



**CLOUD SOLUTIONS 2016-2026**  
Led by the State of Utah

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Master Agreement #: AR2487

Contractor: **ORACLE AMERICA INC.**

Participating Entity: **STATE OF UTAH**

Oracle America, Inc. ("**Oracle**") and the State of Utah, Division of Purchasing, are parties to that certain NASPO ValuePoint Master Agreement for Cloud Solutions, effective March 1, 2017 (contract # AR2487, the "Master Agreement"). This Participating Addendum (this Participating Addendum" or "Addendum" or "PA") to the Master Agreement is between Oracle, as Contractor, and State of Utah (the "Participating State"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Master Agreement.

The following products or services are included in this contract portfolio:

- All products and accessories listed on the Contractor page of the NASPO ValuePoint website.

**Master Agreement Terms and Conditions:**

1. Scope: This Addendum covers **Cloud Solutions** led by the State of Utah for use by state agencies and other entities located in the State of Utah authorized by Utah's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This Master Agreement may be used by the State of Utah's government departments, institutions, agencies, political subdivisions (e.g., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
3. Department of Technology Services Approval: State executive branch agencies that are subject to the authority and prior approval of the Department of Technology Services (DTS) must obtain such approval prior to making purchases under this Contract.
4. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Stephanie Feaman
Address:	1910 Oracle Way, Reston, VA 20190
Telephone:	703-364-0465
Fax:	703-364-0465
Email:	<a href="mailto:stephanie.feaman@oracle.com">stephanie.feaman@oracle.com</a>



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Participating State - Utah

Name:	Solomon Kingston
Address:	3150 State Office Building, Capitol Hill, Salt Lake City, UT 84114-1061
Telephone:	801-538-3228
Fax:	
Email:	skingston@utah.gov

**5. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER AGREEMENT**

These modifications or additions apply only to actions and relationships within the Participating Entity.

Participating State must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

**1. DEFINITIONS:**

- a. "Access to Secure Public Facilities, Data, and Technology". RESERVED, AS NOT APPLICABLE TO CLOUD SERVICES.
- b. "Authorized Persons". RESERVED. See definition of "Purchasing Entity".
- c. "Confidential Information" is as defined in the Master Agreement Attachment A section 2.
- d. "Contract" means this Participating Addendum, including all referenced attachments and documents incorporated by reference, including but not limited to Contractor's Master agreement. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. "Custom Deliverable". RESERVED, AS NOT APPLICABLE TO CLOUD SERVICES
- f. "Contractor" is as defined in the Master Agreement Attachment A section 2.
- g. "Data Breach" has the same meaning of "Security Breach" as defined in Master Agreement Attachment A Section 2.
- h. "Division" means the State of Utah Division of Purchasing.
- i. "DTS" means the Department of Technology Services.
- j. "Purchasing Entity(ies)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract. Notwithstanding the foregoing, private education entities are not included in this definition of Purchasing Entities and may not use this Contract, except and to the extent mutually agreed to in writing by any such entity and Oracle under the applicable Order.
- k. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- l. "Good". RESERVED, AS NOT APPLICABLE TO CLOUD SERVICES.

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- m. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
  - n. "Personal Data" is as defined in the Master Agreement Attachment A section 2.
  - o. "Proposal" means Contractor's response documents, including attachments, to the Division's Solicitation.
  - p. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
  - q. "Security Incident". Refer to definition of "Incident" in the Incident Management and Breach Notification section of Data Processing Agreement (attached as Addendum 2 to Master Agreement and is subject to change at Oracle's discretion).
  - r. "Services" is as defined in the Master Agreement Attachment A section 2.
  - s. "Solicitation" means the documents used by the Division to solicit Contractor's Proposal for the Goods, Custom Deliverables, or Services identified in this Contract.
  - t. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Purchasing Entity whether such data or output is stored on the State of Utah's or an Purchasing Entity's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Purchasing Entity, or by Contractor. Public Data includes any federal data, that the State of Utah or an Purchasing Entity controls or maintains, that is protected under federal laws, statutes, and regulations.
  - u. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - v. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers. Certain Oracle-authorized resellers ("Authorized Resellers" or "Fulfillment Partner") are eligible to resell Services to authorized Purchasing Entities under this Addendum. Such Authorized Resellers, if any, are authorized to take orders under this Addendum and invoice and receive payment from such Purchasing Entities. Oracle is responsible for any reports and/or fees that are required per the terms and conditions of the Master Agreement and/or this Addendum. Participation of Authorized Resellers, if any, will be in accordance with the terms and conditions set forth in the Master Agreement and this Addendum. All of the Authorized Resellers under this Addendum, if any, will promptly be listed on an Oracle website.
  - w. "Work Product". RESERVED, AS NOT APPLICABLE TO CLOUD SERVICES.
- 2. CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- 3. LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all the Goods delivered under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes,

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orders, and regulations, including applicable licensure and certification requirements.

4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Purchasing Entity, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
5. **RECORDS ADMINISTRATION:** Refer to Master Agreement Attachment A Section 26 (Records Administration and Audit) and the dispute resolution provision in Section 10 (Defaults and Remedies). As set forth in Master Agreement Attachment A Section 21 (Fees and Taxes), all fees payable to Oracle are due within thirty (30) days from the invoice date. Invoices for orders for Cloud Services placed under this Addendum shall be billed quarterly in arrears.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
  - (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
  - (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
  - (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
  - (4) Refer to Master Agreement Attachment A Section 13 (Indemnification).
7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.
8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith will all conflict of interest and ethic laws including Section 63G-6a-2404, Utah Procurement Code, as amended.
9. **INDEPENDENT CONTRACTOR:** Refer to Master Agreement Attachment A Section 14.
10. **CONTRACTOR ACCESS TO SECURE Public FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** RESERVED, AS NOT APPLICABLE TO CLOUD SERVICES.
11. **DRUG-FREE WORKPLACE:** Contractor has promulgated policies consistent with the Federal Government's Drug-Free Workplace Act of 1988 and agrees to abide by those policies while on the Purchasing Entity's or the State of Utah's premises.
12. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct which will be provided upon request by Contractor to the Purchasing Entity. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
13. **INDEMNITY CLAUSE:** See Master Agreement Attachment A Section 13 (Indemnification) and Section 16 (Insurance).
14. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race,

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religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.

- 15. SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- 16. AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
- 17. DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
- 18. TERMINATION:** Refer to Master Agreement Attachment A Section 7 (Termination).
- 19. SUSPENSION OF WORK:** Refer to Master Agreement Attachment A Section 10 (Defaults and Remedies) regarding dispute resolution.
- 20. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Purchasing Entity, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Purchasing Entity's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.  
  
If a written notice is delivered under this section, the Purchasing Entity will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Purchasing Entity will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.  
  
Notwithstanding the foregoing, a Purchasing Entity's signature on an Order referencing this Addendum and issuance of a purchase order shall signify to Oracle that all funds for such Order have been fully appropriated and are available and no longer are subject to any appropriations contingency for such Order.
- 21. SALES TAX EXEMPTION:** Refer to Master Agreement Attachment A Section 21 (Fees and Taxes).
- 22. TITLE AND OWNERSHIP WARRANTY:** Refer to Master Agreement Attachment A Sections 29 (Title to Product) and 31 (Warranties, Disclaimers, and Exclusive Remedies). Oracle warrants that, as of the effective date of the applicable ordering document between Oracle and a Purchasing Entity for an order placed pursuant to this Addendum, it has the right to enter into such ordering document; Oracle's infringement indemnification obligations under Section 13 (Indemnification) of the Master Agreement provides the Purchasing Entity's exclusive remedy and Oracle's entire liability for any breach of this particular warranty.
- 23. HARDWARE WARRANTY REMEDIES:** Refer to Master Agreement Attachment A Section 31 (Warranties, Disclaimers, and Exclusive Remedies).
- 24. CLOUD SERVICES WARRANTY:** Refer to Master Agreement Attachment A Section 31.
- 25. WARRANTY REMEDIES:** Refer to Master Agreement Attachment A Section 31.

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26. **UPDATES AND UPGRADES:** Refer to Master Agreement, Attachment A, Section 44(b) (Service Specifications).
27. **BUG FIXING AND REMOTE DIAGNOSTICS:** Refer to Master Agreement, Attachment A, Section 44(b) (Service Specifications).
28. **TECHNICAL SUPPORT AND MAINTENANCE:** Refer to Master Agreement, Attachment A, Section 44(b) (Service Specifications).
29. **SECURE PROTECTION AND HANDLING OF PUBLIC DATA:** Refer to Oracle Hosting and Delivery Policies (attached to Master Agreement as Addendum 1 and subject to change at Oracle's discretion), Data Processing Agreement (attached to Master Agreement as Addendum 2 and subject to change at Oracle's discretion), and *Data Protection* sections of Exhibits 1, 2, and 3.
  1. **Network Security:** Refer to "Oracle Cloud Security Policy" Section of Oracle's Hosting and Delivery Policies.
  2. **Public Data Security:** Refer to "Oracle Cloud Security Policy" Section of Oracle's Hosting and Delivery Policies.
  3. **Public Data Transmission:** Refer to "Controller and Processor of Personal Data and Purpose of Processing" Section of Oracle's Data Processing Agreement.
  4. **Public Data Storage:** Refer to *Data Protection* sections of Exhibits 1, 2, and 3 of Master Agreement.
  5. **Public Data Encryption:** Public Data Encryption: Refer to "Oracle Cloud Security Policy" Section of Oracle's Hosting and Delivery Policies.
  6. **Password Protection:** Refer to "Oracle Cloud Security Policy" Section of Oracle's Hosting and Delivery Policies.
  7. **Public Data Re-Use:** Not applicable to Cloud Services. Refer to Master Agreement Exhibits 1, 2, and 3 section "Data Ownership and Rights Granted").
  8. **Public Data Destruction:** Refer to "Oracle Cloud Security Policy" Section of Oracle's Hosting and Delivery Policies and "Return and Deletion of Personal Data upon Termination of Cloud Services" Section of Data Processing Agreement .
  9. **Data Center Region:** Unless otherwise specified in the applicable Order, the data center region in which a Purchasing Entity's data will reside is North America.
30. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Refer to Oracle Hosting and Delivery Policies (attached to Master Agreement as Addendum 1 and subject to change at Oracle's discretion), Data Processing Agreement (attached to Master Agreement as Addendum 2 and subject to change at Oracle's discretion) and Exhibits 1, 2, and 3.
31. **DATA BREACH RESPONSIBILITIES:** Refer to "Incident Management and Personal Data Breach Notification" section of Oracle's Data Processing Agreement.
32. **STATE INFORMATION TECHNOLOGY POLICIES:** Refer to Oracle Hosting and Delivery Policies (attached to Master Agreement as Addendum 1 and subject to change at Oracle's discretion), Data Processing Agreement (attached to Master Agreement as Addendum 2 and subject to change at Oracle's discretion) and Exhibits 1, 2, and 3.
33. **PUBLIC INFORMATION:** Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Purchasing Entities, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Purchasing Entities, or the State of Utah will not inform Contractor of

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any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.

- 34. DELIVERY:** All deliveries shall be pursuant to delivery terms set forth in the applicable Order.
- 35. ELECTRONIC DELIVERY:** All deliveries shall be pursuant to delivery terms set forth in the applicable Order.
- 36. ACCEPTANCE PERIOD:** Not applicable to Cloud Services. Refer to Master Agreement Attachment A Section 10 (Defaults and Remedies) regarding dispute resolution.
- 37. ORDERING AND INVOICING:** The Purchasing Entity shall sign an Ordering Document with Oracle or an Authorized Reseller for each order placed under this Addendum. Each Ordering Document will include the reference to the Master Agreement. Each Oracle invoice will specify the Purchasing Entity's purchase order number that corresponds to each Ordering Document; and the total net fees specified in each invoice shall correspond to the total net fees specified on the applicable Ordering Document. As set forth in Master Agreement Attachment A Section 21 (Fees and Taxes), all fees payable to Oracle are due within thirty (30) days from the invoice date. Invoices for orders for Cloud Services placed under this Addendum shall be billed quarterly in arrears.
- 38. PROMPT PAYMENT DISCOUNT:** Not applicable. The discounts applicable to each order shall be as applied to the total net fees specified in the applicable Ordering Document, as agreed upon and signed by both parties.
- 39. PAYMENT:**
1. Oracle acknowledges that Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended, applies with respect to interest on payments by state agencies. Notwithstanding the foregoing, as set forth in Master Agreement Attachment A Section 21 (Fees and Taxes), all fees payable to Oracle are due within thirty (30) days from the invoice date. Invoices for orders for Cloud Services placed under this Addendum shall be billed quarterly in arrears.
  2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Purchasing Entity's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.
  3. **The acceptance by Contractor of the correct and actual final payment without a written protest filed with the Purchasing Entity within ten (10) working days of receipt of the correct and actual final payment shall release the Purchasing Entity, the Division, and the State of Utah from all liability to Contractor for fees and costs pursuant to this Contract. Such waiver is limited to correct and actual contracted payment owed, and shall not apply to any breach of or additional use of Contractor's intellectual property rights.** For any such breach or additional use of Contractor's intellectual property rights, The acceptance by Contractor of final payment without a written protest filed with the Purchasing Entity or suit filed in the proper court within two (2) years of receipt of final payment shall release the Purchasing Entity, the Division, and the State of Utah from all claims and all liability for fees and costs pursuant to this Contract .
  4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Purchasing Entities to Contractor, then Contractor shall, upon written request, immediately refund to the Purchasing Entities any such overpayments.
- 40. INDEMNIFICATION – INTELLECTUAL PROPERTY:** Refer to Master Agreement Attachment A Section 13 (Indemnification).
- 41. OWNERSHIP IN INTELLECTUAL PROPERTY:** Refer to "Data Ownership and Rights Granted" sections of Exhibits 1, 2, and 3, as applicable, to the Master Agreement.
- 42. OWNERSHIP IN CUSTOM DELIVERABLES:** [reserved, not applicable to cloud service]
- 43. OWNERSHIP, PROTECTION AND USE OF RECORDS:** Refer to Master Agreement, Attachment A, Section 25 (Purchasing Entity Data) and Section 26 (Records Administration and Audit).

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43. **OWNERSHIP, PROTECTION AND USE OF RECORDS:** Refer to Master Agreement Attachment A Section 26 (Records Administration and Audit).
44. **PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Purchasing Entity. Refer to Master Agreement, Section 8 (Confidentiality, Non-Disclosure, and Injunctive Relief).
45. **PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** Refer to "Oracle Cloud Security Policy" Section of Oracle's Hosting and Delivery Policies and "Return and Deletion of Personal Data upon Termination of Cloud Services" Section of Data Processing Agreement. The costs for any return or deletion of Personal Data upon termination of Cloud Services pursuant to the Data Processing Agreement shall be included as part of this Addendum.
46. **CONFIDENTIALITY:** Refer to Master Agreement Attachment A Section 8 (Confidentiality, Non-Disclosure, and Injunctive Relief).
47. **ASSIGNMENT/SUBCONTRACT:** Refer to Master Agreement Attachment A Section 5 (Assignment/Subcontracts).
48. **DEFAULT AND REMEDIES:** Refer to Master Agreement Attachment A Section 10 (Defaults and Remedies).
49. **TERMINATION UPON DEFAULT:** Refer to Master Agreement Attachment A Section 10 (Defaults and Remedies).
50. **FORCE MAJEURE:** Refer to Master Agreement Attachment A Section 12 (Force Majeure)..
51. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
52. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** Refer to Master Agreement Attachment A Section 16 (Insurance).
53. **RESERVED**
54. **CONFLICT OF TERMS:** Contractor terms and conditions that apply must be in writing and attached to this Contract, except that the Oracle Data Processing Agreement, Oracle Hosting and Delivery Policies, or any URL/hyperlinks specified in the Master Agreement shall: (a) be the baseline against which all subsequent changes are evaluated, and (b) not result in a material change, reduction in quality, level of performance, functionality or availability of Cloud Services provided during the Services Period set forth in the applicable Order. It is expressly agreed that the terms of this Addendum and any Oracle order shall supersede the terms in any purchase order, procurement internet portal or any other similar non-Oracle document and no terms included in any such purchase order, portal or other non-Oracle document shall apply to the Services ordered. In the event of any conflict in the contract terms and conditions, the order of precedence shall be as provided in Master Agreement Attachment A Section 1. Notwithstanding the foregoing, unless such conflicting terms and conditions are to the benefit of the Purchasing Entity, such terms will not result in a material reduction in the level of performance or availability of services provided during the Services Period specified in the applicable Order.
55. **ENTIRE AGREEMENT:** Notwithstanding anything to the contrary set forth in the Master Agreement, by placing an order under this Addendum, each Purchasing Entity agrees that this Addendum and any information that is incorporated by written reference into this Addendum or the applicable ordering document (including reference to information contained in a URL or referenced policy), together with the



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applicable Order, shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written, regarding such Services.

- 56. SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of Public Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.
- 57. WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
- 58. CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
- 59. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** The extent to which an Oracle product is, prior to any customizations, capable of providing comparable access to individuals with disabilities consistent with the applicable provisions of the Architectural and Transportation Barriers Compliance Board standards set out in 36 CFR Part 1194 (known as 'Section 508'), effective as of June, 2001 or as revised effective March, 2017, and the Web Content Accessibility Guidelines (WCAG) version 2.0 level AA, is indicated by the dependencies, comments and exceptions (some of which may be significant, if any) noted on the applicable Voluntary Product Accessibility Templates (VPAT) available at [www.oracle.com/accessibility](http://www.oracle.com/accessibility) for each product, when they are used in accordance with Oracle's associated documents and other written information, and provided that any assistive technologies and any other products used with them properly interoperate with them. In the event that no VPAT is available for a particular Oracle product, please contact the Oracle Accessibility Program Office at [accessible\\_ww@oracle.com](mailto:accessible_ww@oracle.com). In some cases, the outcome may be that a product is still being evaluated for accessibility, may be scheduled to meet accessibility standards in a future release, or may not be scheduled to meet accessibility standards at all. Oracle Support customers with disabilities may use the online My Oracle Support or call Oracle Support at 1.800.223.1711. Hearing-impaired customers in the U.S. who wish to speak to an Oracle Support representative may use a telecommunications relay service (TRS). Information about the TRS is available at <http://www.fcc.gov/cgb/consumerfacts/trs.html>, and a list of telephone numbers is available at <http://www.fcc.gov/cgb/dro/trsphonebk.html>. International hearing-impaired customers should use the TRS at +1.605.224.1837. Oracle Support will respond to product accessibility issues according to the current Technical Support Policies. No other terms, conditions, statements or any other such representations regarding or related to accessibility shall apply to the Oracle products provided under this agreement. Oracle cannot make any commitments about future product directions, including plans to address accessibility or the availability of VPATs. Product direction remains at the sole discretion of Oracle.
- 60. RIGHT TO AUDIT:** Refer to "Audit Rights" Section of Data Processing Agreement.
- 61. LARGE VOLUME DISCOUNT PRICING:** Purchasing Entities may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Purchasing Entity for large volume purchases.
- 62. PURCHASING ENTITY PARTICIPATION:** Participation under this Contract by Purchasing Entities is voluntarily determined by each Purchasing Entity. Contractor agrees to supply each Purchasing Entity with Goods based upon the same terms, conditions and prices of this Contract.



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- 63. **INDIVIDUAL CUSTOMERS:** Each Purchasing Entity that purchases Goods from this Contract will be treated as if they were individual customers. Each Purchasing Entity will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Purchasing Entity will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Purchasing Entity individually. The Division is not responsible for any unpaid invoice.
- 64. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 65. **ORDERING:** Orders will be placed by the using Purchasing Entity directly with Contractor or an Authorized Reseller. All orders will be shipped promptly in accordance with the terms of this Contract.

**66. REPORTS AND FEES:**

- 1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee for the total amount invoiced to Purchasing Entities under this Participating Addendum during that quarter to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be 1% and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
- 2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net total amount invoiced to Purchasing Entities under this Participating Addendum during that quarter to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
- 3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

- 4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
- 5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then the dispute resolution set forth in Master Agreement Attachment A Section 10 (Defaults and Remedies) shall apply.

**If Services are applicable to this Contract, the following terms and conditions apply to this Contract:**

- 67. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
- 68. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- 69. **ADDITIONAL INSURANCE REQUIREMENTS:**
  - 1. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
  - 2. Any other insurance policies described or referenced in the Solicitation for this Contract.



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- 3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
- 4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.
- 70. **STANDARD OF CARE:** Refer to Master Agreement Attachment A Section 31 (Warranties, Disclaimers, and Exclusive Remedies).
- 71. **STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.
- 72. **TRAVEL COSTS:** The following will apply unless otherwise agreed to in the contract: All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7, and as specified in the applicable Ordering Document.
- 73. **CONTRACT EFFECTIVE DATES:** This PA is effective upon final signature of both parties, and expires upon the expiration or termination of the NASPO ValuePoint Master Agreement #. A contract amendment is not necessary in the event of the renewal or extension of the Master Agreement, so long as such renewal/extension was originally provided within the solicitation supporting the master agreement.
- 74. **PRICING:** The pricing and rates from the Master Agreement shall flow down to this PA. An amendment to this PA is not required when pricing in the Master Agreement is adjusted / updated.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity: <i>Utah Division of Purchasing</i>	Contractor: Oracle America, Inc.
Signature: 	Signature: 
Name: <i>Chris Hughes</i>	Name: Stephanie Feaman
Title: <i>Director</i>	Title: Contracts Manager, Public Sector Deal Management
Date: <i>5/17/18</i>	Date: 15-May-2018   7:02 PM EDT

*[Additional signatures may be added if required by the Participating Entity]*



For questions on executing a Participating Addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Shannon Berry
Telephone:	775-720-3404
Email:	<a href="mailto:sberry@naspovaluepoint.org">sberry@naspovaluepoint.org</a>

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