance Commissioner to establish a contract for the following Oracle Software Diagnostic Pack, Database Enterprise Edition, Tuning Pack and Lifecycle Management software maintenance and support. There are three (3) different CSI this RFQ that the Offices of the Insurance Commissioner (OIC) is wanting to combine and co-term. The CSI numbers the OIC are wanting to co-term are 14725998, 15901615 and 23678900.
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **“Licenses”** means Agency’s licenses to utilize Offices of the Insurance Commissioner software.
 - 2.2 **“Pricing Page”** means the pages, contained wvOASIS or attached hereto as Exhibit A, upon which Vendor should list its proposed price for the software maintenance and support.
 - 2.3 **“Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
3. **QUALIFICATIONS:** Vendor, or Vendor’s staff if requirements are inherently limited to individuals rather than corporate entities, shall have the qualifications listed below. Compliance will be determined prior to contract award by the State through documentation provided by the Vendor with its bid or upon request, Vendor must provide any documentation requested by the State to assist in confirmation of compliance with this provision. References, documentation, or other information to confirm compliance with this experience requirement are preferred with the bid submission but may be requested after bid opening and prior to contract award.
 - 3.1. Vendor must be authorized by Oracle to provide software maintenance and support for the Licenses.
4. **MANDATORY REQUIREMENTS:**
 - 4.1. **Software Maintenance and Support:** Vendor must provide maintenance and support for the Licenses as follows:
 - 4.1.1. 32 Licenses must be covered by maintenance and support.
 - 4.1.1.1. Agency owned License Numbers

Oracle Software Maintenance and Support

8 each Oracle Diagnostic Pack
8 each Oracle Database Enterprise Edition
8 each Oracle Tuning Pack
8 each Oracle Lifecycle Management

- 4.1.2. Maintenance and support must be provided for 1 year with 4 optional 1-year renewals.
- 4.1.3. Current maintenance and support began on July 15, 2021 and expires/expired on July 14, 2022 .
- 4.1.4. Maintenance and Support under the initial term of this Contract will be for the period beginning on July 15, 2022 and ending on July 14, 2023 . Each subsequent term, if any are authorized by the parties, will run consecutively to the prior term.
- 4.1.5. Reinstatement fees for lapsed support must be included in the first year of maintenance and support costs, if applicable.
- 4.1.6. Vendor must provide a copy of all applicable maintenance and support agreements prior to contract award for review and approval by the State of West Virginia.
- 4.1.7. Vendor must also agree to accept and incorporate the current negotiated terms between Oracle and the State of WV into their agreement terms, as applicable. These terms available for review at:
<http://www.statewv.us/admin/purchase/SWC/MSORACLE.htm>

5. CONTRACT AWARD:

- 5.1. **Contract Award:** The Contract will be awarded to the Vendor that provides the Software Maintenance and Support meeting the required specifications for the lowest total contract cost as shown on the Pricing Pages.
- 5.2. **Pricing Page:** Vendor should complete the Pricing Page by entering the unite price for each license, multiplying each unit price by the number of licenses for a total cost per license. Then totaling all of the lines to get the total contract cost. Enter the total cost into the commodity line 1 on the wvOASIS document

Oracle Software Maintenance and Support

6. **PAYMENT:** Agency shall pay the annual cost per license , as shown on the Pricing Pages, for all Software Maintenance and Support. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.
7. **FACILITIES ACCESS:** In the event that performance of Software Maintenance and Support requires access to Agency facilities, access cards and/or keys may be required to gain entrance. In the event that access cards and/or keys are required:
 - 7.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
 - 7.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
 - 7.3. Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
 - 7.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
 - 7.5. Vendor shall inform all staff of Agency's security protocol and procedures.

Oracle Software Maintenance and Support

8. VENDOR DEFAULT:

8.1. The following shall be considered a vendor default under this Contract.

8.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.

8.1.2. Failure to comply with other specifications and requirements contained herein.

8.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

8.1.4. Failure to remedy deficient performance upon request.

8.2. The following remedies shall be available to Agency upon default.

8.2.1. Immediate cancellation of the Contract.

8.2.2. Immediate cancellation of one or more release orders issued under this Contract.

8.2.3. Any other remedies available in law or equity.

9. MISCELLANEOUS:

9.1. **Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____

Telephone Number: _____

Fax Number: _____

Email Address: _____



GENERAL TERMS- Public Sector

Oracle General Terms Reference:

US-OMA-226823

The text of these General Terms differs from Oracle's standard General Terms.

These General Terms (these "General Terms") are between Oracle America, Inc. ("Oracle") and the entity identified below in the signature block ("You"). To place orders subject to these General Terms, at least one Schedule (as defined below) must be incorporated into these General Terms. If a term is relevant only to a specific Schedule, that term will apply only to that Schedule if and/or when that Schedule is incorporated into these General Terms.

Subject to the Limitation of Use provision of the Amended Agreement Addendum for Software, as negotiated and agreed by the parties ("WV-96A"), attached hereto as Exhibit A and incorporated herein by reference, all public entities located within the State of West Virginia, including, but not limited to, departments, institutions, institutions of higher education, agencies, legislative, executive or judicial bodies, offices, authorities, posts, committees, institutions, boards, or political subdivisions created by law to exercise sovereign power or to perform governmental duties of the State, cities, counties, towns and political subdivisions (each such entity, an "Authorized Contract User") may also order Programs and Service Offerings from Oracle in accordance with the terms and conditions of the Master Agreement. By placing an order under the Master Agreement, each Authorized Contract User agrees to be bound by the terms and conditions of the applicable ordering document and the Master Agreement and, for the purposes of such order, "You" and "Your" as used in the Master Agreement shall be deemed to refer to such Authorized Contract User, unless indicated otherwise herein. Each Authorized Contract User shall be responsible for its breach(es) of such terms and conditions. "Parties" shall mean You and Oracle, and each of us may be referred to individually as a "party."

1. DEFINITIONS

1.1 Reserved.

1.2 Reserved.

1.3 "**Master Agreement**" refers to these General Terms (including any amendments thereto) and all Schedule(s) incorporated into the Master Agreement (including any amendments to those incorporated Schedule(s)). The Master Agreement governs Your use of the Products and Service Offerings ordered from Oracle or an authorized reseller.

1.4 Reserved.

1.5 "**Products**" refers to Programs .

1.6 "**Programs**" refers to (a) the software owned or distributed by Oracle that You have ordered under Schedule P, (b) Program Documentation and (c) any Program updates acquired through technical support.

1.7 "**Program Documentation**" refers to the Program user manual and Program installation manuals. Program Documentation may be delivered with the Programs. You may access the documentation online at <http://oracle.com/contracts>.

1.8 "**Schedule**" refers to all Oracle Schedules to these General Terms as identified in Section 2.

1.9 "**Separate Terms**" refers to separate license terms that are specified in the Program Documentation, readmes or notice files and that apply to Separately Licensed Third Party Technology.

1.10 "**Separately Licensed Third Party Technology**" refers to third party technology that is licensed under Separate Terms and not under the terms of the Master Agreement.

1.11 "Service Offerings" refers to technical support, education, hosted/outsourcing services, cloud services, consulting, advanced customer support services, or other services which You have ordered. Such Service Offerings are further described in the applicable Schedule.

1.12 "You" and "Your" refers to the entity that has executed these General Terms.

2. MASTER AGREEMENT TERM AND APPLICABLE SCHEDULES

Orders may be placed under the Master Agreement for five years from the Effective Date (indicated below in Section 17). The Master Agreement may be renewed by mutual written agreement of the parties. As of the Effective Date, the following Schedules are incorporated into the Master Agreement: **Schedule P – Program**.

The Schedules set forth terms and conditions that apply specifically to certain types of Oracle offerings which may be different than, or in addition to, these General Terms. Notwithstanding anything to the contrary contained herein, the parties agree that You may not purchase hardware under the Master Agreement.

3. SEGMENTATION

The purchase of any Products and related Service Offerings or other Service Offerings are all separate offers and separate from any other order for any Products and related Service Offerings or other Service Offerings you may receive or have received from Oracle. You understand that you may purchase any Products and related Service Offerings or other Service Offerings independently of any other Products or Service Offerings. Your obligation to pay for (a) any Products and related Service Offerings is not contingent on performance of any other Service Offerings or delivery of any other Products or (b) other Service Offerings is not contingent on delivery of any Products or performance of any additional/other Service Offerings.

4. OWNERSHIP

Oracle or its licensors retain all ownership and intellectual property rights to the Programs and anything developed or delivered under the Master Agreement.

5. INDEMNIFICATION

5.1 To the extent not prohibited by law and subject to sections 5.5, 5.6 and 5.7 below, if a third party makes a claim against You ("Recipient"), that any information, design, specification, instruction, software, data, or material (collectively, "Material") furnished by Oracle ("Provider") and used by the Recipient infringes the third party's intellectual property rights, the Provider, at the Provider's 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:

- a. 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);
- b. gives the Provider sole control of the defense and any settlement negotiations; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

5.2 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, if Oracle is the Provider of an infringing Program, any unused, prepaid technical support fees You have paid to Oracle for the license of the infringing Program, if any. If such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order.

5.3 Reserved.

5.4 In the event that the Material is Separately Licensed Third Party Technology and the associated Separate Terms do not allow termination of the license, in lieu of ending the license for the Material, Oracle may end the

license for, and require return of, the Program associated with that Separately Licensed Third Party Technology and shall refund any Program license fees You may have paid to Oracle for the Program.

5.5 Reserved.

5.6 The Provider will not indemnify the Recipient if the Recipient alters Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of Material which was provided to the Recipient, or if the Recipient continues to use the applicable Material after the end of the license to use that Material. 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. Oracle will not indemnify You for any portion of an infringement claim that is based upon the combination of any Material with any products or services not provided by Oracle. Solely with respect to Separately Licensed Third Party Technology that is part of or is required to use a Program and that is used: (a) in unmodified form; (b) as part of or as required to use a Program; and (c) in accordance with the license grant for the relevant Program and all other terms and conditions of the Master Agreement, Oracle will indemnify You for infringement claims for Separately Licensed Third Party Technology to the same extent as Oracle is required to provide infringement indemnification for the Program under the terms of the Master Agreement. Oracle will not indemnify You for infringement caused by Your actions against any third party if the Program(s) as delivered to You and used in accordance with the terms of the Master Agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify You for any intellectual property infringement claim(s) known to You at the time license rights are obtained.

5.7 This section provides your exclusive remedy for any infringement claims or damages.

6. TERMINATION

6.1 If either of us breaches a material term of the Master 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 the Master Agreement. If Oracle terminates the Master Agreement as specified in the preceding sentence, You must pay within 30 days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Products ordered and/or Service Offerings received under the Master Agreement 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 the Master Agreement, You may not use those Products or Service Offerings ordered.

6.2 See Section 14 (Right to Terminate) of WV-96A.

6.3 If You have used an Oracle Financing Division contract to pay for the fees due under an order and You are in default under that contract, You may not use the Products and/or Service Offerings that are subject to such contract.

6.4 Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.

6.5 See Section 8 (Fiscal Year Funding) of WV-96A.

7. FEES AND TAXES; PRICING, INVOICING AND PAYMENT OBLIGATION

7.1 All fees payable to Oracle are due within 30 days from the invoice date. Reimbursement of expenses related to the provision of any Service Offering, if any, will be addressed in the relevant ordering document and/or statement of work for such services.

7.2 You understand that You may receive multiple invoices for the Products and Service Offerings You ordered. Invoices will be submitted to You pursuant to Oracle's Invoicing Standards Policy, which may be accessed at <http://oracle.com/contracts>. A current copy of the Oracle Invoicing Standards Policy, which is subject to change, is attached hereto as Exhibit B.

8. NONDISCLOSURE

See Section 20 (Confidentiality) of WV-96A.

9. ENTIRE AGREEMENT

9.1 You agree that the Master Agreement and the information which is incorporated into the Master Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the Products and/or Service Offerings ordered by You and supersede all prior or contemporaneous agreements or representations, written or oral, regarding such Products and/or Service Offerings.

9.2 See Section 21 (Amendments) of WV-96A.

10. LIMITATION OF LIABILITY

See Section 13 (Limitation of Liability) of WV-96A.

11. EXPORT

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. You agree that such export laws govern Your use of the Products (including technical data) and any Service Offerings deliverables provided under the Master Agreement, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, Product and/or materials resulting from Service Offerings (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 used in the transfer, export or re-export of the Products and any Service Offerings deliverables: "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."

12. 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; pandemic, electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export, import 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 30 days, either of us may cancel unperformed Service Offerings and affected orders 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 Products and Service Offerings ordered or delivered.

13. GOVERNING LAW AND JURISDICTION

See Sections 1 (Disputes) and 3 (Governing Law) of WV-96A.

14. NOTICE

If You have a dispute with Oracle or if You wish to provide a notice under the Indemnification section of these General Terms, or if You become subject to insolvency or other similar legal proceedings, You will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood City, California, United States, 94065, Attention: General Counsel, Legal Department.

15. ASSIGNMENT

See Section 12 (Assignment) of WV-96A.

16. OTHER

16.1 Oracle is an independent contractor and we agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance.

16.2 If any term of the Master 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 the Master Agreement.

16.3 See Section 9 (Statute of Limitation) of WV-96A.

16.4 Products and Service Offerings deliverables are not designed for or specifically intended for use in nuclear facilities or other hazardous applications. You agree that it is Your responsibility to ensure safe use of Products and Service Offerings deliverables in such applications.

16.5 If requested by an authorized reseller on Your behalf, You agree Oracle may provide a copy of the Master Agreement to the authorized reseller to enable the processing of Your order with that authorized reseller.

16.6 The Uniform Computer Information Transactions Act does not apply to the Master Agreement or orders placed under it.

16.7 You understand that Oracle's business partners, including any third party firms retained by You to provide consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner unless (i) the business partner is providing services as an Oracle subcontractor in furtherance of an order placed under the Master Agreement and (ii) only to the same extent as Oracle would be responsible for the performance of Oracle resources under that order.

17. MASTER AGREEMENT EFFECTIVE DATE

This Master Agreement shall be effective upon the date of the last-executed signature below.

West Virginia Department of Administration
Purchasing Division

Signature [Signature]
Name DAVID TIMMER
Title DIRECTOR
Signature Date 8/28/14

Oracle America, Inc.

Signature [Signature]
Name Clinton Cole
Title Contracts Manager
Signature Date 8/26/2014

Approved:

WV Attorney General's Office

By: [Signature]
Its: Chief Counsel
Date: 8/28/14



Public Sector
Schedule P - Program

Oracle America, Inc. ("Oracle")
500 Oracle Parkway Redwood Shores, CA
94065

Your Name:	State of West Virginia
General Terms Reference:	US-OMA-226823
Schedule Reference:	Schedule P

This Public Sector Program Schedule (this "Schedule P") is a Schedule to the General Terms referenced above. The General Terms and this Schedule P, together with any other Schedules that reference the General Terms, are the Master Agreement. This Schedule P shall coterminate with the General Terms.

1. DEFINITIONS

1.1 "Commencement Date" refers to the date of shipment of tangible media or the effective date of the order if shipment of tangible media is not required.

1.2 Capitalized terms used but not defined in this Schedule P have the meanings set forth in the General Terms.

2. RIGHTS GRANTED

2.1 Upon the full signing of Your order by both Oracle and You, You have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the order), limited right to use the Programs and receive any Program-related Service Offerings You ordered solely for Your internal business operations and subject to the terms of the Master Agreement, including the definitions and rules set forth in the order and the Program Documentation. If accepted, Oracle will notify You and this notice will include a copy of Your Master Agreement.

2.2 Upon payment for Program-related Service Offerings, You have the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for Your internal business operations anything developed by Oracle and delivered to You under this Schedule P ("deliverables"); however, certain deliverables may be subject to additional license terms provided in the order.

2.3 You may allow Your agents and contractors (including, without limitation, outsourcers) to use the Programs and deliverables for Your internal business operations and You are responsible for their compliance with the General Terms and this Schedule P 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 the General Terms and this Schedule P.

2.4 You may make a sufficient number of copies of each Program for Your licensed use and one copy of each Program media.

3. RESTRICTIONS

3.1 The Programs may contain or require the use of third party technology that is provided with the Programs. Oracle may provide certain notices to You in Program Documentation, readmes or notice files in connection with such third party technology. Third party technology will be licensed to You either under the terms of the Master Agreement or, if specified in the Program Documentation, readmes or notice files, under Separate Terms. Your rights to use Separately Licensed Third Party Technology under Separate Terms are not restricted in any way by the Master Agreement. However, for clarity, notwithstanding the existence of a notice, third party technology that is not Separately Licensed Third Party Technology shall be deemed part of the Programs and is licensed to You under the terms of the Master Agreement.

If You are permitted under an order to distribute the Programs, You must include with the distribution all such notices and any associated source code for Separately Licensed Third Party Technology as specified, in the form and to the extent such source code is provided by Oracle, and You must distribute Separately Licensed Third Party Technology under Separate Terms (in the form and to the extent Separate Terms are provided by Oracle). Notwithstanding the foregoing, Your rights to the Programs are solely limited to the rights granted in Your order.

3.2 You may not:

- a. remove or modify any Program markings or any notice of Oracle's or its licensors' proprietary rights;
- b. make the Programs or materials resulting from the Service Offerings 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 Service Offerings you have acquired);
- c. 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);
- d. disclose results of any Program benchmark tests without Oracle's prior written consent, except as required by applicable law, provided that You give Oracle prior notice and an opportunity to oppose such disclosure (unless prohibited by law).

3.3 The prohibition on the assignment or transfer of the Programs or any interest in them under section 15 of the General Terms shall apply to all Programs licensed under this Schedule P, except to the extent that such prohibition is rendered unenforceable under applicable law.

4. TRIAL PROGRAMS

You may order trial Programs, or Oracle may include additional Programs with Your order which You may use for trial, non-production purposes only. You may not use the trial Programs to provide or attend third party training on the content and/or functionality of the Programs. You have 30 days from the Commencement Date to evaluate these Programs. To use any of these Programs after the 30 day trial period, You must obtain a license for such Programs from Oracle or an authorized reseller. If You decide not to obtain a license for any Program after the 30 day trial period, You will cease using and promptly delete any such Programs from Your computer systems. Programs licensed for trial purposes are provided "as is" and Oracle does not provide technical support or offer any warranties for these Programs.

5. TECHNICAL SUPPORT

5.1 For purposes of an order, technical support consists of Oracle's annual technical support services You may have ordered from Oracle or an authorized reseller 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 technical support services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information and consents that Oracle may require in order to perform the technical support services. The technical support policies are incorporated in this Schedule P and are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of technical support 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 order for the applicable technical support services. You may access the current version of the technical support policies at <http://oracle.com/contracts>.

5.2 Technical support is effective upon the Commencement Date unless otherwise stated in Your order.

5.3 Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with Your order may be renewed annually and, if You renew SULS for the same number of licenses for the same Programs, for the first and second renewal years the fee for SULS will not increase by more than 4% over the prior year's fees. If Your order is fulfilled by an authorized reseller, the fee for SULS for the first renewal year will be the price quoted to You by Your authorized reseller; the fee for SULS for the second renewal year will not increase by more than 4% over the prior year's fees.

5.4 If You decide to purchase technical support for any Program 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, You may not update any unsupported Program licenses with new versions of the Program.

6. PROGRAM-RELATED SERVICE OFFERINGS

In addition to technical support, You may order a limited number of Program-related Service Offerings under this Schedule P as listed in the Program-Related Service Offerings document, which is at <http://oracle.com/contracts>. You agree to provide Oracle with all information, access and full good faith cooperation reasonably necessary to enable Oracle to deliver these Service Offerings and You will perform the actions identified in the order as Your responsibility. If while performing these Service Offerings Oracle requires access to another vendor's products that are part of Your system, You will be responsible for acquiring all such products and the appropriate license rights necessary for Oracle to access such products on Your behalf.

Service Offerings provided may be related to Your license to use Programs owned or distributed by Oracle which You acquire under a separate order. The agreement referenced in that order shall govern Your use of such Programs.

7. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES

7.1 Oracle warrants that a Program licensed to You will operate in all material respects as described in the applicable Program Documentation for a period of one year after delivery (i.e., via physical shipment or electronic download). You must notify Oracle of any Program warranty deficiency within one year after delivery. Oracle also warrants that technical support services and Program-related Service Offerings (as referenced in section 6 above) ordered and provided under this Schedule P will be provided in a professional manner consistent with industry standards. You must notify Oracle of any technical support service or Program-related Service Offerings warranty deficiencies within 90 days from performance of the deficient technical support service or Program-related Service Offerings.

7.2 ORACLE DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS.

7.3 FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE ERRORS OF THE APPLICABLE PROGRAM LICENSE IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES YOU PAID TO ORACLE 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 PROGRAM-RELATED SERVICE OFFERINGS; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT PROGRAM-RELATED SERVICE OFFERINGS.

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

8. AUDIT

Upon 45 days written notice, Oracle may audit Your use of the Programs. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Your normal business operations. 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, Oracle can end (a) Program-related Service Offerings (including technical support), (b) Program licenses ordered under this Schedule P and related agreements and/or (c) the Master Agreement. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit.

9. ORDER LOGISTICS

9.1 Delivery and Installation

9.1.1 You are responsible for installation of the Programs unless You purchase installation services from Oracle for those Programs.

9.1.2 Oracle has made available to You for electronic download at the electronic delivery web site located at the following Internet URL: <http://edelivery.oracle.com> the Programs listed in the Programs and Program Support Service Offerings section of the applicable order. Through the Internet URL, You can access and electronically download to Your location the latest production release as of the effective date of the applicable order of the software and related Program Documentation for each Program listed. Provided that You have continuously maintained technical support for the listed Programs, You may continue to download the Programs and related Program Documentation. Please be advised that not all Programs are available on all hardware/operating system combinations. For the most recent Program availability please check the electronic delivery web site specified above. You acknowledge that Oracle is under no further delivery obligation with respect to Programs under the applicable order, electronic download or otherwise unless otherwise stated in Your Order.

9.1.3 If ordered, Oracle will deliver the tangible media to the delivery address specified on the applicable order. You agree to pay applicable media and shipping charges. The applicable shipping terms for the delivery of tangible media are: FCA Shipping Point, Prepaid, and Add.

9.2 Territory

The Programs shall be used in the United States.

9.3 Pricing, Invoicing and Payment Obligation

9.3.1 In entering into payment obligations under an order, You agree and acknowledge that You have not relied on the future availability of any Program or updates. However, (a) if You order technical support, the preceding sentence does not relieve Oracle of its obligation to provide such technical support under the Master Agreement, 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 under an order and the Master Agreement.

9.3.2 Program fees are invoiced as of the Commencement Date.

9.3.3 Program-related Service Offering fees are invoiced after the performance of the Program-related Service Offering performance; specifically, technical support fees are invoiced quarterly in arrears. The period of performance for all Program-related Service Offerings is effective upon the Commencement Date.

9.3.4 In addition to the prices listed on the order, and unless specified otherwise in the Order, Oracle will invoice You for any applicable shipping charges or applicable taxes and You will be responsible for such charges and taxes.

**Exhibit A to the General Terms, US-OMA-226823
WV-96A Amended Agreement Addendum for Software
(as agreed by the parties)**

SEE ATTACHED.

AMENDED AGREEMENT ADDENDUM FOR SOFTWARE

In the event of conflict between this addendum and the Master Agreement, this addendum shall control:

Limitation of Use – The Master Agreement (including this addendum) applies only to contracts issued and approved by the West Virginia Purchasing Division for agencies under its authority and approved as to form by the West Virginia Attorney General's office. No order may be placed under the Master Agreement unless that order and any related documents are approved in advance by the West Virginia Purchasing Division and the West Virginia Attorney General's office. A signature from the Purchasing Division, and from the Attorney General's office, on the ordering document shall operate as approval.

1. **DISPUTES** - The parties agree that they shall not resolve claims between them via arbitration.
2. **HOLD HARMLESS** - As between Oracle and the Agency (also referred to in the Master Agreement or herein as the "Authorized Contract User" or "You," as applicable) any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety, and Oracle will indemnify the Agency for any claim demanding indemnification by the Agency under the terms of the Separately Licensed Third Party Technology, provided that (a) the Agency notifies Oracle within thirty (30) days of Oracle's receipt of a claim; (b) Oracle has sole control of the defense and all related settlement negotiations; and (c) the Agency gives Oracle the information, authority and reasonable assistance necessary to perform the above; reasonable out-of-pocket expenses incurred by the Agency in providing such assistance will be reimbursed by Oracle. For clarity, it is not Oracle's intention to modify any terms of Separately Licensed Third Party Technology, if such modification would create a breach of the Separate Terms. See Section 5 (Indemnification) of the General Terms, which addresses Oracle's indemnification to you.
3. **GOVERNING LAW** - The Master Agreement shall be governed by the substantive and procedural laws of the State of West Virginia.
4. **TAXES** - Provisions in the Master Agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Fees for technical support services are invoiced quarterly in arrears.
6. **INTEREST** - Reserved.
7. **WAIVER** - Reserved.
8. **FISCAL YEAR FUNDING** - The Agency's signature on an ordering document referencing the Master Agreement shall signify to Oracle that funds to be expended under the order during the fiscal year in which the order is signed are appropriated and available as of the effective date of the order. Services performed under the order may be continued in succeeding fiscal years for the term of the order, contingent upon funds being appropriated by the Legislature or otherwise being available for the services. In the event funds are not appropriated or otherwise available for the services, the order shall terminate without penalty on June 30, provided that written notice is received by Oracle on or before such date. After that date, the order becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the order included in its budget. Non-appropriation or non-funding shall not be considered an event of default. Notwithstanding the foregoing, nothing contained herein shall be construed as eliminating the Agency's obligation to pay for products delivered or services rendered prior to termination.
9. **STATUTE OF LIMITATION** - Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to the Master Agreement may be brought by either party more than ten (10) years after the cause of action has accrued.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Agency may not assign the Master Agreement or give or transfer the Programs and/or any Service Offerings or an interest in them to another individual or entity. If Agency grants a security interest in the Programs and/or any Service Offerings deliverables, the secured party has no right to use or transfer the Programs and/or any Service Offerings deliverables, and if Agency decides to finance its acquisition of any Products and/or any Service Offerings, Agency will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>. The foregoing shall not be construed to limit the rights Agency may otherwise have with respect to the Linux operating system, third party technology or Separately Licensed Third Party Technology licensed under open source or similar license terms. Notwithstanding anything to the contrary in the first sentence of this paragraph, You shall be permitted to transfer the Programs and related Service Offerings to another State of West Virginia Agency that assumes Your responsibilities and/or duties due to a merger or consolidation of State Agencies, transfer of official functions and associated technology assets, or name change (the "Assignee State Agency"), provided that: (i) You give advance written notice to Oracle of such assignment, (ii) You have continuously maintained annual technical support services for such Programs or you have reinstated annual technical support services for such Programs prior to the assignment in accordance with Oracle's technical support policies, (iii) the Assignee State Agency agrees in writing with Oracle, using Oracle's standard assignment documentation (a current template of which is attached hereto as Attachment A for reference purposes only), that it assumes all obligations and liabilities with respect to such Programs and related service offerings, and agrees to be bound by such terms and conditions of the Master Agreement and the relevant order placed under the Master Agreement, and the assignment document has been signed by the West Virginia Purchasing Division and Attorney General's Office, and (iv) the Assignee State Agency confirms its continued compliance with the matching service level rules and agrees to maintain technical support services for one year after the assignment with regard to the assigned licenses and any of the same Programs (i.e., Programs in the same license set) held by that agency prior to the assignment.
13. **LIMITATION OF LIABILITY** - NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THE MASTER AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THE SCHEDULE GIVING RISE TO THE LIABILITY, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF THE PRODUCTS OR SERVICE OFFERINGS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT PRODUCT OR SERVICE OFFERINGS GIVING RISE TO THE LIABILITY. THE LIMITATION STATED IN THE SECOND SENTENCE ABOVE OF THIS SECTION SHALL NOT APPLY TO BODILY INJURY (INCLUDING WRONGFUL DEATH) OR DAMAGE TO TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY THE NEGLIGENCE OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS OF ORACLE WHILE PERFORMING SERVICES ON AGENCY'S PREMISES, IF SUCH ACTIONS OR OMISSIONS

WERE NOT CAUSED BY THE ACTION OR OMISSION OF YOU OR ANY THIRD PARTY. FOR THE PURPOSE OF THIS PARAGRAPH, "TANGIBLE PERSONAL PROPERTY" SHALL NOT INCLUDE DOCUMENTATION, SOFTWARE, DATA, OR DATA FILES.

It is understood by the parties that in the State of West Virginia's opinion, the above limitation may violate Article X, Section 6 of the West Virginia Constitution and that the State reserves the right to assert such unconstitutionality in any claim made for damages by the State of West Virginia to be decided in a court of competent jurisdiction.

14. **RIGHT TO TERMINATE** - Agency may terminate the Master Agreement at any time without cause by giving Oracle thirty (30) days prior written notice of such termination. If Agency ends the Master Agreement as specified in the preceding sentence, Agency agrees it must pay within 30 days all amounts which have accrued prior to the end of the Master Agreement, as well as all sums remaining unpaid for Products ordered and/or Service Offerings received under the Master Agreement plus applicable expenses (if any). Any effective ordering document that has been executed by both parties prior to the termination of the Master Agreement (and which has not otherwise been terminated) shall continue in full force and effect.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay liquidated damages upon termination of the agreement is hereby deleted.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The Master Agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Reserved.
19. **ACCELERATION** - Reserved.
20. **CONFIDENTIALITY** -

20.1 By virtue of the Master 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 the Master Agreement. Confidential Information shall be limited to: (1) all trade secret information of Oracle that is clearly identified as confidential at the time of disclosure and (2) Agency's confidential information that is clearly identified as confidential at the time of disclosure.

20.2 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; (d) is independently developed by the other party, or (d) is included in the text of the Master Agreement or any subsequent amendments to the Master Agreement.

20.3 Subject to the applicable law, we each agree not to disclose each other's Confidential Information to any third party other than those set forth in the following sentence for a period of three years (except for Personal Data, defined in section 20.4 below, for which the nondisclosure period shall last for as long as Oracle or the applicable parties set forth in the following sentence are in possession of the information) from the date of the disclosing party's disclosure of the Confidential Information to the receiving party. We may disclose Confidential Information only to those employees or agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than under the Master Agreement. Nothing shall prevent either party from disclosing the terms or pricing under the Master Agreement or orders submitted under the Master Agreement in any legal proceeding arising from or in connection with the Master Agreement or disclosing the Confidential Information to a governmental entity as required by law. In the event Agency receives a valid request for Oracle's Confidential Information pursuant to applicable law, including the West Virginia Freedom of Information Act, Agency will provide Oracle with reasonable notice of such request and give Oracle an opportunity to object to or limit any such disclosure.

20.4 **CONFIDENTIALITY**: Confidential information includes Personal Data. "Personal Data" means non-public personally identifiable information of Agency's individual employees or customers. Agency agrees to disclose to Oracle only such Personal Data as is necessary for Oracle to perform its obligations under the Master Agreement. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, attached hereto as Attachment B and incorporated by reference herein. In the event of any conflict with Oracle's technical support policies and Global Customer Support Security Practices, Attachment B shall control.

21. **AMENDMENTS** - In accordance with Section 9.1 (Entire Agreement) of the General Terms - Public Sector document, it is expressly agreed that the terms of the Master Agreement, as modified by this addendum, and any Oracle order shall supersede the terms in any purchase order, procurement internet portal or any other similar document and no terms included in any such purchase order, portal, or other document shall apply to the Products and/or Service Offerings ordered. No amendment, modification, alteration or change may be made to the Master Agreement or this addendum without the express written approval of the Purchasing Division and the Attorney General and Oracle. In the event of inconsistencies between the terms of Schedule P and the General Terms-Public Sector document, Schedule P shall take precedence. In the event of inconsistencies between the terms of an order and the Master Agreement (as modified by this addendum), the order shall take precedence, subject to the provisions below in Sections 21(a) and 21(b). The order 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 Oracle. Any notice required under the Master Agreement shall be provided to the other party in writing.
 - a. The State has received a sample ordering document (4946808-1) from Oracle for reference purposes. The parties acknowledge that any ordering document issued under the Master Agreement will reflect the specific details of each purchase and any special terms negotiated between the parties for such purchase and may contain third party technology terms that are appropriate or necessary for Oracle program use, if third party technology comprises part of the order.
 - b. The State and Oracle further agree that, notwithstanding the order of precedence in the ordering document, each ordering document shall be governed by the following provisions:
 - i. License fees are invoiced as of the commencement date, and technical support fees are invoiced quarterly in arrears.
 - ii. Services will be invoiced and payable only after services have been rendered, in accordance with Section 9.3.3 of Schedule P.
 - iii. No ordering document will require the payment of taxes from the State.

ACCEPTED BY:

STATE OF WEST VIRGINIA

Spending Unit: PURCHASING DIVISION

Signed: [Signature]

Date: 8/28/14

Title: DIRECTOR

VENDOR

Company Name: Oracle America, Inc.

Signed: Cliff CIL

Date: 8/26/2014

Title: Contracts Manager

Approved:

[Signature]
WV ATTORNEY GENERAL'S OFFICE

By:

Chief Counsel

Its

Date: 8/28/14

Exhibit A Pricing Page

Description	Unit	Unit Cost	Qty	Extended Cost
Year 1 - Oracle Diagnostics Pack Maintenance & Support	each	\$819.36	8	\$ 6,554.86 -
Year 1 - Oracle Database Enterprise Edition Maintenance & Support	each	\$9,180.86	8	\$ 73,446.89 -
Year 1 - Oracle Database Tuning Pack Maintenance & Support	each	\$736.31	8	\$ 5,890.51 -
Year 1 - Oracle Lifecycle Management Software Management and Support	each	\$1,689.34	8	\$ 13,514.68 -
Year 2 - Oracle Diagnostics Pack Maintenance & Support	each	\$876.67	8	\$ 7,013.38 -
Year 2 - Oracle Database Enterprise Edition Maintenance & Support	each	\$9,518.48	8	\$ 76,147.84 -
Year 2 - Oracle Database Tuning Pack Maintenance & Support	each	\$773.32	8	\$ 6,186.53 -
Year 2 - Oracle Lifecycle Management Software Management and Support	each	\$2,102.53	8	\$ 16,820.22 -
Year 3 - Oracle Diagnostics Pack Maintenance & Support	each	\$911.74	8	\$ 7,293.88 -
Year 3 - Oracle Database Enterprise Edition Maintenance & Support	each	\$9,899.22	8	\$ 79,193.76 -
Year 3 - Oracle Database Tuning Pack Maintenance & Support	each	\$804.25	8	\$ 6,433.98 -
Year 3 - Oracle Lifecycle Management Software Management and Support	each	\$2,186.63	8	\$ 17,493.03 -
Year 4 - Oracle Diagnostics Pack Maintenance & Support	each	\$948.20	8	\$ 7,585.63 -
Year 4 - Oracle Database Enterprise Edition Maintenance & Support	each	\$10,295.19	8	\$ 82,361.51 -
Year 4 - Oracle Database Tuning Pack Maintenance & Support	each	\$836.42	8	\$ 6,691.35 -
Year 4 - Oracle Lifecycle Management Software Management and Support	each	\$2,274.09	8	\$ 18,192.71 -
Year 5 - Oracle Diagnostics Pack Maintenance & Support	each	\$986.14	8	\$ 7,889.08 -
Year 5 - Oracle Database Enterprise Edition Maintenance & Support	each	\$10,707.00	8	\$ 85,655.97 -
Year 5 - Oracle Database Tuning Pack Maintenance & Support	each	\$869.87	8	\$ 6,959.00 -
Year 5 - Oracle Lifecycle Management Software Management and Support	each	\$2,365.05	8	\$ 18,920.44 -
Total Bid Amount				\$ 550,245.27 -