The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at *wvOASIS.gov*. As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at *WVPurchasing.gov* with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

**wvOASIS**

Welcome, Lu Anne Cottrill

Procurement | Budgeting | Accounts Receivable | Accounts Payable

**Solicitation Response(SR)** | **Dept:** 0803 | **ID:** ESR12022000000003934 | **Ver.:** 1 | **Function:** New | **Phase:** Final | ▼ | Modified by batch , 12/02/2020

**Header** 📎 6

[≡ List View]

| General Information | Contact | Default Values | Discount | Document Information | Clarification Request |

**Procurement Folder:** 803742

**Procurement Type:** Central Contract - Fixed Amt

**Vendor ID:** 000000199159 ⬆

**Legal Name:** MYTHICS INC

**Alias/DBA:**

**Total Bid:** $291,573.91

**Response Date:** 12/02/2020 📅

**Response Time:** 12:25

**Responded By User ID:** Mythics ⬆

**First Name:** Gigie

**Last Name:** Button

**Email:** slccontracts@mythics.co

**Phone:** 757-412-4362

**SO Doc Code:** CRFQ

**SO Dept:** 0803

**SO Doc ID:** DOT2100000060

**Published Date:** 11/19/20

**Close Date:** 12/2/20

**Close Time:** 13:30

**Status:** Closed

**Solicitation Description:** ORACLE SOFTWARE

**Total of Header Attachments:** 6

**Total of All Attachments:** 6

| **Proc Folder:** | 803742 |
| --- | --- |
| **Solicitation Description:** | ORACLE SOFTWARE |
| **Proc Type:** | Central Contract - Fixed Amt |

| Solicitation Closes | Solicitation Response | Version |
| --- | --- | --- |
| 2020-12-02 13:30 | SR 0803 ESR12022000000003934 | 1 |

| **VENDOR** |
| --- |
| 000000199159<br>MYTHICS INC |

| **Solicitation Number:** | CRFQ 0803 DOT2100000060 | | | |
| --- | --- | --- | --- | --- |
| **Total Bid:** | 291573.9099999999743886291980 | **Response Date:** 2020-12-02 | **Response Time:** | 12:25:22 |
| **Comments:** | | | | |

**FOR INFORMATION CONTACT THE BUYER**
John W Estep
304-558-2566
john.w.estep@wv.gov

**Vendor**
**Signature X**                              **FEIN#**                              **DATE**

**All offers subject to all terms and conditions contained in this solicitation**

| Line | Comm Ln Desc | Qty | Unit Issue | Unit Price | Ln Total Or Contract Amount |
|------|--------------|-----|-----------|-----------|------------------------------|
| 1 | PRIMAVERA P6 ENTERPRISE PROJECT PORTFOLIO MGMT | 105.00000 | EA | 2158.483464 | 226640.76 |

| Comm Code | Manufacturer | Specification | Model # |
|-----------|--------------|---------------|---------|
| 81111805 | | | |

**Commodity Line Comments:**

**Extended Description:**

PRIMAVERA P6 ENTERPRISE PROJECT PORTFOLIO MGMT -  APPLICATION USER PERPETUAL
CSI# 18075389

| Line | Comm Ln Desc | Qty | Unit Issue | Unit Price | Ln Total Or Contract Amount |
|------|--------------|-----|-----------|-----------|------------------------------|
| 2 | ORACLE DATABASE STANDARD EDITION - PROCESSOR PERPETUAL | 2.00000 | EA | 22229.941870 | 44459.88 |

| Comm Code | Manufacturer | Specification | Model # |
|-----------|--------------|---------------|---------|
| 81111805 | | | |

**Commodity Line Comments:**

**Extended Description:**

ORACLE DATABASE STANDARD EDITION - PROCESSOR PERPETUAL
CSI# 1987287

| Line | Comm Ln Desc | Qty | Unit Issue | Unit Price | Ln Total Or Contract Amount |
|------|--------------|-----|-----------|-----------|------------------------------|
| 3 | ORACLE DATABASE STANDARD EDITION - PROCESSOR PERPETUAL | 1.00000 | EA | 20473.265970 | 20473.27 |

| Comm Code | Manufacturer | Specification | Model # |
|-----------|--------------|---------------|---------|
| 81111805 | | | |

**Commodity Line Comments:**

**Extended Description:**

ORACLE DATABASE STANDARD EDITION - PROCESSOR PERPETUAL
CSI#5790214

| **Proc Folder:** | 803742 | **Reason for Modification:** |
| --- | --- | --- |
| **Doc Description:** | ORACLE SOFTWARE | |

| **Proc Type:** | Central Contract - Fixed Amt | |
| --- | --- | --- |

| **Date Issued** | **Solicitation Closes** | **Solicitation No** | **Version** |
| --- | --- | --- | --- |
| 2020-11-19 | 2020-12-02   13:30 | CRFQ   0803   DOT2100000060 | 1 |

## BID RECEIVING LOCATION

BID CLERK
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
2019 WASHINGTON ST E
CHARLESTON     WV     25305
US

## VENDOR

**Vendor Customer Code:**

**Vendor Name :**   Mythics, Inc.

**Address :**   4525 Main Street, Suite 1500

**Street :**

**City :**   Virginia Beach

| **State :**   Virginia | **Country :**   USA | **Zip :**   27932 |
| --- | --- | --- |

**Principal Contact :**   Deonte J. Watters, CCMAP

**Vendor Contact Phone:**   757-412-4362       **Extension:**

## FOR INFORMATION CONTACT THE BUYER
John W Estep
304-558-2566
john.w.estep@wv.gov

Mythics is submitting this bid pursuant to the terms and conditions of Oracle Master Agreement (OMA), US-OMA-226823, wl;lich accompanies Mythic's bid and is incorporated herein by reference. If there are any conflicts between the terms of this bid solicitation and the OMA, the latter shall prevail.

**Vendor Signature X** _Deonte J. Watters_       **FEIN#**  54-1987871       **DATE**   December 1, 2020

**All offers subject to all terms and conditions contained in this solicitation**

## ADDITIONAL INFORMATION

REQUEST FOR QUOTATION:

The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Transportation (WVDOT) to establish a contract for Oracle software maintenance and support. Per the bid requirements, specifications, terms and conditions attached to this solicitation.

| INVOICE TO | SHIP TO |
|---|---|
| DIVISION OF HIGHWAYS<br>INFORMATION SERVICE DIVISION<br>1900 KANAWHA BLVD E, BLDG 5 RM 920<br>CHARLESTON      WV    25305-0430<br>US | DIVISION OF HIGHWAYS<br>INFORMATION SERVICE DIVISION<br>1900 KANAWHA BLVD E, BLDG 5 RM 920<br>CHARLESTON      WV    25305-0430<br>US |

| Line | Comm Ln Desc | Qty | Unit Issue | Unit Price | Total Price |
|---|---|---|---|---|---|
| 1 | PRIMAVERA P6 ENTERPRISE PROJECT PORTFOLIO MGMT | 105.00000 | EA | $ 2,158.483 | $ 226,640.76 |

| Comm Code | Manufacturer | Specification | Model # |
|---|---|---|---|
| 81111805 | | | N/A |

**Extended Description:**
PRIMAVERA P6 ENTERPRISE PROJECT PORTFOLIO MGMT -  APPLICATION USER PERPETUAL
CSI# 18075389 - **Total pricing for 2020-2025**

| INVOICE TO | SHIP TO |
|---|---|
| DIVISION OF HIGHWAYS<br>INFORMATION SERVICE DIVISION<br>1900 KANAWHA BLVD E, BLDG 5 RM 920<br>CHARLESTON      WV    25305-0430<br>US | DIVISION OF HIGHWAYS<br>INFORMATION SERVICE DIVISION<br>1900 KANAWHA BLVD E, BLDG 5 RM 920<br>CHARLESTON      WV    25305-0430<br>US |

| Line | Comm Ln Desc | Qty | Unit Issue | Unit Price | Total Price |
|---|---|---|---|---|---|
| 2 | ORACLE DATABASE STANDARD EDITION - PROCESSOR PERPETUAL | 2.00000 | EA | $ 22229.942 | $44,459.88 |

| Comm Code | Manufacturer | Specification | Model # |
|---|---|---|---|
| 81111805 | | | N/A |

**Extended Description:**
ORACLE DATABASE STANDARD EDITION - PROCESSOR PERPETUAL
CSI# 1987287 - **Total pricing for 2020-2025**

| | INVOICE TO | | SHIP TO |
|---|---|---|---|

**INVOICE TO**

DIVISION OF HIGHWAYS
INFORMATION SERVICE DIVISION
1900 KANAWHA BLVD E, BLDG 5 RM 920
CHARLESTON                WV      25305-0430
US

**SHIP TO**

DIVISION OF HIGHWAYS
INFORMATION SERVICE DIVISION
1900 KANAWHA BLVD E, BLDG 5 RM 920
CHARLESTON                WV      25305-0430
US

| Line | Comm Ln Desc | Qty | Unit Issue | Unit Price | Total Price |
|---|---|---|---|---|---|
| 3 | ORACLE DATABASE STANDARD EDITION - PROCESSOR PERPETUAL | 1.00000 | EA | $ 20,473.26 | $ 20,473.26 |

| Comm Code | Manufacturer | Specification | Model # |
|---|---|---|---|
| 81111805 | | | N/A |

**Extended Description:**

ORACLE DATABASE STANDARD EDITION - PROCESSOR PERPETUAL

CSI#5790214 - **\*\*Total pricing for 2020-2025\*\***

## SCHEDULE OF EVENTS

| Line | Event | Event Date |
|---|---|---|
| 1 | Tech Ques Dur by 10:00am | 2020-11-25 |

| | Document Phase | Document Description | Page 4 |
|---|---|---|---|
| DOT2100000060 | Final | ORACLE SOFTWARE | |

## ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

| Primavera P6 Enterprise Project Portfolio Management – Application User Perpetual CSI #18075389 | Year | Start Date | End Date | Total Number of Licenses | Annual Price Per License | Total Cost |
|---|---|---|---|---|---|---|
| Maintenance & Support plus reinstatement fees | 1 | 2/29/2020 | 2/28/2021 | 105 | 398.5145714 | $ 41,844.03 |
| Maintenance & Support | 2 | 3/1/2021 | 2/28/2022 | 105 | 414.4551543 | $43,517.79 |
| Maintenance & Support | 3 | 3/1/2022 | 2/28/2023 | 105 | 431.0333605 | $45,258.50 |
| Maintenance & Support | 4 | 3/1/2023 | 2/28/2024 | 105 | 448.2746949 | $47,068.84 |
| Maintenance & Support | 5 | 2/29/2024 | 2/28/2025 | 105 | 466.2056827 | $48,951.60 |
| | | | | | | |
| | | | | | | |

| Oracle Standard Edition – Processor Perpetual CSI #1987287 | Year | Start Date | End Date | Total Number of Licenses | Annual Price Per License | |
|---|---|---|---|---|---|---|
| Maintenance & Support plus reinstatement fees | 1 | 2/29/2020 | 2/28/2021 | 2 | 4104.25 | $8,208.50 |
| Maintenance & Support | 2 | 3/1/2021 | 2/28/2022 | 2 | 4268.42 | $8,536.84 |
| Maintenance & Support | 3 | 3/1/2022 | 2/28/2023 | 2 | 4439.1568 | $8,878.31 |
| Maintenance & Support | 4 | 3/1/2023 | 2/28/2024 | 2 | 4616.723072 | $9,233.45 |
| Maintenance & Support | 5 | 2/29/2024 | 2/28/2025 | 2 | 4801.391995 | $9,602.78 |
| | | | | | | |

| Oracle Standard Edition – Processor Perpetual CSI #5790214 | Year | Start Date | End Date | Total Number of Licenses | Annual Price Per License | |
|---|---|---|---|---|---|---|
| Maintenance & Support plus reinstatement fees | 1 | 2/29/2020 | 2/28/2021 | 1 | 3779.92 | $3,779.92 |
| Maintenance & Support | 2 | 3/1/2021 | 2/28/2022 | 1 | 3931.1168 | $3,931.12 |
| Maintenance & Support | 3 | 3/1/2022 | 2/28/2023 | 1 | 4088.361472 | $4,088.36 |
| Maintenance & Support | 4 | 3/1/2023 | 2/28/2024 | 1 | 4251.895931 | $4,251.90 |
| Maintenance & Support | 5 | 2/29/2024 | 2/28/2025 | 1 | 4421.971768 | $4,421.97 |
| Total Contract Cost | | | | | | $291,573.91 |

1/4/2019

# ORACLE

# The Modernization of the Oracle PartnerNetwork

The modernization of the Oracle PartnerNetwork (OPN) involves a transition from recognizing Oracle partners based on metal-tier designations like Gold or Platinum to recognizing partners based on achievements of "Expertise" attained through skills accreditation and customer satisfaction for a specific product or cloud solution and regional/country coverage.  As Oracle partners transition from metal-tiers to Expertise, Oracle asks that customers issuing requests-for-proposals (RFPs) and/or tenders from Oracle partners update their requirements to seek out Oracle partners with either (i) the appropriate metal-level designation or (ii) Expertise(s) aligned with the specific solution or service area for the applicable RFP and/or tender.

As Oracle partners transition from the metal-tiers to Expertise, it can be helpful for customers that issue RFPs to understand some of the key differences between the programs.

Metal-tiers (Classic OPN)
- Gold level membership had no Specialization / ISV accreditation requirements, Platinum level membership required 5 or more Specializations and/or ISV accreditations
- Specializations required a combination of individual Specialist accreditations in Sales (including Presales) and Services with no geographic requirements
- In order to sell systems, applications and SaaS, partners were required to have Sales Specialists (including Presales) and for applications and SaaS, Services Specialists were also required, with in-country requirements for all. Technology license, and IaaS and PaaS had no requirements

Expertise (Modern OPN)
- The areas of Expertise are in the following tracks: Cloud Build, Cloud Sell, Cloud Service, and License and Hardware (Build, Sell, and Service)
- The individual Specialist accreditation requirements have been separated into Sell and Service with regional market requirements, and the ISV accreditations are under Build
- The objective has been to ensure that the various Expertise are supported by the relevant competent Specialists - Sales (including Presales) or Services - and with the relevant geographic proximity - regional market
- Sales Expertise requirements have been introduced for IaaS and PaaS, as well as systems, applications and SaaS
- Introduction of a quality threshold of Customer Loyalty Index (CLI) >= 8 for customer satisfaction ('purchases' for Sell Expertise or 'go-lives' for Service Expertise).

For further information, please refer to oracle.com/partnernetwork/.

# PURCHASING AFFIDAVIT

**CONSTRUCTION CONTRACTS:** Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

**ALL CONTRACTS:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

**AFFIRMATION:  By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code* §61-5-3) 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, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.**

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: Mythics, Inc.

Authorized Signature: *Dennis J. Watters*  Date: December 1st, 2020

State of Virginia

County of Virginia Beach , to-wit:

Taken, subscribed, and sworn to before me this 1 day of December , 20 20 .

My Commission expires September 30th , 20 23 .

**AFFIX SEAL HERE**   NOTARY PUBLIC *mekessia brown*

Mekessia Talonda Brown
2020.12.01 14:22:00
-05'00'

*Purchasing Affidavit (Revised 01/19/2018)*

# Disclosure of Interested Parties to Contracts

Pursuant to *W. Va. Code* § 6D-1-2, a state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of $1 million or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

*"Business entity"* means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation, but does not include publicly traded companies listed on a national or international stock exchange.

*"Interested party"* or *"Interested parties"* means:

(1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
(2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
(3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

*"State agency"* means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of W. Va. Code § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

*This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: ethics@wv.gov; website: www.ethics.wv.gov.*

# West Virginia Ethics Commission
# **Disclosure of Interested Parties to Contracts**

(Required by *W. Va. Code* § 6D-1-2)

**Name of Contracting Business Entity:** Mythics, Inc.        **Address:** 4525 Main Street, Suite 1500

Virginia Beach, VA 23462

**Name of Authorized Agent:** Deonte J. Watters, CCMAP    **Address:** Same as above

**Contract Number:** CRFQ 0803 DOT2100000060    **Contract Description:** Oracle Software

**Governmental agency awarding contract:** State of West Virginia Info Technology

☐  **Check here if this is a Supplemental Disclosure**

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below *(attach additional pages if necessary)*:

1.  **Subcontractors or other entities performing work or service under the Contract**

    ☑ Check here if none, otherwise list entity/individual names below.

2.  **Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)**

    ☐ Check here if none, otherwise list entity/individual names below.

    Mythics Emergent Group, Inc.

3.  **Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)**

    ☑ Check here if none, otherwise list entity/individual names below.
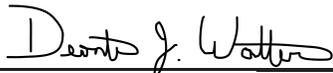
Signature: _Deonte J. Watters_        Date Signed: December 1st, 2020

## *Notary Verification*

State of Virginia _____, County of Virginia Beach _____:

I, _____, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this 1st _____ day of December _____, 2020 ____.


MEKESSIA TALONDA BROWN
Electronic Notary Public
Reg. # 7644106
Commonwealth of Virginia
My Commission Expires Sep. 30, 2023

Mekessia Talonda Brown
2020.12.01 14:30:27 -05'00'

_mekessia brown_
Notary Public's Signature

***To be completed by State Agency:***
Date Received by State Agency: _____
Date submitted to Ethics Commission: _____
Governmental agency submitting Disclosure: _____

*Revised June 8, 2018*

| 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.
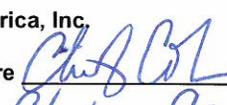
## 17. MASTER AGREEMENT EFFECTIVE DATE

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

**West Virginia Department of Administration**
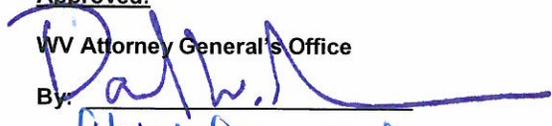**Purchasing Division**

Signature _____

Name _____DAVID TINCHER_____

Title _____DIRECTOR_____

Signature Date _____8/28/14_____

**Oracle America, Inc.**

Signature _____

Name _____Clinton Cole_____

Title _____Contracts Manager_____

Signature Date _____8/26/2014_____


Approved:

WV Attorney General's Office

By: _____

Its: _____Chief Counsel_____

Date: _____8/28/14_____

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 COMMERCIALLY 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 COMMERCIALLY 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.