



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

# State of West Virginia Master Agreement

Order Date: 12-07-2022

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:	CMA 0803 0081 DOT2300000032 1	Procurement Folder:	1117849
Document Name:	Oracle Data Appliance, Licenses and Sup or equal (81230038)	Reason for Modification:	
Document Description:	Oracle Data Appliance, Licenses and Sup or equal (81230038)		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-12-06
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-11-29

VENDOR		DEPARTMENT CONTACT		
Vendor Customer Code:	000000199159	Requestor Name:	John P Toomey	
MYTHICS INC		Requestor Phone:	304-352-0540	
4525 MAIN ST SUITE 1500		Requestor Email:	John.P.Toomey@wv.gov	
VIRGINIA BEACH	VA	23462		
US				
Vendor Contact Phone:	757-965-4974	Extension:		
Discount Details:		<b>23</b> FILE LOCATION _____		
Discount Allowed	Discount Percentage			Discount Days
#1 No	0.0000			0
#2 No				
#3 No				
#4 No				

INVOICE TO	SHIP TO
INFORMATION TECHNOLOGY DIVISION DEPT. OF TRANSPORTATION  1900 KANAWHA BLVD E, BLD. 5 RM-720  CHARLESTON WV 25305  US	INFORMATION TECHNOLOGY DIVISION DEPT. OF TRANSPORTATION  1900 KANAWHA BLVD E, BLD. 5 RM-720  CHARLESTON WV 25305  US

Total Order Amount:

Open End

Purchasing Division's File Copy

**ENTERED**

PURCHASING DIVISION AUTHORIZATION

DATE: *12-8-22*  
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM

DATE: *12/12/2022*  
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION

DATE: *12/12/2022*  
ELECTRONIC SIGNATURE ON FILE

**Extended Description:**

This contract identified as CMA 0803 DOT2300000032 is created for administrative purposes only and is intended to change the contract number from CCT DOT2300000003. System limitation required that this contract be given a new number moving forward but the original contract, including all terms, conditions, prices, and specifications contained therein remain in full force and effect.

Effective date of change 12/06/2022  
Old procurement folder 1142505  
No other changes.

The Vendor, Mythics Inc., agrees to enter with the West Virginia Department of Transportation (WVDOT), into a contract for Oracle Data Appliance, Licenses and Support with trade in. per the Specifications, Terms and Conditions, Bid Requirements, and the Vendor's bid dated 11/02/2022 incorporated herein by reference and made apart hereof.

\$ 1,980,286.83 New Oracle Data Appliance, Licenses and Support.  
\$ 47,769.16 Trade-in allowance.  
\$ 1,932,517.57 Bid amount after trade-in-allowance  
  
\$ 488,749.85 Contract 1 Year amount

This Contract is for Year one (Y1).

Optional Renewal Years:  
Optional Renewals for Year two (Y2), Year three (Y3), Year four (Y4), and Year five(Y5). Will be added by Change Order upon mutual agreement between the Agency and Quality Associates Inc. including all terms, conditions, prices and specifications contained in the original contract and all authorized change orders.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	43230000			EA	0.000000
	Service From	Service To			

Commodity Line Description: Oracle Data Appliance, Licenses and Sup or equal

**Extended Description:**  
Oracle Data Appliance, Licenses and Support or equal. See Attached Pricing Page

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	43230000				0.000000
	Service From	Service To			

Commodity Line Description: Oracle Data Appliance, Licenses and Sup or equal

**Extended Description:**  
Oracle Data Appliance, Licenses and Support or equal. See Attached Pricing Page for Service lines



**WEST VIRGINIA  
DEPARTMENT OF TRANSPORTATION**  
1900 Kanawha Boulevard East • Building Five • Room 109  
Charleston, West Virginia 25305-0440 • (304) 558-0444

**Jimmy Wriston, P.E.**  
Secretary of Transportation  
Commissioner of Highways

**December 6, 2022**

**AGREEMENT LETTER - 81230038**

This is a two-party agreement letter of administrative change order for CCT DOT23\*3 effective 11/30/2022 through 11/29/2023. CCT DOT23\*03 will be canceled on 12/6/2022 and will be issued as a new CMA, an open-ended Master Agreement to replace it. The new CMA will be effective 12/6/2022 through 11/30/2023 and will include the same pricing and terms and conditions supplied in CCT DOT23\*03.

If you agree to this cancellation and re-award of the contract for Oracle licensing, hardware, and services please sign below. Once the CMA has been issued, all orders against this contract will be processed through delivery orders from wvOASIS.

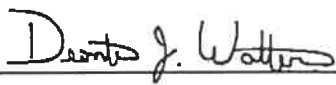
**WVDOT**

By: 

Its: DM2

Date: 12/06/2022

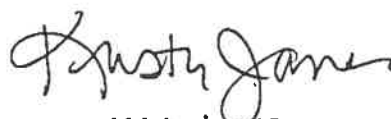
**Mythics, Inc.**

By: 

Its: Deonte J. Watters, CCMAP - Vice President, Contracts

Date: 12/6/2022

cc: Kristy James, WVDOT  
Procurement Officer



Kristy James  
Procurement Officer  
WVDOT

## **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, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), 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.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as \_\_\_\_\_), and continues until the project for which the vendor is providing oversight is complete.

☐ **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.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

**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 of 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:

☐ **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.

☐☐☐☐

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.

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below 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: 1,000,000 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: 1,000,000 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.

☒ State of West Virginia must be listed as additional insured on insurance certificate. Certificate holder should read as follows :

☒ State of WV  
1900 Kanawha Blvd. E., Bldg. 5  
Charleston, WV 25305

☐

☐

**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. VENUE:** All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

**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.

Revised 09/12/2022

**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 NON-CONFLICT:** Neither Vendor nor its representatives are permitted to have any interest, nor shall they 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.

**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](mailto: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 of such operations, from steel made by the open hearth, 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.

(Printed Name and Title) Matt.hew Coenen

(Address) 4525 Main Street, Suite 1500, Virginia Beach, VA 23462

(Phone Number) / (Fax Number) 757-880-6332(M) 757-965-9486(F)

(email address) mcoenen@myt.hics.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 this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; 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; 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.

Mythics, Inc.

(Company) Deonte J. Watters 11/15/2022

(Signature of Authorized Representative)  
Deonte J. Watters, CCMAP, Vice President, Contracts

(Printed Name and Title of Authorized Representative) (Date)  
757-223-4275 (P) 757-412-1060 (F)

(Phone Number) (Fax Number)  
ConsultingContracts@myt.hics.com

(Email Address)

**REQUEST FOR QUOTATION**  
**WVDOT Database Appliance, Software and Services (81230038)**

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**SPECIFICATIONS**

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Department of Transportation (WVDOT) to establish an open-end contract for an Oracle Database Appliance X9-2L, Oracle Licenses, Support, Maintenance and Services or equal.

WVDOT is seeking to replace its end-of-life hardware with new equipment that will operate the current Agency owned AASTHOWare SiteManager Oracle Database. This software and database manage the construction lifecycle and project management for all WVDOT construction projects.

Additionally, WVDOT seeks to trade in its current owned three (3) Oracle Database Standard License Edition – Processor Perpetual licenses and upgrade them to Oracle Database Enterprise Editions.

**Current Agency Owned Licensing Information:**

Oracle Database Standard Edition QTY 2 CSI # 14235147

Oracle Database Standard Edition QTY 1 CSI # 18899503

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 **“Contract Item” or “Contract Items”** means the list of items identified in Section 3.1 below and on the Pricing Pages.
- 2.2 **“Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
- 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 following minimum qualifications:
- 3.1 Vendor must provide, upon request proof they are the manufacturer or an authorized reseller of its proposed hardware and software.

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3.2 Vendor must provide, upon request, showing ten (10) years experience with having successfully completed database appliance device setup and configuration within an organization of similar size and complexity or larger than WVDOT.

3.3 Vendor must provide, upon request, showing ten (10) years experience with having successfully completed Oracle licensing migration within an organization of similar size and complexity or larger than WVDOT.

**4. GENERAL REQUIREMENTS:**

**4.1 Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

**4.1.1 Oracle Database Appliance X9-2L, TAA or equal**

- 4.1.1.1 Database Appliance must support 19C Oracle Database version or newer.
- 4.1.1.2 Database Appliance must support Oracle Linux Operating System or equal.
- 4.1.1.3 Database Appliance must be supported from the hardware layer to the software layer by an Oracle Engineered Standard or equal.
- 4.1.1.4 Database Appliance must have at a minimum two (2) Intel Xeon S4314 2.4GHz, 16 cores, 135 watt, 24 MB L3 cache or equal
- 4.1.1.5 Database Appliance must have at a minimum 512GB of Memory (16 x 32 GB) with ability to upgrade to memory expansion to 1.0 TB or equal.
- 4.1.1.6 Database Appliance must have at a minimum two (2) 6.8TB NVMe SSD mirrored drives (6.2TB usable) with ability to upgrade to 81.6TB (31.5TB usable – mirrored drives)

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**WV DOT Database Appliance, Software and Services (81230038)**

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- 4.1.1.6.1 Vendor must offer the option to expand storage on an-going basis that is a minimum of two (2) 6.8TB NVMe SSD mirrored drives for Oracle Database Appliance X9-2l or equal with Oracle Premier Support or equal.
- 4.1.1.7 Database Appliance must have at a minimum two (2) internal 240 GB M.2. SSD's mirrored for Operating System and Oracle Database Software or equal
- 4.1.1.8 Database Appliance must have at least two (2) 1200 watt hot-swappable and redundant power supplies.
- 4.1.1.9 Database Appliance must have Oracle 1/10 GbE Dual Rate SFP+ Short Range (SR) Transceiver for factory installation or equal.
- 4.1.1.10 Database Appliance must have Oracle Dual Port 25 Gb Ethernet Adapter for Oracle Database Appliance X92 for factory installation or equal.
- 4.1.1.11 Database Appliance must have Oracle Quad Port 10GBase-T Adapter v2 for ODA X8-2 for factory installation or equal.
- 4.1.1.12 Database Appliance must have Oracle Standard System Installation Service, Site Audit: Engineered Systems or equal
- 4.1.1.13 Database Appliance must have Oracle Premier Support for Systems or equal
- 4.1.1.14 Database Appliance must have included installation kit for rack-mount slide rail kit and cable management arm.
- 4.1.1.15 Database Appliance must have at a minimum one (1) GbE port, one (1) serial RJ45 port, and one (1) USB 3.0 port
- 4.1.1.16 Database Appliance must at a minimum have systems management that includes service processor and monitoring.

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- 4.1.1.16.1 Server processor must allow for remote keyboard, video, mouse redirection, full remote management through command-line, IPMI, and browser interfaces, remote media capability (USB,DVD,CD and ISO Image), advanced power management and monitoring, active directory, LDAP, and RADIUS support, Dual Oracle ILOM flash or equal and direct virtual media redirection.
- 4.1.1.16.2 Monitoring must allow at a minimum for compressive fault detection and notification, in-band and out-of-band, and side-band SNMP monitoring v3, syslog and SMTP alerts, and automatic creation of a service request for key hardware faults with Oracle auto service request (ASR) or equal
- 4.1.1.17 Database Appliance must have Oracle Linux, Oracle Linux KVM and Appliance Manager all pre-installed or equal.
- 4.1.1.18 Database Appliance must have automated database backup including to Cloud.
  - 4.1.1.18.1 Must allow for integrated RMAN for simple backup operation of Oracle Databases to Oracle Cloud Infrastructure Object Storage or Internal FRA/External FRA. Restore can be done to different levels latest, PITR, SCN, et or equal.
- 4.1.1.19 Database Appliance must provide integrated data guard configuration that allows client interface through ODACLI commands for easy configuration and management of Oracle Data Guard for high availability, data protection, and disaster recovery or equal.
- 4.1.1.20 Database Appliance must have an integrated database security assessment tool (DBST) that allows run DBSAT reports directly from the Browser User Interface (BUI). The Oracle Database Security Assessment Tool (DBSAT) helps identify areas where your database configuration, operation, or implementation introduces



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risks and recommends changes and controls to mitigate those risks or equal.

- 4.1.1.21 Database Appliance must have system configuration backup. The system config backup must use Oracle Database Appliance Backup and Recovery (ODABR) to back up the system disks to ensure easy restore if the patching operation fails. ODABR restores the system disk to pre-patching state or equal.
- 4.1.1.22 Database Appliance must have at the minimum the following data protection features:
  - 4.1.1.22.1 Prioritize recovery of critical database files
  - 4.1.1.22.2 Automatic repair of corrupt disk data
- 4.1.1.23 Database Appliance must have built-in storage management with integrated ASM for simplified, where the user only selects a few options, and the appliance Manager automatically configures ASM or equal.
- 4.1.1.24 Database Appliance must have integrated database clones for rapid efficient database copies using integrated ACFS Snapshots to provision database environments for development and testing of applications or equal.
- 4.1.1.25 Database Appliance must have Hybrid Columnar Compression Support that enables the highest levels of data compression possible to agency owned Oracle databases, delivering 10x to 15x compression ratios or equal.
- 4.1.1.26 Database Appliance must have at a minimum the following security and compliance features:
  - 4.1.1.26.1 Hardening - Installed packages trimmed to a minimum, only essential services enabled on Oracle Database Appliance nodes, operating system users are audited, secure configurations for NTP, SSH, etc. or equal.
  - 4.1.1.26.2 Security Capabilities – must have isolation policies, controlled access to data, cryptographic services, monitoring and auditing, Unified Auditing for Oracle

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- Database, and Oracle Integrated Lights out Manager for secure management or equal.
- 4.1.1.26.3 Multi-User Access – must be able to create multiple users with different roles that restrict them from accessing resources created by other users and restrict the set of operations they can perform or equal.
- 4.1.1.26.4 Compliance – FIPS 140-2 level one compliant, Security Technology Guide security audit script, Secure erase drives, and Integrated Database Security Assessment Tool or equal.
- 4.1.1.26.5 Adaptive Classification and Redaction – enable sanitization of sensitive diagnostic data, such as host names, IP/MAC addresses, database names, tablespace names, and user data that may leak into redo and block dumps into trace files, etc. or equal.

**4.1.2 Oracle Database Standard Edition (Trade-In)**

- 4.1.2.1 Vendor shall provide a trade in value for the current Agency owned three (3) Oracle Database Standard Edition licenses:
- 4.1.2.1.1 Oracle Database Standard Edition QTY 2  
CSI # 14235147
- 4.1.2.1.2 Oracle Database Standard Edition QTY 1  
CSI # 18899503
- 4.1.2.2 The trade in value listed on the pricing page will be reviewed and a determination will be made to accept or reject the trade in offer. In the case that the trade in value is denied, an award will be made to the responsible vendor with the lowest cost excluding the trade in value.

**4.1.3 Oracle Licensing or Equal**

- 4.1.3.1 Vendor must provide quantity three (3) Oracle Database Enterprise Edition licenses and support or equal
- 4.1.3.1.1 Oracle Database Enterprise Edition licenses or equal will term to November 30, 2022 to November 29, 2023

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- 4.1.3.1.2 Oracle Database Enterprise Edition licenses pro-rated Delta Support or equal will term from March 1, 2023 to November 29, 2023.
- 4.1.3.2 Vendor must provide quantity three (3) Oracle Diagnostic Pack perpetual licenses or equal and term from November 30, 2022 to November 29, 2023.
- 4.1.3.3 Vendor must provide quantity three (3) Oracle Tuning Pack perpetual licenses or equal and term from November 30, 2022 to November 29, 2023.
- 4.1.3.4 Vendor must provide quantity three (3) Oracle Advanced Security perpetual licenses or equal and term from November 30, 2022 to November 29, 2023.

**4.1.4 Oracle Professional Services or Equal**

- 4.1.4.1 Vendor must setup and configure Oracle Device Appliance or equal.
- 4.1.4.2 Vendor must upgrade and migrate current owned agency Oracle Data to version 19C or equal.
- 4.1.4.3 Vendor must encrypt new Oracle Device Appliance or equal.
- 4.1.4.4 Vendor must perform OEM setup on Oracle Device Appliance or equal.
- 4.1.4.5 Vendor must offer rate for Monitoring as a Service or equal
- 4.1.4.6 Vendor must offer rate for Patching as a Service or equal
- 4.1.4.7 Vendor must offer rate for Full Based Managed Services or equal. This includes monitoring, patching, and incident resolution.
- 4.1.4.8 Vendor must have the ability to provide Oracle PaaS & IaaS Universal Credits or equal.
- 4.1.4.9 Vendor must offer hourly rate for professional services to troubleshoot, assist, configure at agency request.

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Experienced Oracle or equal, analysts and software developers shall be available to assist WVDOT with installation, configuration, and customizations.

- 4.1.4.9.1 A Statement of Work (SOW) shall be developed by the vendor that identifies the following:
  - 4.1.4.9.1.1 Tasks to be preformed
  - 4.1.4.9.1.2 Deliverables
  - 4.1.4.9.1.3 Staff assigned, resumes and experience level. Staff shall have a minimum of two years of experience working in the specific subject area they will be assigned to.
  - 4.1.4.9.1.4 Cost breakdown based on rates bid in this RFQ.
  - 4.1.4.9.1.5 WVDOT shall review and approve the SOW before commencing of any services.

**4.2 Oracle Support and Maintenance or equal**

- 4.2.1 Vendor shall provide support and maintenance of all Oracle or equal products as noted in this RFQ. Support and maintenance shall be provided 24/7/365 days per year and all holidays. Support and maintenance shall be provided for the entire contract period and for all agreed upon optional renewals.

**4.3 Terms and Conditions**

- 4.3.1 Vendor should provide with their bid a copy of any software licensing and or support terms and conditions to which the State of West Virginia or the Agency must agree to or accept, either in writing or digitally, in order to receive the commodities or services offered as part of this contract. Written terms will be required prior to the award of any contract resulting from this solitication. Failure to provide additional terms and conditions may result in disqualification or cancellation of the vendor's bid or contract.

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**WV DOT Database Appliance, Software and Services (81230038)**

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- 4.3.2** Vendor must also agree to accept and incorporate the current negotiated terms between Oracle and the State of West Virginia into their agreements, as applicable. These terms are available for review at:  
<http://www.state.wv.us/admin/purchase/swc/MSORACLE14.pdf>

**4.4 Invoicing**

- 4.4.1** Licenses, Support, and Maintenance invoices shall be billed and paid quarterly in arrears.

**4.5 Alternate Bid**

- 4.5.1** If an alternative is bid, vendor must clearly identify alternate source and provide adequate specifications, industry literature and any other relevant documentation that demonstrates the alternate source is functionally equivalent to the specified above.

**5. CONTRACT AWARD:**

- 5.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.
- 5.2 Pricing Pages:** Vendor should complete the Pricing Pages by providing the database appliance, licensing, trade-in value and services rates. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address:  
[John.W.Estep@wv.gov](mailto:John.W.Estep@wv.gov)

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**6. ORDERING AND PAYMENT:**

- 6.1 Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.
- 6.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

- 7. TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.
- 8. PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.

**9. DELIVERY AND RETURN:**

- 9.1 Delivery Time:** Vendor shall deliver orders within ten (10) working days after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.
- 9.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

- 9.3 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery



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charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

- 9.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 9.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

**10. VENDOR DEFAULT:**

- 10.1** The following shall be considered a vendor default under this Contract.
- 10.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
  - 10.1.2** Failure to comply with other specifications and requirements contained herein.
  - 10.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
  - 10.1.4** Failure to remedy deficient performance upon request.

**REQUEST FOR QUOTATION**  
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**10.2** The following remedies shall be available to Agency upon default.

**10.2.1** Immediate cancellation of the Contract.

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

**10.2.3** Any other remedies available in law or equity.

**11. MISCELLANEOUS:**

**11.1 No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

**11.2 Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

**11.3 Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

**11.4 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:** Theresa Petrowicz  
**Telephone Number:** 757-386-0911  
**Fax Number:** 757-412-1060  
**Email Address:** ConsultingContracts@mythics.com



## ORACLE MASTER AGREEMENT AMENDMENT ONE

This Oracle Master Agreement Amendment One (this "Amendment One") amends the Oracle Master Agreement US-OMA-226823, dated 28-AUG-2014, and all amendments and addenda thereto (the "Master Agreement") between West Virginia Department of Administration Purchasing Division ("You") and Oracle America, Inc. ("Oracle").

### RECITALS

WHEREAS the parties entered into the Master Agreement.

WHEREAS the Master Agreement allowed for orders to be placed thereunder for a period of five (5) years from its effective date, and contemplated that the parties could agree to renew the Master Agreement by mutual agreement.

WHEREAS the parties now desire to renew the Master Agreement, as further described in this Amendment One.

NOW THEREFORE in exchange for valuable consideration, the parties agree to amend the Master Agreement as follows:

#### A. GENERAL TERMS

##### 1. Section 2. MASTER AGREEMENT TERM AND APPLICABLE SCHEDULES

Delete the first sentence of the first paragraph of Section 2 of General Terms and replace with the following:

"Orders may be placed under the Master Agreement for ten (10) years from the Effective Date (indicated below in Section 17) of the Master Agreement."

Subject to the modifications herein, the Master Agreement shall remain in full force and effect.

The Effective Date of this Amendment One is 05/29/19 (to be completed by Oracle), and is effective as to the matters covered herein as of August 29, 2019.

West Virginia Department of Administration  
Purchasing Division

Authorized Signature: [Signature]

Name: Mr. Michael Sheets

Title: Director

Signature Date: 04/21/20

Oracle America, Inc.

DocuSigned by:  
Authorized Signature: David A. Martin

Name: David A. Martin

Title: Deal Specialist, Americas SSC, Deal Management

Signature Date: 02-Apr-2020 | 6:47 PM CDT

#### Approved:

West Virginia Attorney General's Office

Authorized Signature: [Signature]

Name: John S. Gray

Title: Deputy Attorney General

Signature Date: 4/21/2020

# MEMORANDUM

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TO: Agencies Utilizing the Oracle Master Agreement

FROM: The Purchasing Division

DATE: August 27, 2014

RE: Ordering Instructions for the Oracle Master Agreement

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## Instructions for State Agencies Utilizing the Oracle Master Agreement

1. **Use Limitations:** The Oracle Master Agreement is intended to provide the basic contractual framework for contracts between entities subject to the Purchasing Division's oversight and Oracle. The Oracle Master Agreement is not a stand-alone contract and does not permit an agency to procure goods or services from Oracle without a separate procurement.

The Oracle Master Agreement 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 Oracle 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.

2. **Master Agreement Use:** In the event that Oracle is identified as the lowest responsible bidder in a bid, is designated as a sole source vendor, or is selected through an emergency procurement, this Master Agreement and any ordering documents will be used to provide the terms and conditions for the subsequent contract. Any documents provided by Oracle must be submitted to the Purchasing Division and the Attorney General's office for review and approval.

In the event that an agency is seeking to obtain goods or services from Oracle under Section 9 of the Purchasing Division Procedures Handbook, or as an agency delegated procurement, the agency must nevertheless submit Oracle's ordering documents to the Purchasing Division and the Attorney General's office for review and approval.



## 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 C/L

Date: 8/26/2014

Title: Contracts Manager

Approved:

[Signature]  
WV ATTORNEY GENERAL'S OFFICE

By: Chief Counsel

Date: 8/28/14

**ATTACHMENT A TO EXHIBIT A OF THE GENERAL TERMS, US-OMA-226823**

**ORACLE ASSIGNMENT AGREEMENT TEMPLATE**

**(sample, subject to change)**





**Assignor:**

**Assignee:**

**Assignor's Location:**

**Assignee's Location:**

This document must be executed by Assignor and Assignee on or before \_\_\_\_\_, 201\_ to be valid and once so executed shall become effective upon the date of Oracle's consent and execution below.

**ASSIGNMENT AND CERTIFICATION OF NON POSSESSION**

Assignor represents and warrants that, as a result of a merger or consolidation of state agencies or transfer of official functions and associated technology assets, Assignor wishes to assign to Assignee certain supported Oracle programs and, as a result, Assignee will be assuming all liabilities of Assignor in relation to such programs. Assignor also represents and warrants that Assignor has not sold, assigned or otherwise transferred the supported Oracle program(s) described below or the license(s) thereto to another entity. Assignor hereby assigns to Assignee all its right, title and interest in and to the following supported license(s) for the Oracle program(s) represented by (the "Oracle program(s)").

Program	CSI	Quantity	License Type	Support Expiration Date
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Assignor hereby certifies, represents and warrants that upon execution of the above assignment, it will discontinue use of the Oracle program(s). Appropriate documentation and other materials received from Oracle for the Oracle program(s) will be immediately transferred to Assignee.

By signing below, signatory further represents and warrants that signatory has the authority to make the above representations and warranties and sign on Assignor's behalf.

**Assignor:**

**Signature:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**Accepted:**

**WV ATTORNEY GENERAL'S OFFICE**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

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

**West Virginia Department of Administration  
Purchasing Division**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

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

#### **ACCEPTANCE OF ASSIGNMENT**

Assignee represents and warrants that, as a result of a merger or consolidation of state agencies or transfer of official functions and associated technology assets, Assignor wishes to assign to Assignee certain supported Oracle programs and, as a result, Assignee will be assuming all liabilities of Assignor in relation to such programs. Assignee hereby accepts the foregoing assignment and agrees that the use of the supported Oracle program(s) will be governed by the attached Oracle License and Services Agreement, Version \_\_\_\_\_ ("OLSA") and by the licensing metrics set forth below. Assignee acknowledges that the Oracle program(s) are for use in US. The annual fee for Software Update License & Support for the Oracle program(s) is ~~/\$.xx/~~ and these technical support services are valid through \_\_\_\_\_ [*minimum one year required*]. By signing below, signatory further represents and warrants that signatory has the authority to make the above representations and warranties and sign on Assignee's behalf.

**Licensing Metrics:**

**Assignee:**

**Signature:**

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

**Accepted:**

**WV ATTORNEY GENERAL'S OFFICE**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

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

**West Virginia Department of Administration  
Purchasing Division**

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

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

**CONSENT TO ASSIGNMENT**

Subject to the terms and conditions of the above-mentioned assignment and certification of non-possession and acceptance of assignment, Oracle hereby consents to the foregoing assignment. By signing below, signatory further represents and warrants that signatory has the authority to sign on Oracle's behalf.

**Oracle America, Inc.**

**Signature:**

**Name:**

**Title:**

**Date:**

**Attachment B to Exhibit A of the  
General Terms, US-OMA-226823**

**Notice of State of West Virginia  
Confidentiality Policies and Information Security Accountability Requirements**

This Attachment B to Exhibit A ("Attachment") is a modified form of the State of West Virginia's "Confidentiality Policies and Information Security Accountability Requirements" policy available at <http://www.state.wv.us/admin/purchase/privacy/NoticeConfidentiality.pdf>. The terms of this Attachment, and not the policy referenced in the previous sentence, apply only to the provision of Oracle technical support services by Oracle ("Vendor") and the receipt of such services by the West Virginia entity that has entered into the agreement to which this Attachment is attached ("You" or "Customer"). As used in this Attachment, the term "Agreement" refers collectively to the Agreement Addendum to which this Attachment is attached, the General Terms attached to the Agreement Addendum, the ordering document for services, and any documents incorporated into any of the foregoing (including, as applicable, the Oracle Services Privacy Policy, the Oracle Technical Support Policies, and the Oracle Global Customer Support Security Practices documents). This Attachment applies only to vendor's handling of Personal Data provided to vendor as necessary to provide the technical support services ordered under the Agreement Addendum to which this Attachment is attached.

Sections 1.0 and 3.0 of this Attachment are provided for informational purposes only, are not binding and do not create, modify or limit any obligations or rights of either party.

Oracle technical support services and systems are not designed to accommodate special security controls that may be required to store or process certain types of sensitive data. You agree not to submit any health, payment card or other sensitive data that requires protections greater than those specified in this Attachment or the Agreement. Information on how to remove sensitive data from Your submission is available in My Oracle Support at <https://support.oracle.com/CSP/main/article?cmd=show&type=NOT&id=1227943.1>.

## **1.0 INTRODUCTION**

The Executive Branch has adopted privacy and information security policies to protect Personal Data as defined in the Agreement Addendum to which this Attachment is attached. This Notice sets forth terms for safeguarding this information.

**Attachment B to Exhibit A of the  
General Terms, US-OMA-226823**

**Notice of State of West Virginia  
Confidentiality Policies and Information Security Accountability Requirements**

**2.0 DEFINITIONS**

- 2.1 Security Breach** shall mean the wrongful and unauthorized acquisition or access of Personal Data that compromises the security or privacy of such information.
- 2.2 Personal Data**, shall have the meaning set forth in the Agreement Addendum to which this Attachment is attached.
- 2.3 Security Incident** means any violation, or attempted or imminent threat of violation, to the confidentiality, integrity or availability of Personal Data.

**3.0 BACKGROUND**

Agencies maintain Confidential Information, including, but not limited to, trade secrets, personally identifiable information, protected health information, financial information, financial account numbers, credit card numbers, debit card numbers, driver's license numbers, State ID numbers, social security numbers, employee home addresses, etc. Federal laws, including, but not limited to, the Health Insurance Portability and Accountability Act, the Privacy Act of 1974, Fair Credit Reporting Act and State laws require that certain information be safeguarded. In some situations, Agencies delegate, through contract provisions, functions to vendors that involve the vendor's collection, use and/or disclosure of Confidential Information. WV State government must take appropriate steps to ensure its compliance with those laws and desires to protect its citizens' and employees' privacy, and therefore, must require that its vendors also obey those laws.

**4.0 POLICY**

- 4.1** This Attachment applies to the performance of technical support services under the Agreement to which this Attachment is attached and incorporated.
- 4.2** The parties may specify additional requirements related to the protection of Personal Data in an ordering document, subject to mutual agreement and to the extent Oracle services are designed and deployed to support such requirements.
- 4.3** In performing the technical support services, Oracle will comply with the following:



**Attachment B to Exhibit A of the  
General Terms, US-OMA-226823**

**Notice of State of West Virginia  
Confidentiality Policies and Information Security Accountability Requirements**

- 4.3.1** Personal Data shall only be used or disclosed as set forth in the Agreement, including as necessary to provide the services ordered under the Agreement (which includes correcting deficiencies and making improvements in applicable Oracle software products and services).
- 4.3.2** Agency retains all ownership in any Personal Data that it provides to vendor under the Agreement. Agency retains all ownership and intellectual property rights to the Agency's own proprietary information that the Agency provides to Oracle under this Agreement.
- 4.3.3** Personal Data shall only be used or disclosed as set forth in the Agreement, including as necessary to provide the services ordered under the Agreement (which includes correcting deficiencies and making improvements in applicable Oracle software products and services).
- 4.3.4** Oracle conducts security reviews, assessments, and audits periodically to confirm compliance with Oracle information security policies, procedures and practices. Upon Your reasonable request, not more frequently than once per year, Oracle will respond to Your requests for more information about Oracle's security practices relevant to the services, subject to any reasonable concerns or questions (for example, any request for information that could compromise Oracle security, privacy, or employment policies). Any information provided is Oracle confidential information and may not be shared with any third party or used for any purpose other than assessing Oracle's compliance with the terms of this Attachment and the Agreement.
- 4.3.5** Any collection, use or disclosure of information that is in violation of the terms of this Attachment or applicable law may result in termination of the Agreement, subject to the terms therein related to termination for cause.
- 4.3.6** The terms of this Attachment shall survive for so long as Vendor is in possession of Personal Data obtained through the performance of services under the Agreement.
- 4.4 SECURITY BREACH** If Oracle determines that a Security Breach has occurred, the following will apply:

**Attachment B to Exhibit A of the  
General Terms, US-OMA-226823**

**Notice of State of West Virginia  
Confidentiality Policies and Information Security Accountability Requirements**

**4.4.1** If the Security Breach involves a theft, or is incidental to another crime, appropriate law enforcement officials shall be notified as Oracle determines reasonably necessary in light of the circumstances. A copy of applicable portions of the police report, if provided to Oracle, will be forwarded to You upon request. Oracle may redact the police report.

**4.4.2** Notification of Breach.

**4.4.2.1** Oracle evaluates and responds to incidents that create suspicions of unauthorized access to or handling of Personal Data. Oracle's Global Information Security (GIS) organization is informed of such incidents and, depending on the nature of the activity, defines escalation paths and response teams to address those incidents.

**4.4.2.2** If Oracle determines that Your Personal Data has been subject to a Security Breach, Oracle will report such to You promptly and as soon as reasonably possible but in any event not later than 3 business days of making such determination, unless otherwise required by law.

**4.4.2.3** Notification required by this section shall be provided to:

- 1) the Office of Technology at [incident@wv.gov](mailto:incident@wv.gov).
- 2) the contact information listed on the applicable order.

**4.4.2.4** Oracle shall promptly investigate any Security Breach and take reasonable measures to identify its root cause(s) and prevent a recurrence. As information is collected or otherwise becomes available, unless prohibited by law, Oracle will provide You with a detailed description of the Security Breach, the type of data that was the subject of the breach, the identity of each affected person, and other information You may reasonably request concerning the affected persons.

**4.4.2.5** Oracle will work with the customer, internal LoBs, the appropriate technical teams, and law enforcement where necessary to respond to the Security Breach. The goal of the incident response will be to respond to the Security Breach and establish root causes and remediation steps. The parties will coordinate in good faith on developing the content of any

**Attachment B to Exhibit A of the  
General Terms, US-OMA-226823**

**Notice of State of West Virginia  
Confidentiality Policies and Information Security Accountability Requirements**

related public statements or any required notices for the  
affected persons.

**4.4.2.6** Any liability of the parties with respect to this Attachment shall  
be subject to and as addressed in the applicable liability  
sections of the Agreement.

**4.5** In response to industry practices and standards, as well as customer concerns regarding the safety and confidentiality of data entrusted to Oracle, Oracle, or its agent, has performed a pre-employment background check on applicants hired on or after January 1, 2003 in the United States. The background check is used to attempt to ascertain an applicant's previous employment with up to four employers within the seven years preceding the date of the check, to attempt to ascertain an applicant's post secondary education, and to assess any criminal records, dated within the seven years preceding the date of the check, that are uncovered for that individual. In general, international transfers and individuals with valid United States government issued security clearance are not subject to a background check, and processing and procedural variances may apply to students/interns, university recruiting hires, and to employees of companies acquired by Oracle. Personnel screening in other countries varies according to local laws, practices and employment regulations and Oracle policy.

**4.6** Oracle's Oracle Global Customer Support Security Practices Document describes the safeguards in place for the protection of Personal Data.

**4.7** Oracle's use of encryption is described in more detail in the Oracle Global Customer Support Security Practices Document referenced in Your order.

**Exhibit B to the General Terms, US-OMA-226823**  
**Invoicing Standards Policy**  
**SEE ATTACHED.**

## Invoicing Standards

Oracle will submit invoices based on the standards outlined in this document. No other requirements will be supported unless they are statutory for the issuing country, or noted in the contract (requires pre-approval per the Trade Accounts Receivable Invoicing Policy).

Invoices will be generated upon delivery of product and/or services. No advanced invoicing is allowed.

### Exceptions:

LOB	Description	Comments
Support	Invoiced in advance	Except where prohibited by law. For example, Public Sector accounts.
Installation Services	Invoiced in advance	Except where prohibited by law. For example, Public Sector accounts.
Consulting Services	Event invoice available upon request	Available upon request only; not standard. During customer's FY close, an "event" invoice can be issued for already funded projects.

### Invoice Data Elements

Standard data elements included on an invoice are:

- Invoice Number
- Invoice Date
- PO Number
- Payment Terms
- Payment Instructions
- Due Date
- Bill To / Ship To Customer name and addresses
- Sales Representative
- Oracle Order Number
- End User
- Line item descriptions
- Extended price
- Unit of Measure
- Quantity
- Tax/VAT
- Oracle Tax ID
- Priced items only (except for Greece & Thailand) – All zero dollar line items are suppressed
- Support period, including Contract Start and End Dates and/or Billing Start and End Dates (depending on country)

- Collections contact details

**Hardware Only:**

- Part/Item Numbers - no other products display part numbers
- Serial numbers as part of description (from model level)
- Zero dollar line at model level

**Electronic Invoices Only:**

- Part/Item Numbers from all LOBs
- Serial numbers segregated in unique field
- Customer PO Line Item Number (CLIN)\* - Only available for select transactions

Any other requested data elements are considered non-standard and will not be allowed.

\* If a customer would like CLINs, they are obligated to sign up for electronic invoicing. This data is not supported for any other invoice format.

**INVOICE FORMATS**

Invoice formats will adhere to the following standards:

LOB	Description	Comments
All	Detailed Line Item Description	Product by product detail by line of business
License	License and First Year Support invoiced together on same invoice	Except where prohibited by law. See exception countries below. Support is itemized by product supported, meaning one line item for each supported product will be displayed, including start and end date of the service period.
License	Invoices immediately upon booking, assuming standard EPD (Electronic Product Download) terms.	
License/Systems combined orders	Systems and License orders will result in multiple invoices	License lines and associated support invoice immediately; Systems invoices upon shipment plus delivery.
Systems	Systems, First Year Support, Installation Service and all associated Systems fees are invoiced together on same invoice.	Except where prohibited by law. See exceptions noted below. Support is itemized by product supported, meaning one line item for each supported product will be displayed, including start and end date of the service period.
Systems	Systems invoices are issued upon shipment, plus delivery which could result in multiple invoices per Systems order.	Systems are shipped when ready, unless consolidation fee is paid. Therefore, one order can result in multiple invoices.
Systems	Systems orders with a paid	Consolidation fee will consolidate the



	consolidation fee will result in a single invoice for all Systems, associated support and Systems fees on a single order. All other products (e.g. License) will invoice separately.	Systems portion of the order only. For example - License, if ordered together with the Systems, will invoice immediately upon booking, assuming EPD.
Systems	Freight is a separate line item on the invoice.	Each Systems line will have a separate freight line item, and will be invoiced together with the associated Systems when it ships.
Premier Support Renewals	Invoiced separately at each renewal year and cannot be combined with any other LOB for invoicing.	For example, ACS services will be invoiced separately.
Premier Support Renewals	Itemized by product supported	One line item for each product supported. Invoices could contain several lines items and be multiple pages in length.
Premier Support Renewals - Systems	One install/site location per invoice and per Purchase Order	Customers requiring separate invoice per install site must issue separate P.O. and renew each contract separately. It is not possible to have service lines with multiple ship-to locations on a single invoice.
Consulting	Invoiced separately and cannot be combined with any other LOB for invoicing.	
Consulting	Expense/activity Report attached	This is a system generated report, and is attached to the invoice automatically (excludes electronic invoice delivery).
Consulting	Copies of Time Sheets sent, where required	Where required by law, copies of Time Sheets are sent with invoice.
Consulting	Copies of expense receipts – sent if requested	Originals are retained with Oracle. Copies of expense receipts can be sent as part of the collections process, if requested by the customer. <u>Copies of receipts are not sent automatically.</u>
Education & Learning Credits	Invoiced separately and cannot be combined with any other LOB for invoicing.	
Education – onsite training	Invoiced separately and cannot be combined with any other LOB for invoicing.	
Advanced Customer Support (ACS) – undetermined period	Invoiced separately and cannot be combined with any other LOB for invoicing.	
ACS – fixed period/combined with LFYS order	Invoiced together with LFYS in Year 1, and separately upon renewal.	The ACS renewal in subsequent years, also, cannot be combined with any other LOB for invoicing.
OnDemand/SAAS	Invoiced separately and cannot be combined with any other LOB for invoicing.	Separate invoices are possible where customers issue alternative methods of payment (i.e., new PO) for additional

		services.
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#### EXCEPTIONS TO INVOICING FORMATS:

LOB	Description	Comments
License, Systems and Services	Countries that require separate invoicing for services and product.	Malaysia, Thailand, Philippines, China, Taiwan, Poland, Romania, Slovakia, Slovenia, Puerto Rico, Peru, Brazil, Venezuela, and Costa Rica.

#### NON STANDARD INVOICING

The following list, although not exhaustive, constitutes non standard Invoicing and is not permitted without preapproval per the Trade Accounts Receivable Policy:

Description	Definition
Multiple LOB, bundled invoicing	Any request to bundle multiple lines of business on a single invoice. For example, Systems and ACS.
Multiple LOB, bundled into a single line item	Any request to bundle multiple lines of business into a single line item on an invoice. For example, Systems and Installation.
Advanced Invoicing	Requests to invoice in advance of: <ul style="list-style-type: none"> <li>• Delivery</li> <li>• Signing of contract</li> <li>• Issuance of a purchase order or ordering document, unless Purchase Order Exemption Form is on file</li> <li>• Booking of an order</li> <li>• Expenses being incurred</li> </ul>
Manual invoice	Any request to process an invoice manually or that deviates from our standard automated processing.
Accounting period cutoff	Any requirement to withhold invoicing due to cutoff dates for receiving invoices in customer's accounting period. Includes any requirement to ensure invoice is dated within the accounting period (generally same month) in which it was issued.
One to one ratio invoice to PO	Any requirement to ensure there is only one invoice per customer P.O., regardless of the products and services on the customer's P.O. and regardless of delivery of said products and/or services. Often this is referred to as "P.O. matching."
P.O. matching	Any requirement to match a customer's P.O.

	(Descriptions, terms, comments, etc). Oracle's process is to ensure we book orders as per the Oracle Ordering Document, not customer's P.O. Customer's P.O. should match the Oracle Ordering Document, not the other way around .
Printing data elements on invoice not available at time of order submission	Any requirement to include/print additional information on invoice not available to us at time of order submission and booking (e.g. Protocol #, Goods Receipt #).
Invoice attachments	Any requirement to attach additional documentation to invoice not available to us at time order submission and booking (e.g. warehouse acceptance certificate, acceptance certificate, POD, Packing Slip).
Printing customer line item number on invoice	Any requirement to add customer P.O. line item number (CLIN) to the line description on the invoice.
Support in Arrears invoicing - Commercial	In arrears invoicing is allowed for government accounts only as required by law. All other accounts, support is invoiced in advance.
Government monthly in arrears Invoicing	Where required by law, standard in arrears invoicing for government is quarterly in arrears. Monthly in arrears is considered non standard.
Self Billing	Any request to enter billing of services via manual entry into a web portal or data in lieu of a system generated invoice. Self-billing is a customer procurement model. With self billing, the customer in effect issues an invoice to themselves.

## INVOICE DELIVERY

It is Oracle's policy to deliver invoices to the "Bill To" stated in the Contract or on the Customer's Purchase Order. Primarily, it is the Customer's Purchase Order which denotes the "Bill To address" that is to be used on all transactions. Oracle cannot deliver invoices to any 3rd party company or different company address from the stated "Bill To" on the Customer's Contract or Purchase Order. There are no exceptions to this policy. Any request to bill a 3rd Party entity other than the customer/contracting entity is not permitted.

Method	Description
Paper	Sent via standard priority mail globally. All Invoices will be delivered to the address identified as the Bill-To on the Contract or the Customer's Purchase Order.
Self Service	Via Oracle's iReceivables product:

	<ul style="list-style-type: none"> <li>• Registration is required</li> <li>• Contact <a href="mailto:el invoicing_ww_grp@oracle.com">el invoicing_ww_grp@oracle.com</a> with any inquiries</li> </ul>
Automated PDF via email	Invoices automatically delivered to the email address(es) identified in the customer's set-up. Please email <a href="mailto:el invoicing_ww_grp@oracle.com">el invoicing_ww_grp@oracle.com</a> for the full list of countries currently supported.
Electronic	<ol style="list-style-type: none"> <li>1. Via electronic file transfer</li> <li>2. Via manual entry into a web portal <ul style="list-style-type: none"> <li>• Provided there are <u>no</u> 3<sup>rd</sup> party fees incurred by Oracle</li> <li>• Requires approval from <a href="mailto:el invoicing_ww_grp@oracle.com">el invoicing_ww_grp@oracle.com</a></li> </ul> </li> </ol>
Self Billing	Any request to enter into a Self Billing agreement is not permitted. The single source of truth for any invoice MUST be the Oracle system of record.

## DEFINITIONS

Term	Definition
Detailed Invoice	Oracle's standard invoicing format is to invoice in detail line-by-line, including product line descriptions, serial numbers, where appropriate, etc.
Multiple LOB, bundled invoicing	Typically involves bundling multiple LOBs not ordinarily invoiced together onto a single invoice. For example, bundling ACS and Education onto a single invoice.
Multiple LOB, bundled into a single line item	Typically involves combining multiple LOBs into a single line item on a single invoice.
Advanced Invoicing	Involves invoicing in advance of product or service delivery, and other mandatory criteria being met.
Manual Invoicing	Any request that would cause Oracle to deviate from its predefined, standard automated processes.
Invoice Data Elements	The data elements that will be contained on the invoice.
LFYS	License and First Year Support
ACS	Advanced Customer Support
LOB	Line of business. For example License,

	Systems, Consulting, ACS, etc.
POEF	Purchase Order Exemption Form. Used for customers who do not issue a Purchase Order as a standard business practice.

**ATTACHMENT B TO EXHIBIT A OF THE GENERAL TERMS, US-OMA-226823**

**NOTICE OF STATE OF WEST VIRGINIA**

**CONFIDENTIALITY POLICIES AND INFORMATION SECURITY ACCOUNTABILITY REQUIREMENTS**

**(as agreed by the parties; see attached)**



### 3. Terms and Conditions

Mythics is submitting this proposal pursuant to the terms and conditions of Mythics' US Communities Contract No.: 180233, fully executed on 12 December 2018 and the professional services terms incorporated herein. Any additional terms amended to this order 1) must be mutually agreed to by the Parties, and 2) in the case of a conflict, Mythics' US Communities Contract terms and conditions will govern.

**Warranty** – Mythics warrants that the services will be provided in a professional manner consistent with industry standards. Client must notify Mythics of any warranty deficiencies within ninety (90) calendar days from performance of the services.

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. FOR ANY BREACH OF THE WARRANTY, CLIENT'S EXCLUSIVE REMEDY, AND MYTHICS' ENTIRE LIABILITY, SHALL BE THE REPERFORMANCE OF THE DEFICIENT SERVICES, OR IF MYTHICS CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO MYTHICS FOR THE DEFICIENT SERVICES.

**Standard of Conduct** - In rendering services under this Agreement, Mythics shall conform to the highest professional standards of work and business ethics. Mythics shall not use time, materials, or equipment of the Client without the prior written consent of the Client.

**Payment Terms** - All payments from Client to Mythics are due in full within thirty (30) days after receipt of a valid invoice. ~~If any portion of a bill has not been paid, except for items disputed by the Client, within the sixty (60) day period, interest at the rate of twelve percent (12%) per annum, compounded monthly, of all owed amounts, shall automatically be added to the amount owed.~~ If any balance remains outstanding seventy-five (75) days following the date of the invoice, Mythics may terminate this Agreement or any portion thereof. Termination of this Agreement or any portion thereof pursuant to this provision shall not release Client from any of its obligations hereunder. All payment or invoice inquires should be directed to the following points of contact:

Mythics, Inc.	Client Name
Accounts Receivable	Accounts Payable
4525 Main Street, Suite 1500	Address
Virginia Beach, Virginia 23462	
Attn: Patricia Holley	Attn:
Telephone: 757-452-6291	Telephone:
Facsimile: 757-963-6198	Facsimile:
Email: <a href="mailto:ptholley@mythics.com">ptholley@mythics.com</a>	Email:

**Indemnification** - Mythics covenants to fully indemnify, save and hold harmless Client, its officers, employees, and agents ("Indemnitees") against all liability, damage, loss, claims, demands and actions of any kind on account of personal injuries (including, without limiting the foregoing, workers' compensation and death claims), or property loss or damage of any kind, which arise out of or are in any manner connected with, or are claimed to arise out of or be in any manner connected with services or products provided by Mythics under this agreement which may be attributed to negligence by Mythics.



**Intellectual Property Rights** - All drawings, models, designs, formulas, methods, documents and tangible items prepared for and submitted to the Client by Mythics in connection with the services rendered under this Agreement shall belong exclusively to the Client and shall be deemed to be works made for hire (the "Deliverable Items"). To the extent that any of the Deliverable Items may not, by operation of law, be works made for hire, Mythics hereby assigns to the Client the ownership of copyright or mask work in the Deliverable Items, and the Client shall have the right to obtain and hold in its own name any trademark, copyright, or mask work registration, and any other registrations and similar protection which may be available in the Deliverable Items. Mythics agrees to give the Client or its designees all assistance reasonably required to perfect such rights.

Notwithstanding the foregoing, Client acknowledges that, as part of performing the Services, Mythics may utilize proprietary software, ideas, concepts, know-how, tools, models, processes, methodologies and techniques that have been originated or developed by Mythics or that have been purchased by or licensed to Mythics (collectively, the "Mythics' Proprietary Materials"), including enhancements, modifications or additions that have been developed while Mythics has been performing the Services under this Agreement. Mythics grants the Client a perpetual, non-exclusive, worldwide, non-transferable license to use Mythics' Proprietary Materials in connection with the Deliverables or the Services. Client agrees that Mythics shall retain sole and exclusive right, title and interest in and to Mythics' Proprietary Materials.

**IP Indemnification** - If a third party makes a claim against you ("Recipient"), that any information, design, specification, instruction, software, data, or material ("Material") furnished by Mythics ("Provider"), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider if the Recipient does the following:

- Notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice the claim, (or sooner if required by applicable law);

- gives the Provider sole control of the defense and any settlement negotiations; and

- gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it and any unused, prepaid technical support fees you have paid for the license. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. Mythics will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Mythics. Mythics 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 this agreement would not otherwise infringe any third-party intellectual property rights. Mythics will not indemnify you for any claim that is based on: (1) a patent that you were

made aware of prior to the effective date of this agreement (pursuant to a claim, demand or notice); or (2) your actions prior to the effective date of this agreement. This section provides the parties' exclusive remedy for any infringement claims or damages.

**Limitation of Liability** - UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, REVENUE, DATA, USE, OR SAVINGS) INCURRED BY EITHER PARTY, OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY OR ANY OTHER PERSON HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. MYTHICS' TOTAL LIABILITY UNDER THIS AGREEMENT, FOR ANY CAUSE OF ACTION WHATSOEVER, SHALL BE LIMITED TO THE AMOUNT OF FEES PAID BY CLIENT UNDER THE APPLICABLE STATEMENT OF WORK FROM WHICH SUCH LIABILITY ARISES.

**Confidential Information** - In performing consulting services under this Agreement, Mythics may be exposed to and will be required to use certain "Confidential Information" (as hereinafter defined) of the Client. Mythics agrees that Mythics will not and Mythics' employees, agents or representatives will not, use, directly or indirectly, such Confidential Information for the benefit of any person, entity or organization other than the Client, or disclose such Confidential Information without the written authorization of the President of the Client, either during or after the term of this Agreement, for as long as such information retains the characteristics of Confidential Information.

"Confidential Information" means information, not generally known, and proprietary to the Client or to a third party for whom the Client is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the Client, any vendor names, client and supplier lists, databases, management systems and sales and marketing plans of the Client, any confidential secret development or research work of the Client, or any other confidential information or proprietary aspects of the business of the Client. All information which Mythics acquires or becomes acquainted with during the period of this Agreement, whether developed by Mythics or by others, which Mythics has a reasonable basis to believe to be Confidential Information, or which is treated by the Client as being Confidential Information, shall be presumed to be Confidential Information.

**Non-Solicitation** - It is expressly agreed that neither Party will directly solicit, hire, consult, or otherwise contract with any employee(s) of the other Party who are associated with the investigation / marketing efforts and subsequent proposals, and/or contract/subcontract efforts called for under this Agreement during the course of this Agreement for a period of one (1) year thereafter without prior written consent of the other Party. This shall not prohibit one Party from hiring any employee of the other Party who responds to (i) routine employment solicitations, or open house or job fair events, or (ii) widely distributed announcements of job openings.

**Disputes** – Disputes under this agreement shall be referred to the appropriate Client president, or their designee, and Mythics' president, or their designee, thirty (30) days before either party may commence formal proceedings; provided however, that this provision shall not restrain either party from seeking injunctive or equitable relief.

When seeking to resolve a dispute, the party's designated executives shall consider the types and impacts of the disputed matters, the effect of the dispute on the Program and Client's success as awardee, the cost to both parties of resolving the dispute and the practical effects on the business of each party resulting from the resolution or failure to resolve any such dispute.

In the event that the designated executives are unable to resolve a dispute in the required time or longer, if extended by the mutual agreement of the parties, either party may then submit the matter for formal proceedings which may include litigation or alternate dispute resolution.

In the event litigation is necessary to enforce any provision of or resolve any dispute arising out of this Agreement, the Parties agree that any proceeding relating to or arising from the Agreement shall be heard and litigated exclusively in a state or federal court located in the County or City of Virginia Beach, Commonwealth of Virginia. Each party hereto consents to the personal jurisdiction in any such action brought in any such court, consents to service of process by registered mail upon each party's designated legal counsel and waives any objection to venue in any such courts and any claim that any such court is an inconvenient forum. During this process, each party will continue performing its obligations under this agreement.

**Governing Law** - This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without giving effect to such State's principles of conflicts of laws and the laws of the United States of America. Any claim or cause of action arising out of or connected with this Agreement shall be brought exclusively in the Circuit Court of the City of Virginia Beach, Virginia or in the Federal Court in the Eastern District of Virginia, Norfolk Division. The parties consent to submit to the personal jurisdiction of such courts and waive any and all objections to such jurisdiction and venue.

**Modification** - No modification, termination or attempted waiver of this Agreement, or any provision thereof, shall be valid unless in writing signed by the party against whom the same is sought to be enforced.

**Force Majeure** - Neither party shall be liable to the other for any loss, claim or damage as a result of any delay or failure in the performance of any obligation hereunder, directly or indirectly caused by or resulting from: acts of the government; acts of God; acts of third persons; strikes, embargoes, delays in the mail, transportation and delivery; power failures and shortages; fires; floods; epidemics and unusually severe weather conditions; or other causes which do not result from the fault or negligence of such party.

	\$25,887.60	\$0.00	\$0.00	\$0.00	\$0.00	\$25,887.60
\$	39.70	\$0.00	\$0.00	\$0.00	\$0.00	\$39.70
\$	1.65	\$0.00	\$0.00	\$0.00	\$0.00	\$1.65
\$	333.70	\$0.00	\$0.00	\$0.00	\$0.00	\$333.70
\$	401.10	\$0.00	\$0.00	\$0.00	\$0.00	\$401.10
\$	3,199.65	\$3,455.62	\$3,732.07	\$4,030.64	\$3,453.09	\$17,871.07
\$	1,748.14	\$0.00	\$0.00	\$0.00	\$0.00	\$1,748.14
\$	9,720.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9,720.00
\$	1,166.40	\$1,259.71	\$1,360.49	\$1,469.33	\$1,586.87	\$6,842.80
\$	42,554.61	\$22,628.61	\$24,438.90	\$26,394.00	\$28,505.52	\$144,521.64
\$	10,650.30	\$0.00	\$0.00	\$0.00	\$0.00	\$10,650.30
\$	15,921.00	\$3,158.10	\$3,410.76	\$3,683.61	\$3,978.30	\$30,151.77
\$	10,614.00	\$2,105.40	\$2,273.82	\$2,455.74	\$2,652.21	\$20,101.17
\$	31,842.00	\$6,316.20	\$6,821.49	\$7,367.22	\$7,956.60	\$60,303.51
\$	16,572.00	\$0.00	\$0.00	\$0.00	\$0.00	\$16,572.00
\$	12,429.00	\$0.00	\$0.00	\$0.00	\$0.00	\$12,429.00
\$	8,286.00	\$0.00	\$0.00	\$0.00	\$0.00	\$8,286.00
\$	16,572.00	\$0.00	\$0.00	\$0.00	\$0.00	\$16,572.00
\$	11,985.00	\$12,584.25	\$13,213.46	\$13,874.14	\$14,567.84	\$66,224.69
\$	74,630.00	\$78,631.50	\$82,279.58	\$86,393.55	\$90,713.23	\$412,647.86
\$	140,980.00	\$148,029.00	\$155,490.00	\$163,202.00	\$171,362.10	\$779,003.10
\$	3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$3,500.00	\$17,500.00
\$	49,716.00	\$52,200.00	\$54,811.20	\$57,552.00	\$60,429.60	\$274,708.80
						\$1,932,517.60
\$	488,749.85	\$333,888.39	\$351,271.77	\$369,922.23	\$388,705.36	\$1,932,517.60



