



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: 08-02-2024

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 0705 0705 LOT2400000003 2	Procurement Folder:	1334393
Document Name:	Microsoft Business Central Implementation Services	Reason for Modification:	Change Order No. 1 - Per the attached documentation
Document Description:	Microsoft Business Central Implementation Services		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2024-01-31
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2025-01-30

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: VS0000043431 ONACTUATE CONSULTING US INC 10900 NE 4TH ST UNIT 2300 BELLEVUE WA 98004 US Vendor Contact Phone: 7018707690 Extension:	Requestor Name: Thomas P Hymes Requestor Phone: 304-558-2350 Requestor Email: thymes@wvlottery.com																				
Discount Details: <table border="1"> <thead> <tr> <th></th> <th>Discount Allowed</th> <th>Discount Percentage</th> <th>Discount Days</th> </tr> </thead> <tbody> <tr> <td>#1</td> <td>No</td> <td>0.0000</td> <td>0</td> </tr> <tr> <td>#2</td> <td>No</td> <td></td> <td></td> </tr> <tr> <td>#3</td> <td>No</td> <td></td> <td></td> </tr> <tr> <td>#4</td> <td>No</td> <td></td> <td></td> </tr> </tbody> </table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			<h1>2025</h1> <p>FILE LOCATION _____</p>
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
ACCOUNTS PAYABLE LOTTERY PO BOX 2067 CHARLESTON WV 25327-2067 US	PURCHASING LOTTERY 900 PENNSYLVANIA AVE CHARLESTON WV 25302 US

8/14/24 61

Purchasing Division's File Copy

Total Order Amount:	Open End
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[Signature]
 8/14/2024

PURCHASING DIVISION AUTHORIZATION
 DATE: *[Signature]* - 8/14/2024
 ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
 DATE: *[Signature]*
 ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
 DATE: *[Signature]* 8/20/24
 ELECTRONIC SIGNATURE ON FILE

8/20/2024

Extended Description:

Change Order

Change Order No. 01 - is issued to memorialize, per the attached documentation, the ongoing maintenance and support agreement to the original contract according to all terms, conditions, prices, and specifications contained in the original contract, including all authorized change orders.

No other changes

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	43231500				0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Microsoft Business Central Implementation Services

Extended Description:

See Attached Specifications and Exhibit - A Pricing Page

Cost To Include Planning & Design, Configuration, Data Migration and Implementation of Interfaces, Training and Testing.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	43231500				0.000000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Support and Maintenance

Extended Description:

CO1 - Ongoing Maintenance Support and Client Support Program Service Agreement.

See Attached Specifications and Exhibit - A Pricing Page

Exhibit - A Pricing Page

Discussed with
Director
APPROVED
[Signature]



P.O. BOX 2067
CHARLESTON, WV 25327

JOHN A. MYERS
DIRECTOR

PHONE: 304.558.0500
wvlottery.com

August 2, 2024

TO: Brandon L Barr, Buyer, Purchasing Division
Toby L Welch, Senior Buyer, Purchasing Division

FROM: Thomas Hymes, Procurement Specialist, Senior, Lottery *[Signature]*

SUBJECT: CMA LOT24*03 - Change Order #1 Request - Ongoing Maintenance Support/Client Support Program Service Agreement

Lottery is requesting the subject change order according to specifications section 4.1.6 and the Vendors submitted bid for the Ongoing Maintenance Support/Client Support Program.

Lottery has negotiated the Service Agreement with the Vendor and has determined Lottery will not pre-purchase a bank of support hours suggested on the pricing page of Vendors bid. Lottery has agreed to the attached Client Support Program Service Agreement.

The agreement will start on July 29, 2024, for 12 months at a rate of \$150/hour for Microsoft Dynamics 365 Business Central. The proposal includes the agreement terms, charges, service levels, vendor/customer responsibilities, confidentiality, and liability, and according to all terms, conditions, prices, and specifications contained in the original contract.

The agreement has been reviewed by Lottery's legal office, Attorney - June Somerville JSomerville@wvlottery.com and understands this contract is subject to West Virginia Code §5A-3-62.



Exhibit A - Pricing Page

Cost for Implementation Services

Item #	Section	Description of service	Estimated Hours Only	Regular Hourly rate	Overtime Hourly Rate	Extended Cost
1	4.1.1.a	Planning and Design		150	225	
	4.1.1.b	Planning and Design (On-site)		225	338	
2	4.1.2	Configuration		150	225	
3	4.1.3	Data migration and Implementation of Interfaces		150	225	
4	4.1.4	Training (On-site)		225	338	
5	4.1.5	Testing		150	225	
6	4.1.6	Support and Maintenance (Post Go-Live Support for 2 Weeks)		Lump Sum		12,000.00
Total Bid Amount						

Cost for Ongoing Maintenance Support (Optional)

Our Client Support Program is tied to a separate Service Agreement which allows our client to pre-purchase a bank of support hours typically valid for a year (e.g. 150 hours a year). For a project of size and scope similar to WV, we suggest 50 support hours valid for 12 months. Once these pre-purchased hours are completely utilized, WV has an option to buy additional bank of support hours based on their need. The additional support hours can be pre-purchased at any time with the ability to execute a subsequent agreement for the following term. Please note that this is an optional service, and WV can opt in or out of the program based on their needs. For your reference, we have provided the cost below for 50 support hours valid for 12 months.

Item #	Section	Description of service	Estimated Hours Only	Regular Hourly rate	Overtime Hourly Rate	Extended Cost
1	-	Ongoing Maintenance Support / Client Support Program		150	-	

GLOBAL SUPPORT PROPOSAL
MICROSOFT DYNAMICS D365 BUSINESS CENTRAL
WEST VIRGINIA LOTTERY

VERSION: 2.0
DATE: JULY 29, 2024.

PREPARED BY: MANJIT BHASIN

DOCUMENT VERSION CONTROL

VERSION	DATE	INITIALS	SUMMARY OF CHANGES
1.0	JULY 19., 2024	MB	INITIAL VERSION
2.0	JULY 29., 2024	MB	<ul style="list-style-type: none">- CHANGED THE RATE TO 150\$/HR.- REMOVED AUTO RENEWAL CLAUSE

TABLE OF CONTENTS

1 THE AGREEMENT..... 4

2 TERMS..... 4

3 CHARGES..... 4

4 SERVICE LEVEL OBLIGATIONS 5

5 CUSTOMER'S RESPONSIBILITIES 5

6 DUTY OF CONFIDENTIALITY 5

7 FORCE MAJEURE 5

8 WARRANTIES AND REPRESENTATIONS..... 6

9 LIMITATION OF LIABILITY 6

10 SOFTWARE UPGRADES 6

11 ENTIRE AGREEMENT..... 7

SCHEDULE 1: THE SUPPORT SERVICES..... 8

SCHEDULE 2: SUPPORT SERVICE LEVELS.....10

SCHEDULE 3: CUSTOMER'S RESPONSIBILITIES.....11

SCHEDULE 4: SUPPORT CHARGES12

1 THE AGREEMENT

THIS SERVICE AGREEMENT (this "Agreement") is made on July 29, 2024.

BETWEEN:

OnActuate Consulting Inc., a company registered in Canada and whose Head Office is 777 Hornby St. #600, Vancouver, BC V6Z 1S4, Canada. (the "Supplier"); and

West Virginia Lottery and whose principal office is at 900 Pennsylvania Avenue, Charleston, WV 25302 ("Customer").

2 TERMS

2.1 This Agreement shall commence from July 29, 2024, to July 28, 2025 (12 Months) on sign off this Support Services Agreement by the Customer and will have duration for 12 months from the date of commencement with budgeted effort of \$150/Hour USD of Consulting work.

2.2 A Support Call Incident is defined as a system failure that has been identified by the customer and cannot be resolved by the customer's in-house support operation. In such circumstances, an incident call is logged by the customer with the OnActuate Support Team and incident resolution is managed according to the following key steps:

- *Investigate incident*
- *Understand how to produce a work-around to get user/system back to an operational state*
- *Implement the work-around*
- *Understand what the final resolution to the incident should be*
- *If no system changes are required, then implement the solution*
- *If system changes are required, then this is subject to approval of change request Estimate.*

3 CHARGES

3.1 In consideration of the performance of the Support Services in accordance with the terms of this Agreement (including without limitation the Service Levels – see Schedule 2), Supplier shall invoice, and the Customer shall pay the Charges for Support Services identified Schedule 4 of this Agreement; in accordance with the payment terms specified herein. The Support Services Charges may be varied only by written agreement between the parties.

4 SERVICE LEVEL OBLIGATIONS

- 4.1** The Supplier undertakes to perform the Services identified in Schedule 1 (the "Support Services") for the Customer in accordance with the terms of this Agreement and in accordance with the service levels and requirements identified in Schedule 2 hereto (the "Service Levels").
- 4.2** The Customer shall permit the Supplier such access to the Solution as is reasonably required for the Supplier to comply with its obligations stated in this Agreement.
- 4.3** The Customer would not be doing any customization / backend data modification during the Support period.
- 4.4** If the Supplier fails to provide the Support Services in accordance with the applicable Service Levels, the Supplier shall, without prejudice to the Customer's other rights and remedies:
 - i. Arrange all such additional resources as are necessary to perform the Support Services in accordance with the Service Levels as early as practicable thereafter and at no additional charge to the Customer.
 - ii. Support any effort by the Customer and its Subsidiaries to seek alternative source of support to cover the entire system.

5 CUSTOMER'S RESPONSIBILITIES

- 5.1** As a condition to Supplier's obligation to provide the Support Services, the Customer shall perform the Customer's responsibilities identified in Schedule 3. Supplier acknowledges and agrees that the failure by Customer to fulfil its responsibilities identified in Schedule 3 or any other obligations of Customer under this Agreement (other than the failure to pay the Support Service Charges) shall not constitute a material breach of this Agreement on the part of Customer, rather such failure shall relieve Supplier of its obligations to perform the Support Services to the extent Customer's failure prevents such performance until such Customer obligations are satisfied.

6 DUTY OF CONFIDENTIALITY

- 6.1** Both Parties guarantee that they themselves and their employees and sub-contractors will always treat any received information as confidential and proprietary information of the disclosing party. The duty of confidentiality gives way to duties of disclosure to which the Parties are subject according to statutory regulations.
- 6.2** The provisions of this shall not apply to any information which: (a) is or becomes public knowledge other than by breach of this; (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (d) is independently developed without reliance upon the Confidential Information.
- 6.3** Subject to any other terms in this agreement, both Parties agree to return any document or other material provided to them at any time and at the request of the other Party.

7 FORCE MAJEURE

- 7.1** Neither party can be held responsible for conditions constituting force majeure, including but not limited to war, riots, general strikes, fire, natural disasters, foreign exchange control, import or export prohibitions, disruptions, interruptions or cut off of energy supplies, sub-suppliers' non-delivery, long-term illness of key employees, system virus and force majeure in relation to sub-suppliers.
- 7.2** In the event of force-majeure the affected Party shall inform the other Party thereof without delay, and both Parties may call for a renegotiation of the Timetables. If the force majeure situation continues for more than 60 days, both Parties may terminate the Agreement without liability to the other party.

8 WARRANTIES AND REPRESENTATIONS

8.1 The Supplier warrants and represents that:

- i. The Supplier has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorized representative of the Supplier
- ii. It shall comply with all applicable legislation in the performance of its obligations and the provision of the Services hereunder
- iii. The personnel supplied by the Supplier to render the Services are appropriately experienced, qualified, and trained personnel and will render the Services with reasonable skill, care, and diligence and
- iv. The Supplier shall discharge its obligations hereunder with reasonable skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

9 LIMITATION OF LIABILITY

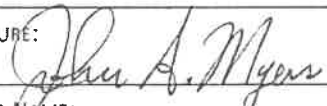

- 9.1 Notwithstanding anything else in this Agreement, and except in respect of injury to or death of any person or any other liability which cannot be limited or excluded by law (for which no limit applies), each party's liability to the other shall not exceed:
- 9.2 Subject always to Clause 9.1, the aggregate liability of either party for all Defaults under this Agreement shall in no event exceed the aggregate total of the Charges paid under this Agreement in the previous 12 months.
- 9.3 Subject always to Clause 9.1, in any event neither party shall be liable to the other for:
- 9.4 Loss of profits, business revenue, goodwill or anticipated savings; and
- 9.5 Indirect or consequential loss or damage.
- 9.6 The Supplier shall not be liable for errors and defects which do not relate to the Software, but to external factors, including those relating to other software. For the avoidance of doubt, the Supplier shall not be liable for:
 - i. The integration or the interaction between the Software and the Customer's computer environment and organization; and
 - ii. Any modifications made to the Software by the Customer or a third party on the Customer's instructions
 - iii. Any Fault which is found to be caused by negligence or misuse of the solution by the client.
 - iv. The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

10 SOFTWARE UPGRADES

- 10.1 Microsoft may regularly develop modifications and enhancements to the Solution to improve the functionality and usefulness and to respond to developments in the marketplace.
- 10.2 In connection, therewith, during the term of this Agreement, Supplier will make available to Customer at the request of Customer; patches, fixes, enhancements, updates, upgrades and new versions and releases of any aspect of the Solution that are generally available to the Customer (collectively, "Upgrades"), subject to a current Microsoft enhancement plan being in place.

11 Entire Agreement

This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, saves as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either Party.

WEST VIRGINIA LOTTERY	ONACTUATE CONSULTING INC.
SIGNATURE: 	SIGNATURE: 
PRINTED NAME: John A. Myers	PRINTED NAME: Naeem Shafi
TITLE: Lottery Director	TITLE: Partner and VP North America
DATE: 8/2/2024	DATE: 2024-08-01

SCHEDULE 1: THE SUPPORT SERVICES

1. SOFTWARE

The following software version is covered under this Support & Maintenance agreement

- MICROSOFT DYNAMICS D365 BUSINESS CENTRAL

2. HOURS OF SUPPORT

The services detailed in this Schedule are provided during the SST (Support Services Time - means the period between 08:00 AM HOURS AND 5:30 PM HOURS PST on Monday to Friday inclusive but excluding Public Holidays). A help desk service is provided during these hours, with systems engineering and consultancy support available to resolve any system delivery or support problems that may arise.

The SUPPLIER's help desk staff will endeavor to address all Faults that are identified during the MCT period. In the events:

- that a Fault is identified and logged by the CUSTOMER outside the SST, the SUPPLIER will notify the CUSTOMER at the beginning of the SST on the status of the Fault
- that a Fault which has been logged with a priority code of Critical or High, is resolved outside of the SST and the CUSTOMER's named user(s) is not contactable, the SUPPLIER will notify the CUSTOMER at the beginning of the SST the resolution status of the Fault
- that an outstanding logged call cannot be resolved within the SST, then resolution activities will cease and not resume until the next SST begins (i.e. between the hours of 17:30 and 08:30 IST on the normal working day, the SUPPLIER is under no obligation to provide support services to the CUSTOMER)
- that an outstanding logged call with a priority code of Critical or High, cannot be resolved within the SST, then the SUPPLIER will offer the CUSTOMER the option of working through to resolution, provided that the SUPPLIER has the resources available to so do.
- that a fault takes more than 2 hours for analysis or resolution, the SUPPLIER will notify the CUSTOMER before continuing the further work on the incident. Only after getting the approval from the CUSTOMER, SUPPLIER will resume the work on the issue.
- that the incident logged relates to a base product fault, OnActuate will log the incident with Microsoft or relevant 3rd Party vendor. If the incident logged is a OnActuate software fault, OnActuate will investigate and fix the problem giving that the problem was reported within the warranty period. If the software fault is outside of the warranty, the work that is necessary to fix the software fault will be chargeable.

3. OUT OF HOURS SUPPORT

The Supplier will use reasonable endeavors to provide availability and/or managed service support outside the agreed or supported SST. However, assistance outside SST can only be provided if enough notice has been given to enable the Supplier to allocate the necessary resources.

4. SUMMARY OF SUPPORT SERVICES

- OnActuate will track ongoing support hours.
- General how-to advice and Guidance.
- Support to Key Users
- New Change Requests
 - Report Writing
 - Approved enhancements development and deployment

- e. Hot-Fix Merging
- f. Short User training
- g. Backups and restoration
- h. Team Viewer remote assistance

5. SUPPORT EXCLUSIONS

OnActuate has a policy that should ensure that tasks that are likely to incur costs are approved by the Client before we commence on a resolution. OnActuate will advise the Client well in advance if the incident is outside the scope of support services and will give a choice to customer if it wants to proceed or cancel the request. Should the Client wish to proceed with the request, OnActuate will provide a task order for approval. Support services may be chargeable when faults arise from any of the points mentioned below.

Support may only be given to key users. It is not intended for supporting end-users and is designed as a 2nd level escalation support service to the Client's nominated contact person(s), i.e. Key Users defined in SCHEDULE 3: CUSTOMER'S RESPONSIBILITIES. Support on third party software not sold by OnActuate is not covered by OnActuate support services and must be submitted to the 3rd Party directly.

Support services do not cover enterprise-wide training, large development, version upgrades or installation services. These could be taken up based on separate Ad-hoc Task Orders, the standard service charges are depicted in SCHEDULE 5: AD-HOC TASK ORDER RATES

Summary of Exclusions -

- a. Modifications developed by Client's staff.
- b. Enterprise-wide User training
- c. Dedicated Onsite Support
- d. 3rd Party Software not Implemented by OnActuate
- e. Add-on Products not implemented by OnActuate
- f. Development Advice to Client's staff
- g. Support and guidance to staff not specified in SCHEDULE 3: CUSTOMER'S RESPONSIBILITIES
- h. Infrastructure changes (Hardware and Other Software)
- i. LAN/WAN networking, Desktop/laptops/ workstations/ Servers, Printers, Citrix/WTS, any Application, LAN/WAN/Application security installation and maintenance

SCHEDULE 2: SUPPORT SERVICE LEVELS

1. HELP DESK SERVICES

To notify any Support requests please send an e-mail to support@onactuate.com The Help Desk facility to the Customer is operational during SST defined hours. Help Desk staff is fully trained in help desk procedures.

CODE	PRIORITY DESCRIPTION	EXAMPLE
P1	<u>MISSION CRITICAL</u> TOTAL FAILURE OF A SYSTEM FOR A USER GROUP, WHICH RESULTS IN THE COMPLETE DISRUPTION OF THE BUSINESS PROCESS & NO ALTERNATIVE BYPASS IS AVAILABLE.	<ul style="list-style-type: none"> BUSINESS CRITICAL PROCESS INTERRUPTION WITH MAJOR FINANCIAL IMPACT & THERE IS NO POSSIBILITY TO REPLACE THE FUNCTIONALITY WITH THE TEMPORARY BYPASS. D365 NOT ACCESSIBLE TO 1 (DEPENDS ON THE ROLE) OR MORE USERS MONTH END / QUARTER END / YEAR END CLOSURES STUCK COMPLETELY
P2	<u>HIGH</u> TOTAL FAILURE OF A SYSTEM FOR A USER GROUP, WHICH CAUSES SERIOUS DISRUPTION TO THE BUSINESS PROCESS BUT FOR WHICH CONTINGENCY MEASURES &/OR BYPASS ARE POSSIBLE. INCIDENTS THAT WOULD OTHERWISE BE CONSIDERED SEVERITY LEVEL 1 BUT THAT HAVE AN ACCEPTABLE ALTERNATIVE OR BYPASS AVAILABLE WILL BE DESIGNATED A SEVERITY LEVEL 2.	<ul style="list-style-type: none"> FINANCIAL ISSUES CLOSE TO THE MONTH END WITH A CLOSE DEADLINE. PROBLEM WITH STOCK RECONCILIATION
P3	<u>MEDIUM</u> NON TIME CRITICAL FUNCTION OR PROCEDURE, UNUSABLE OR HARD TO USE & HAVING AN OPERATIONAL IMPACT BUT WITH NO DIRECT IMPACT ON SERVICE AVAILABILITY.	<ul style="list-style-type: none"> ADMIN & USER MGMT TICKETS REPORTING RELATED ISSUES
P4	<u>LOW</u> "HOW-TO" ISSUES.	<ul style="list-style-type: none"> HOW TO ACCESS D365 USER IS NOT AWARE OF HOW A SPECIFIC PROCESS IS WORKING IN D365.

CODE	DESCRIPTION	ACKNOWLEDGEMENT	FREQUENCY OF UPDATES
P1	MISSION CRITICAL	120 MINUTES	4 WORKING HOURS
P2	HIGH	120 MINUTES	6 WORKING HOURS
P3	MEDIUM	180 MINUTES	DAILY
P4	LOW	NEXT DAY	WEEKLY

SCHEDULE 3: CUSTOMER'S RESPONSIBILITIES

The Customer will ensure that any member of staff using the Software has received adequate training. If the Customer wishes to use aspects of the Software for which they haven't been trained, and this result in excessive calls to the Help Desk, the Supplier will recommend an appropriate training course and reserves the right to refuse assistance if the training is not undertaken within a reasonable timeframe.

The Customer will ensure that only approved members of staff call for Support Services. A member of staff will be approved from the time that:

- the Supplier has been notified of the member's name and has been given a statement of his or her relevant training and competence; and

The Customer will give reasonable co-operation to the Supplier to enable the Support Services to be provided economically and efficiently. Amongst other things, the Customer will provide:

- The reproducible steps for recreating issue
- Acceptance testing for the solution suggested by the Consultant
- UAT environment
- Production Environment
- Remote connectivity to their UAT Environment and Production Environment
- Allow downtime or system re-boots
- Allow patches and modifications to be installed
- Provide data and suitable personnel for testing patches and modifications
- Promptly responds to the Consultant's queries. If the response is not received within 5 days, the issue will be assumed to be resolved and the system will close the issue. However, if the issue is unresolved, the Customer can reopen the incident or create a new incident

Provided that the Supplier shall ensure that any downtime arising as a result of any of the above will be minimized as far as possible.

The Customer will load any new objects sent to them by the Supplier into a test database and will test the functionality to ensure it meets the specified requirements. The Customer should follow the Supplier's instructions regarding the loading of these objects. If the objects pass the Customer's acceptance testing, they should inform the Supplier before loading the objects into the live database.

SCHEDULE 4: SUPPORT CHARGES

1. SUPPORT SERVICE CHARGES

ONACTUATE PROJECT AND SUPPORT HOURLY RATES	
<ul style="list-style-type: none">PROJECT TASK RATES AND EST. COSTS	USD \$ RATE & EST. COSTS QUOTED FOR EACH PROJECT TASK REQUEST.
<ul style="list-style-type: none">HOURLY SUPPORT RATE FROM JULY 29, 2024, TO JULY 28, 2025 (12 MONTHS).	150\$

Onsite visit will be charged at a minimum of 8 hours per visit at same rates. This rate is applicable for normal office hours between 08:00 A.M. HOURS AND 5:30 P.M. HOURS PST from Monday to Friday. Travel related expenses will be charged on actuals.

Invoicing and Payment

Per terms of each approved project task and support request.

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): **West Virginia Lottery**

Vendor: **ONACTUATE CONSULTING US INC**

Contract/Lease Number ("Contract"): **CMA - LOT2400000003**

Commodity/Service: **Microsoft Business Central Implementation Services**

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – 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 licenses, subscriptions, or maintenance may be paid annually in advance.
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. 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.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. 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.
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikethrough~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: WV Lottery

Vendor: ONACTUATE CONSULTING US INC

By: *T. Michelle Painter*

By: *sharan obero*

Printed Name: T. Michelle Painter

Printed Name: Sharan Oberoi

Title: Deputy Director of Finance

Title: Managing Partner & CEO

Date: 8/14/2024

Date: 08/11/2024

COMPLIANCE VERIFICATION CHECKLIST FOR REQUISITION SUBMISSION

<i>Purchasing Division Use:</i> Buyer: <u>10-Brandon Barr</u> Date: <u>8/5/2024</u> Solicitation No. <u>CMA LOT24*03</u>	Agency: Lottery Procurement Officer Submitting Requisition: Thomas Hymes Requisition No. CMA LOT2400000003 (CRFQ LOT24*04) PF No.: 1334393
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This checklist **MUST** be completed by a state agency's designated procurement officer and submitted with the Purchase Requisition to the Purchasing Division. The purpose of the checklist is to verify that an agency procurement officer has obtained and included required documentation necessary for the Purchasing Division to process the requisition without future processing disruptions. At the agency's preference, the agency **MUST** either submit the checklist by attaching it to the requisition's Header **OR** by placing it in the requisition's Procurement Folder.

FOR ALL SOLICITATION TYPES:

	Compliance Check Type	Required	Provided, if Required	Not Required	Purch. Div. Confirmation
1	Specifications and Pricing Page included	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	Use of correct specification template	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Use of correct requisition type [CRQS → CCT or CPO] or [CRQM → CMA]	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Use of most current terms and conditions (www.state.wv.us/admin/purchase/TCP.pdf)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	Maximum budgeted amount in wvOASIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6	Suggested vendors in wvOASIS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7	Capitol Building Commission pre-approval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8	Financing (Governor's Office) pre-approval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9	Fleet Management Division pre-approval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Compliance Check Type	Required	Provided, if Required	Not Required	Purch. Div. Confirmation
10	Insurance requirements				
	<i>Commercial General Liability</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<i>Automobile Liability</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<i>Workers' Compensation/Employer's Liability</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<i>Cyber Liability</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<i>Builder's Risk/Installation Floater</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<i>Professional Liability</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<i>Other (specify)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	Office of Technology CIO pre-approval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12	Treasurer's Office (banking) pre-approval	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

FOR CHANGE ORDERS/RENEWALS:

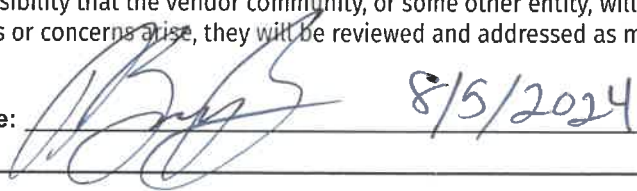
1	Two-party agreement	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Standard change order language	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Office of Technology CIO approval	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4	Justification for price increases/backdating/other	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Bond Rider (Construction)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6	Secretary of State Verification	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7	State debarment verification	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8	Federal debarment verification	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**The items pre-checked are required before a Purchase Requisition may be submitted to the Purchasing Division. Failure to complete and verify this documentation may result in rejection of the requisition back to the agency. It is up to the agency procurement officer to determine if pre-approvals, insurance, or other documentation is needed for the purchase. The referenced information below may be used to make this determination.*

For Purchasing Division Use Only:

I have reviewed the requisition identified above and find that it is sufficient to advertise publicly to the vendor community. My review does not preclude the possibility that the vendor community, or some other entity, will identify an area of concern; however, should such issues or concerns arise, they will be reviewed and addressed as may be appropriate.

Signature: _____



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Business Organization Detail

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ONACTUATE CONSULTING US INC.

Organization Information								
Org Type	Effective Date	Established Date	Filing Date	Charter	Class	Sec Type	Termination Date	Termination Reason
C Corporation	7/24/2023		7/24/2023	Foreign	Profit			

Organization Information	
Business Purpose	5415 - Professional, Scientific and Technical Services - Professional, Scientific and Technical Services - Computer Systems Design and Related Services (design, programming, facilities mgmt)
Charter County	
Charter State	WA
At Will Term	
At Will Term Years	
Authorized Shares	
Capital Stock	
Control Number	
Excess Acres	
Member Managed	
Par Value	
Young Entrepreneur	No

Addresses	
Type	Address
Local Office Address	10900 NE, 4TH ST UNIT 2300 BELLEVUE, WA, 98004
Mailing Address	10900 NE, 4TH ST UNIT 2300 BELLEVUE, WA, 98004 USA
Notice of Process Address	DUSTIN KNUDSON 10900 NE, 4TH ST UNIT 2300 BELLEVUE, WA, 98004
Principal Office Address	10900 NE, 4TH ST UNIT 2300 BELLEVUE, WA, 98004 USA
Type	Address

Officers	
Type	Name/Address
Vice-President	DUSTIN KNUDSON 2306 VICTORIA ROSE DRIVE SOUTH FARGO, ND, 58104
Type	Name/Address

X Close

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Filed For	Date filed
2024	

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- All Words ⁱ
- Exact Phrase ⁱ

e.g. 123456789, Smith Corp

"ONACTUATE CONSULTING US INC." x

Entity



Location



Status



- Active
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