



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.

Welcome, Lu Anne Cottrill

Procurement

Budgeting

Accounts Receivable

Accounts Payable

Solicitation Response(SR)

Dept: 0210

ID: ESR09101500000000995

Ver.: 1

Function: New

Phase: Final

Modified by batch , 09/10/2015

Header

 List View

General Information

Contact

Default Values

Discount

Document Information

Procurement Folder: 130301

Procurement Type: Central Contract - Fixed Amt

Vendor ID: VS0000003348



Legal Name: Accelera Solutions Inc

Alias/DBA:

Total Bid: \$2,032,088.39

Response Date: 09/10/2015



Response Time: 13:27

SO Doc Code: CRFQ

SO Dept: 0210

SO Doc ID: ISC1600000002

Published Date: 8/31/15

Close Date: 9/10/15

Close Time: 13:30

Status: Closed

Solicitation Description: Addendum #2-Network hardware,
software, firewall and service

Total of Header Attachments: 0

Total of All Attachments: 0



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

State of West Virginia
Solicitation Response

Proc Folder : 130301

Solicitation Description : Addendum #2-Network hardware, software, firewall and service

Proc Type : Central Contract - Fixed Amt

Date issued	Solicitation Closes	Solicitation No	Version
	2015-09-10 13:30:00	SR 0210 ESR09101500000000995	1

VENDOR
VS0000003348 Accelera Solutions Inc

FOR INFORMATION CONTACT THE BUYER

Laura E Hooper
(304) 558-0468
laura.e.hooper@wv.gov

Signature X	FEIN #	DATE
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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	4.1.1.1 Next-Generation Firewall PA-5060 or Equal	4.00000	EA	\$126,947.370000	\$507,789.48

Comm Code	Manufacturer	Specification	Model #
43222501			

Extended Description : PAN-PA-5060-SSD2-D or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	4.1.1.2 Premium Support or Equal for each Next-Generation FW	4.00000	EA	\$83,200.000000	\$332,800.00

Comm Code	Manufacturer	Specification	Model #
81111804			

Extended Description : PAN-SVC-PREM-5060-5YR or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
3	4.1.1.3 Panorama M-100 with 4TB storage or Equal	2.00000	EA	\$14,210.530000	\$28,421.06

Comm Code	Manufacturer	Specification	Model #
43222501			

Extended Description : PAN-M-100-4TB or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
4	4.1.1.4 Panorama central management software license	1.00000	EA	\$9,473.680000	\$9,473.68

Comm Code	Manufacturer	Specification	Model #
43222501			

Extended Description : 4.1.1.4. PAN-M-P-25 or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
5	4.1.1.5 Premium Support or Equal for each Panorama M-100	2.00000	EA	\$22,400.000000	\$44,800.00

Comm Code	Manufacturer	Specification	Model #
81111804			

Extended Description : PAN-SVC-PREM-M-100-P-25-5YR or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
6	4.1.1.6 WildFire WF-500 or Equal	1.00000	EA	\$118,421.050000	\$118,421.05

Comm Code	Manufacturer	Specification	Model #
43222501			

Extended Description : PAN-WF-500 or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
7	4.1.1.7 Premium Support for each WildFire or Equal	1.00000	EA	\$80,000.000000	\$80,000.00

Comm Code	Manufacturer	Specification	Model #
81111804			

Extended Description : PAN-SVC-PREM-WF-500-5YR or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
8	4.1.1.8 URL Filtering subscription or Equal	4.00000	EA	\$75,865.260000	\$303,461.04

Comm Code	Manufacturer	Specification	Model #
43232800			

Extended Description : PAN-PA-5060-URL4-5YR-HA2 or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
9	4.1.1.9 Threat Prevention subscription or Equal	4.00000	EA	\$75,865.260000	\$303,461.04

Comm Code	Manufacturer	Specification	Model #
43232800			

Extended Description :	PAN-PA-5060-TP-5YR-HA2 or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
10	4.1.1.10 WildFire subscription or Equal	4.00000	EA	\$75,865.260000	\$303,461.04

Comm Code	Manufacturer	Specification	Model #
43232800			

Extended Description :	PAN-PA-5060-WF-5YR-HA2 or Equal

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
11	4.1.1.11 Installation, Migration, and Training Services	1.00000	LS		

Comm Code	Manufacturer	Specification	Model #
86132201			

Extended Description :	Installation, Migration, and Training Services

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.
2. **MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.
3. **PREBID MEETING:** The item identified below shall apply to this Solicitation.

☒ A pre-bid meeting will not be held prior to bid opening.

☐ A NON-MANDATORY PRE-BID meeting will be held at the following place and time:

☐ A MANDATORY PRE-BID meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in, but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

4. **VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non-binding. Submitted e-mails should have solicitation number in the subject line.

Question Submission Deadline: 08/27/2015 5:00PM

Submit Questions to: Laura Hooper, Senior Buyer

2019 Washington Street, East

Charleston, WV 25305

Fax: (304) 558-4115 (Vendors should not use this fax number for bid submission)

Email: laura.e.hooper@wv.gov

5. **VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.
6. **BID SUBMISSION:** All bids must be submitted electronically through wvOASIS or signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via wvOASIS, hand delivery, delivery by courier, or facsimile. The bid delivery address is:

Department of Administration, Purchasing Division

2019 Washington Street East

Charleston, WV 25305-0130

A bid that is not submitted electronically through wvOASIS should contain the information listed below on the face of the envelope or the bid may be rejected by the Purchasing Division.:

SEALED BID:
BUYER:
SOLICITATION NO.:
BID OPENING DATE:
BID OPENING TIME:
FAX NUMBER:

In the event that Vendor is responding to a request for proposal, and chooses to respond in a manner other than by electronic submission through wvOASIS, the Vendor shall submit one original technical and one original cost proposal plus N/A convenience copies of each to the Purchasing Division at the address shown above. Additionally, if Vendor does not submit its bid through wvOASIS, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: (This only applies to CRFP)

☐ Technical

☐ Cost

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official Purchasing Division time clock (in the case of hand delivery).

Bid Opening Date and Time: 09/10/2015 1:30PM
Bid Opening Location: Department of Administration, Purchasing Division
2019 Washington Street East
Charleston, WV 25305-0130

8. **ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

9. **BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.
10. **ALTERNATES:** Any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
11. **EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.
12. **COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.
13. **REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.
14. **UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.
15. **PREFERENCE:** Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Vendor Preference Certificate form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Vendor Preference Certificate form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.
16. **SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the

same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

17. WAIVER OF MINOR IRREGULARITIES: The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

18. ELECTRONIC FILE ACCESS RESTRICTIONS: Vendor must ensure that its submission in wvOASIS can be accessed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately opened and/or viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening if those documents are required with the bid.

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.
2. **DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.
 - 2.1. **"Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.
 - 2.2. **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.
 - 2.3. **"Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.
 - 2.4. **"Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.
 - 2.5. **"Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.
 - 2.6. **"Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
 - 2.7. **"State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.
 - 2.8. **"Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

☐ **BID BOND:** All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

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

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

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

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

☐ **INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the state as a certificate holder:

☐ **Commercial General Liability Insurance:** In the amount of _____ or more.

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

☐☐☐☐☐

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

☒ **Term Contract**

Initial Contract Term: This Contract becomes effective on award and extends for a period of five (5) year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to zero (0) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

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

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

- ☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional _____ successive one year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of this Contract is prohibited.

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

- ☐ **Other:** See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.
5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.
- ☐ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.
- ☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.
- ☒ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.
- ☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.
6. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.
7. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.
8. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

- ☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

☐☐☐☐

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

9. **WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.
10. **LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.
11. **LIQUIDATED DAMAGES:** Vendor shall pay liquidated damages in the amount of _____ for _____.
- This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

12. **ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Award Document, upon receipt.
13. **FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.
14. **PAYMENT:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.
15. **TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
16. **CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.
17. **TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
18. **APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.
19. **COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable law.
20. **PREVAILING WAGE:** Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable.

- 21. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.
- 22. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the Purchasing Division.
- 23. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.
- 24. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
- 25. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.
- 26. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.
- 27. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
- 28. BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.
- 29. CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents

to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

- 30. DISCLOSURE:** Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Purchasing Division. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code §§ 29B-1-1 et seq. and the competitive bidding laws found West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. A legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED. Additionally, pricing or cost information will not be considered exempt from disclosure and requests to withhold publication of pricing or cost information WILL NOT BE HONORED.

Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

- 31. LICENSING:** In accordance with West Virginia Code of State Rules §148-1-6.1.7, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.
- 32. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States

and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

33. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

34. PURCHASING CARD ACCEPTANCE: The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

☐ Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

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

against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

- 36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.
- 37. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.
- 38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 39. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.
- 40. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:
- ☒ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

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

41. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision.

The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

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

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater.

For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

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

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products.

This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

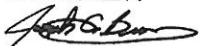
All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for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

CERTIFICATION AND SIGNATURE PAGE

By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

Accelera Solutions

(Company)



Joseph Brown

President

(Authorized Signature) (Representative Name, Title)

Sep 10, 2015

(Phone Number) (Fax Number) (Date)






Instructions to Vendors, and General Terms and Conditions (1)

Adobe Document Cloud Document History

September 10, 2015

Created: September 10, 2015
By: Jodi Varnese (jodiv@accelerasolutions.com)
Status: SIGNED
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"Instructions to Vendors, and General Terms and Conditions (1)" History

-  Document created by Jodi Varnese (jodiv@accelerasolutions.com)
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September 10, 2015 - 10:38 AM EDT

SOLICITATION NUMBER: ISC1600000002

Addendum Number: 1

The purpose of this addendum is to modify the solicitation identified as ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☐ | Modify bid opening date and time
- ☐ | Modify specifications of product or service being sought
- ☐ | Attachment of vendor questions and responses
- ☐ | Attachment of pre-bid sign-in sheet
- ☒ | Correction of error
- ☐ | Other

Description of Modification to Solicitation:

To attach the Purchasing Affidavit and Vendor Preference Certificate inadvertently omitted from the original solicitation.

No further changes.

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

ATTACHMENT A

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Vendor Preference, if applicable.

1. Application is made for 2.5% vendor preference for the reason checked:

Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,

Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,

Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,

2. Application is made for 2.5% vendor preference for the reason checked:

Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

3. Application is made for 2.5% vendor preference for the reason checked:

Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

4. Application is made for 5% vendor preference for the reason checked:

Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,

5. Application is made for 3.5% vendor preference who is a veteran for the reason checked:

Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,

6. Application is made for 3.5% vendor preference who is a veteran for the reason checked:

Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

7. Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with *West Virginia Code* §5A-3-59 and *West Virginia Code of State Rules*.

Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (*West Virginia Code*, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder:

Accelera Solutions, Inc.

Signed:

[Signature]

Date:

9/10/14

Title:

President

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

MANDATE: 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 exceeds 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 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: Accelerate Solutions, Inc.

Authorized Signature: [Signature] Date: 9/10/15

State of Virginia

County of Fairfax, to-wit:

Taken, subscribed, and sworn to before me this 10th day of Sep, 2015.

My Commission expires 9/30/2018, 20 .

AFFIX SEAL HERE



NOTARY PUBLIC

[Signature]
Purchasing Affidavit (Revised 07/01/2012)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: ISC1600000002

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

<input type="checkbox"/> Addendum No. 1	<input type="checkbox"/> Addendum No. 6
<input type="checkbox"/> Addendum No. 2	<input type="checkbox"/> Addendum No. 7
<input type="checkbox"/> Addendum No. 3	<input type="checkbox"/> Addendum No. 8
<input type="checkbox"/> Addendum No. 4	<input type="checkbox"/> Addendum No. 9
<input type="checkbox"/> Addendum No. 5	<input type="checkbox"/> Addendum No. 10

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Accelera Solutions, Inc
Company

Authorized Signature
9/10/15
Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.
Revised 6/8/2012

SOLICITATION NUMBER: ISC1600000002

Addendum Number: 2

The purpose of this addendum is to modify the solicitation identified as ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☐ | Modify bid opening date and time
- ☐ | Modify specifications of product or service being sought
- ☒ | Attachment of vendor questions and responses
- ☐ | Attachment of pre-bid sign-in sheet
- ☐ | Correction of error
- ☐ | Other

Description of Modification to Solicitation:

To distribute the vendor questions and agency responses.

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

ATTACHMENT A

CRFQ ISC16*02 Vendor Questions and Agency Responses

8/28/15

Vendor Question 1)

Will The State permit a 'split-invoice' scenario?

Line items # 1 to # 10 can be invoiced as soon as the products are shipped.

However Line item # 11 (Installation, Migration, & Training Services) would be invoiced upon completion, which could conceivably be 4-6 months later.

Agency Response 1)

WVOT foresees no issues with split invoices.

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: ISC1600000002

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

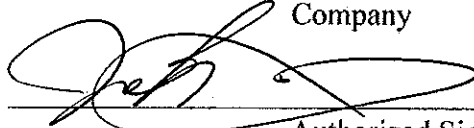
Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|---|--|
| <input type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Accelera Solutions, Inc
Company

Authorized Signature
9/10/15
Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.
Revised 6/8/2012

REQUEST FOR QUOTATION
Next Generation Firewall

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Office of Technology to establish a contract for the purchase of networking hardware such as firewalls and logging appliances. The appliances will require the purchase of subscription services for URL filtering, threat prevention, security, hardware maintenance, support, and installation.

The devices and services listed will protect the State's data from external attacks and loss of information from internal networks with the ability to block suspect or malicious traffic. The purchase of these devices is a requirement by the Internal Revenue Service (IRS).

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

2.1 **"Appliance"** means a device or piece of equipment designed to perform a specific task.

2.2 **"Business Hours"** means Monday 7:00 AM to Friday 6:00 PM EST excluding weekends and Federal and State holidays. State Holidays are as followed:

- New Year's Day (January 1)
- Martin Luther King Day (Third Monday in January)
- President's Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- West Virginia Day (June 20)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veterans Day (November 11)
- Thanksgiving (Fourth Thursday in November)
- Day After Thanksgiving (Fourth Friday in November)
- Christmas Day (December 25)

2.3 **"Contract Item"** means firewalls, logging appliances, filtering services, threat prevention services, hardware maintenance and support services as more fully described by these specifications.

2.4 **"Firewall"** means security system that controls the incoming and outgoing network traffic based on an applied rule set. A firewall establishes a barrier between a trusted,

REQUEST FOR QUOTATION
Next Generation Firewall

secure internal network and another network (e.g., the Internet) that is assumed not to be secure and trusted.

2.5 “GB” means Gigabyte. A gigabyte is a measure of computer data storage capacity.

2.6 “GBps” means Gigabits per second or billions of bits per second. This a measure of bandwidth on digital data transmitted over the network.

2.7 “Pricing Page” means the pages, contained in wvOASIS or attached as Exhibit “A”, upon which Vendor should list its proposed price for the Contract Items.

2.8 “RAM” means Random Access Memory. This is where current data is kept and can be accessed quickly by an appliances processor.

2.9 “Severity Level 1” is the most critical which means the appliance is not functioning and there is no solution to fix the issue. Call response time for this severity level must be within one (1) hour of the initial support call. Support center must be available 24 hours a day, 7 days week for Severity Level 1 issues. Follow up communication will be every 4 hours until issue is resolved or a temporary solution is in place. This level may require 4 hour delivery of parts.

2.10 “Severity Level 2” is high which means the appliance is not fully functional and there is no solution to fix the issue. Call response time for this severity level must be within two (2) business hours of the initial support call. At this level follow up communication will be once a day until issue is resolved or a temporary solution is in place. This level may require next business day delivery of parts.

2.11 “Severity Level 3” is medium which means the appliance has failed but support center has resources to resolve the issues. Call response time for this severity level must be within four (4) business hours of the initial support call. Follow up communications will be every three (3) days until issue is resolved.

2.12 “Severity Level 4” is the lowest which means the appliance is working properly but needs to be updated. Call response time for this severity level must be within eight (8) business hours of the initial support call. Follow up will be conducted once a week until issue is resolved.

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

3. QUALIFICATIONS: Vendor shall have the following minimum qualifications:

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3.1 Vendor's solution must be in the Gartner Magic Quadrant Leader based on Gartner's 2014 Magic Quadrant for Enterprise Network Firewall and have the Ability to be deployed in an Active/Passive HA configuration in Virtual Wire Mode.

3.1.1 Vendor should provide documentation of proof with their bid submission response. Vendor will be required to submit before Award of Purchase Order.

4. GENERAL REQUIREMENTS:

4.1 Mandatory Contract Item Requirements: Contract Item must meet or exceed the mandatory requirements listed below.

4.1.1 Firewalls and Appliances, Support and Subscription Services, Installation, Migration and Training Services: Firewall and appliances must be new. Any firewall or appliances that have been refurbished, warranted-as-new, or like-new will not be permitted.

4.1.1.1 Palo Alto Networks PA-5060 Next-Generation Firewall "or Equal"
Required Quantity: 4

4.1.1.1.1 Firewall throughput must be a minimum of 20 GBps.

4.1.1.1.2 Threat prevention throughput must be a minimum of 10 GBps.

4.1.1.1.3 A minimum of 120,000 connections per second.

4.1.1.1.4 Customize blocking or alert actions and email notifications and reports.

4.1.1.1.5 The appliance must have minimum of 2 factor authentication.

4.1.1.2 Vendor must provide a quantity of 5 years of Premium Support "or Equal" for each PA-5060 Next Generation Firewall being purchased.

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Required Quantity: 4

4.1.1.2.1 Premium Support “or Equal” may include advanced replacement with Next Business Day shipping, or the optional 4 hour parts delivery. Optional 4 hour parts delivery will be based on severity level 1. Call response times will also be based on severity levels. Severity levels range 1 through 4. Each level is defined in Section 2: Definitions.

4.1.1.2.2 Vendor must provide online resources such as technical documentation for common issues and step by step solutions, a method for support tickets or cases to be tracked, and product update, announcements, and release notes.

4.1.1.3 Palo Alto Networks Panorama M-100 with 4TB of storage “or Equal”

Required Quantity: 2

4.1.1.4 Panorama central management software license, 25 devices or log collector for the M-Series “or Equal”

Required Quantity: 1

4.1.1.5 Vendor must provide a quantity of 5 years of Premium Support for each Panorama M-100 “or Equal”

Required Quantity: 2

4.1.1.5.1 Premium Support “or Equal” may include advanced replacement with Next Business Day shipping, or the optional 4 hour parts delivery. Optional 4 hour parts delivery will be based on severity level 1. Call response times will also be based on severity levels. Severity levels range 1 through 4. Each level is defined in Section 2: Definitions.

4.1.1.5.2 Vendor must provide online resources such as technical documentation for common issues and

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step by step solutions, a method for support tickets or cases to be tracked, and product update, announcements, and release notes.

4.1.1.6 Palo Alto Networks WildFire WF-500 “or Equal”

Required Quantity: 1

4.1.1.6.1 The appliance must have a Dual 6 Core Intel Processor with Hyper Threading.

4.1.1.6.2 A minimum of 128 GB RAM

4.1.1.6.3 A minimum of 120 GB Solid State Drive

4.1.1.7 Vendor must provide a quantity of 5 years of Premium Support for each WildFire “or Equal”

Required Quantity: 1

4.1.1.7.1 Premium Support “or Equal” may include advanced replacement with Next Business Day shipping, or the optional 4 hour parts delivery. Optional 4 hour parts delivery will be based on severity level 1. Call response times will also be based on severity levels. Severity levels range 1 through 4. Each level is defined in Section 2: Definitions.

4.1.1.7.2 Vendor must provide online resources such as technical documentation for common issues and step by step solutions, a method for support tickets or cases to be tracked, and product update, announcements, and release notes.

4.1.1.8 Palo Alto Networks URL Filtering subscription “or Equal”

Required Quantity: 4

4.1.1.8.1 Vendor must provide a quantity of 5 years of subscription service that will allow administrator’s access to URL filtering database. Access to the

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service will provide administrator's control of applications and web activities.

- 4.1.1.8.2** Vendor must base subscription pricing on the quantity of the appliances in operation and not by users or the volume of data.

4.1.1.9 Palo Alto Networks Threat Prevention subscription "or Equal"

Required Quantity: 4

- 4.1.1.9.1** Vendor must provide a quantity of 5 years of subscription service that offers threat prevention. This service must scan all internet traffic, applications, end-user activities, and content.

- 4.1.1.9.2** Vendor must base subscription pricing on the quantity of the appliances in operation not by users or the volume of data.

4.1.1.10 Palo Alto Networks Wildfire subscription "or Equal"

Required Quantity: 4

- 4.1.1.10.1** Vendor must provide a quantity of 5 years of subscription service that will detect, identify, respond, and prevent threats without an administrator being present.

- 4.1.1.10.2** Vendor must base subscription pricing on the quantity of the appliances in operation and not by users or the volume of data.

4.1.1.11 Installation, Migration, & Training Services

- 4.1.1.11.1** Installation service is vendor service and support to fully install all hardware and software components, including testing to validate all device components are fully functional. Vendor will perform installation during normal business hours, under the supervision of WVOT staff. Vendor will remove hardware from package and physically install all equipment in designated racks, located in Charleston, WV and Morgantown, WV. Vendor will

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install and ensure all software included is properly installed.

4.1.1.11.2 Migration/Configuration service is vendor service and support to implement the devices components' functionality to an operational level that includes (1) migration of current web filtering capabilities to the new device, (2) configuration of the device in an Active/Passive High Availability configuration in Virtual Wire Mode, (3) and verification that all paid subscription services are fully functional.

4.1.1.11.3 Training services includes vendor instructor lead courses designed to teach the objectives of installation, maintenance, basic and advanced operations of all purchased components. Training must be provided on-site (Capitol Complex, Charleston, WV) for a minimum of forty (40) hours for up to 10 students covering the following objectives: all device capabilities (with emphasis on most utilized capabilities). In addition, training must be provided on-site (Capitol Complex, Charleston, WV) for a minimum of forty (40) hours for up to 5 students covering the following objectives: (1) advanced configuration and operation based on best practices and (2) advanced troubleshooting. All training provided must align with established vendor's courses, available at the time of award, that cover the above listed training objectives. Training must also be provided in both lecture and lab format, allowing for training to take place before equipment installation and operation. Finally, the vendor will provide (2) two certification exam vouchers, valid for a minimum of (2) two years, for the applicable vendor certification, if such certification exists at the time of the award.

4.1.2 Acceptance of system: Prior to an acceptance of the system the following criteria must be met: (1) successful testing of all components, validating fully functionality, (2) completion of all training courses, and (3) thirty (30) days of live production with access to subject matter experts to complete initialization and tuning of subscription services.

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5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide Agency with a purchase price for the Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total price as shown on the Pricing Pages.

Evaluation and Awarded Contract will be based upon the Total Price for all items requested.

5.2 Pricing Page: Vendor should complete the Pricing Page. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

5.2.1 If the Vendor is submitting an Equivalent Brand this information including Model Number must be submitted with their bid submission.

5.2.2 Vendor should include with their bid a copy of any Software Terms and Conditions or licenses that the State of West Virginia or the Agency will have to agree or accept as a part of this solicitation. **This information will be required before Purchase Order is issued.**

5.2.3 Vendor should include a copy of Maintenance Terms and Conditions or Licenses that the State of West Virginia or the Agency will be required to agree or accept as a part of this solicitation. **This information will be required before the Purchase Order is issued.**

5.2.4 Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: Laura.E.Hooper@wv.gov

VENDOR'S WHO WISH TO RESPOND TO A CENTRALIZED REQUEST FOR QUOTATION (CRFQ) ONLINE MAY SUBMIT INFORMATION THROUGH THE STATE'S WVOASIS VENDOR SELF SERVICE (VSS). VENDORS SHOULD DOWNLOAD THE EXHIBIT "A": PRICING PAGE THAT IS ATTACHED SEPARATELY TO THE CRFQ AND PUBLISHED TO THE VSS. VENDORS MUST COMPLETE THIS FORM WITH THEIR PRICES INFORMATION AND

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INCLUDE IT AS AN ATTACHMENT TO THEIR ONLINE RESPONSE WITH AN ATTACHMENT TYPE OF "PRICING". THE PRICING PAGE ATTACHMENTS (PRICING) ARE THEN DOWNLOADED BY THE BUYER DURING THE SCHEDULED BID OPENING FOR BID EVALUATION.

IF UNABLE TO RESPOND ONLINE, VENDOR MUST SUBMIT THE EXHIBIT "A" PROPOSAL FORM/PRICING PAGES WITH YOUR BID PRIOR TO THE SCHEDULED BID OPENING DATE.

Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

6. PAYMENT:

6.1 Payment: Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

7. DELIVERY AND RETURN:

7.1 Shipment and Delivery: Vendor shall ship the Contract Items immediately after being awarded this Contract and receiving a purchase order or notice to proceed. Vendor shall deliver the Contract Items within 30 calendar days after receiving a purchase order or notice to proceed. Contract Items must be delivered to Agency at:

West Virginia Office of Technology
ATTENTION: Carmen Young
908 Bullitt St.
Charleston, WV 25301-1002

7.2 Late Delivery: The Agency placing the order under this Contract must be notified in writing if the shipment of the Contract Items will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the Contract, and/or obtaining the Contract Items from a third party.

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

7.3 Delivery Payment/Risk of Loss: Vendor shall deliver the Contract Items F.O.B. destination to the Agency's location.

7.4 Return of Unacceptable Items: If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and

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with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

7.5 Return Due to Agency Error: Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

8 VENDOR DEFAULT

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

- 8.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
- 8.1.2** Failure to comply with other specifications and requirements contained herein.
- 8.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 8.1.4** Failure to remedy deficient performance upon request.

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

- 8.2.1** Immediate cancellation of the Contract.
- 8.2.2** Immediate cancellation of one or more release orders issued under this Contract.
- 8.2.3** Any other remedies available in law or equity.

9 CONTRACT MANAGER

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

Contract Manager: Jennifer Moran
Telephone Number: 703-637-3307
Fax Number: 703-637-2447
Email Address: Jenniferm@accelerasolutions.com

GLOBAL CUSTOMER SUPPORT SERVICES

TERMS AND CONDITIONS

Please read these terms and conditions carefully.

These Global Customer Support Services Terms and Conditions ("Agreement") set forth the terms and conditions under which Palo Alto Networks, Inc., a Delaware corporation ("Palo Alto Networks®"), will provide technical support services to you ("Customer" or "you") under the Palo Alto Networks Support Plan purchased by Customer for the Palo Alto Networks network security products sold and/or licensed to you pursuant to the Palo Alto Networks License Agreement and Limited Warranty ("EULA").

Palo Alto Networks is willing to provide technical support services to you only if you accept all the terms and conditions contained in this Agreement. By checking the box labeled "I accept", you are indicating that you understand this Agreement and accept all of its terms and conditions. The date on which you check the box labeled "I accept" is the "Effective Date". If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement, in which case the terms "you" or "your" shall refer to such company or other legal entity. If you do not accept all the terms and conditions of this Agreement, then Palo Alto Networks is unwilling to provide technical support services to you.

1. SUPPORT PLANS AND SERVICES OFFERED

Support offerings	Premium Plus Support*	Premium Support	Standard Support**
Office Hours Availability	See http://support.paloaltoNetworks.com		
After Hours Availability	Mon 7 am to Fri 6 pm PT (24x7 for Severity 1)	Mon 7 am to Fri 6 pm PT (24x7 for Severity 1)	No
Hardware Support			
Designated Technical Support Engineer	Yes	No	No
Technical Account Manager	Yes	No	No
4 Hour Replacement Service (available only for products located within a specified range of a Palo Alto Networks Service Location)	Optional**	Optional**	No
Advance Replacement Service: Next Business Day Ship	Yes	Yes	No
Return and Repair	No	No	Yes
Call Response Times			
Severity 1 – Critical Product is down, critically effects customer production environment. Not workaround yet available.	< 1 Hour	< 1 Hour	< 1 Hour 7 am – 6 pm PST
Severity 2 – High Product is impaired, customer production up, but impacted. No workaround yet.	2 Business Hours	2 Business Hours	2 Business Hours
Severity 3 – Medium A product function has failed, customer production not affected. Support is aware of the issue and a workaround is available.	4 Business Hours	4 Business Hours	4 Business Hours
Severity 3 –Low Non-critical issue. Does not impact costumer business. Feature information, documentation, how-to and enhancement requests from the customer.	8 Business Hours	8 Business Hours	8 Business Hours
Contacting Support			

* Requires purchase of Premium Support on all covered devices

** Available in the US only. Additional support programs may be offered by an Authorized Support Center in your region.

2. DEFINITIONS

- a) **“Business Hours”** means Mondays through Fridays, 7:00 am – 6:00 pm PST, excluding U.S. and California holidays.
- b) **“Hardware”** means the appliance and server agent products listed on Palo Alto Networks’ then-current published product price list.
- c) **“Major Releases”** means significant modifications or improvements to the Software that: (i) are designated by a change in the 1st digit of the version release number (e.g., v5.0 to v6.0); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- d) **“Minor Releases”** means minor modifications or improvements to the Software, cumulative bug fixes from Maintenance Releases since the last Minor Release and new bug fixes, as applicable, that: (i) are designated by a change in the 2nd set of digits of the version release number (e.g., v5.00 to v5.01); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- e) **“Maintenance Releases”** means bug fixes to the Software that: (i) are designated by a change in the 3rd set of digits of the version release number (e.g., v5.00.01 to v5.00.02); and (ii) are generally made available by Palo Alto Networks to its customers under valid support contracts, at no additional cost.
- f) **“Palo Alto Networks Standard Support,” “Palo Alto Networks Premium Support,” and “Palo Alto Networks Premium Plus Support”** refer to software and hardware support programs offered by Palo Alto Networks, as further detailed in Section 3 below.
- g) **“Palo Alto Networks Support Plans”** means Palo Alto Networks Standard Support, Palo Alto Networks Premium Support, Palo Alto Networks 4 Hour Premium Support, and any other support plan for the Products described in this Agreement or on the Palo Alto Networks Support Web Site.
- h) **“Palo Alto Networks Support Web Site”** means the web site currently located at <https://support.paloaltonetworks.com>, or any successor site thereto, as specified by Palo Alto Networks.
- i) **“Products”** means, collectively, Hardware and Software.
- j) **“Software”** means the software products listed on Palo Alto Networks’ then-current published product price list, including any software embedded in Hardware.

3. DESCRIPTION OF SUPPORT PLANS

Each Product under a Palo Alto Networks Support Plan must be registered by Customer in the Palo Alto Networks Support Web Site in order to access the features available on such site. In consideration of Customer’s purchase of a Palo Alto Networks Support Plan, Palo Alto Networks will use commercially reasonable efforts to provide the applicable services, as set forth in the table entitled “Support Plans and Services Offered” above, which are more fully described as follows:

- a) **Technical Support**
 - i. Telephone support available during the times specified for the Palo Alto Networks Support Plan purchased by Customer.
 - ii. Support cases created via the Web will be classified as non-critical and will have a response time based on the severity classification as set forth in the table entitled “Support Plans and Services Offered” above.
- c) **Secure Web Access**
 - i. Access to the Palo Alto Networks Support Web Site to acquire the latest software fixes, feature releases, software release notes, signature updates, FAQs, case management and technical documentation.
 - ii. Palo Alto Networks will use commercially reasonable efforts to ensure that the Palo Alto Networks Support Web Site is available 24x7.

Palo Alto Networks reserves the right to modify the support plans offered. Please refer to the Palo Alto Networks Support Web Site for the most current support plan descriptions.

4. SUPPORT OPTIONS

Customer shall choose from three support plans: (i) Palo Alto Networks Standard Support, (ii) Palo Alto Networks Premium Support, or (iii) Palo Alto Networks Premium Plus Support.

Based upon the Customer's selection and payment of the applicable fees per the purchase, Palo Alto Networks shall have the following obligations:

a) Palo Alto Networks Standard Support

- i. Maintain and support the list of releases as defined as the current support releases on the Palo Alto Networks Support Web Site.
- ii. Make available all supported Maintenance Releases, Minor Releases and Major Releases.
- iii. Verify and correct identified defects in the Software for the currently supported Maintenance Releases.
- iv. Provide access to Palo Alto Networks online support through the Palo Alto Networks Support Web Site including, but not limited to, knowledge base/FAQ, case management and software downloads.
- v. Provide technical telephone support Monday through Friday, excluding Palo Alto Networks' designated holidays, in accordance to the times listed on Palo Alto Networks Support Web Site.
- vi. Provide a return and repair service for Hardware defects.

Customer may access Palo Alto Networks technical call center numbers and website address as listed in the table entitled "Support Plans and Services Offered" above.

b) Palo Alto Networks Premium Support

Includes all of the support services described under Palo Alto Networks Standard Support plus the following:

- i. After hours technical telephone support on a 7x24 (seven days per week, 24 hours per day) basis for Severity 1, critical issues.
- ii. Provide a next business day ship advance replacement for Hardware defects.

c) Palo Alto Networks Premium Plus Support

This support option is available only for Products located within a specified range of a Palo Alto Networks Service Location. Includes all of the support services described under Palo Alto Networks Premium Plus Support plus commercially reasonable efforts by Palo Alto Networks to deliver the replacement hardware to the Customer within four hours.

5. RMA POLICY AND PROCESS

In those situations when it is necessary for Customer to return a Product to Palo Alto Networks, Customer must request Palo Alto Networks to issue a Return Material Authorization (RMA) Number prior to shipment. Each RMA Number will be uniquely identified and records will be maintained to record significant information regarding the processing of the Product.

- a) **Return and Repair:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or email or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Customer shall repackage the Product in the original packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), note the RMA Number on the shipping label and ship the Product to the specified Palo Alto Networks location. Customer will be responsible for all shipping costs incurred in returning the defective Product to Palo Alto Networks. Products will be repaired or replaced within 10 business days from receipt of the defective Product by Palo Alto Networks. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the repaired or replacement Product to Customer, except that if Customer is located outside the United States, Customer will be responsible for any taxes, duties, fees or other charges assessed in connection with importing the repaired or replaced Product into Customer's country of destination.

- b) **Advance Replacement:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone or via the Palo Alto Networks Support Web Site. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used in connection with shipping the Product back to Palo Alto Networks. Palo Alto Networks will ship a replacement Product to Customer by the next business day and a prepaid return airbill will be included with the shipping documents affixed to the exterior of the shipping carton. Palo Alto Networks will pay all shipping costs that it incurs in connection with shipping the replacement Product to Customer, except that if Customer is located outside the United States, Customer will be responsible for any taxes, duties, fees or other charges assessed in connection with importing the replacement Product into Customer's country of destination. Upon receipt of a replacement Product, Customer shall return the defective Product to Palo Alto Networks in the replacement Product's packaging (shipping damage that occurs as a result of insufficient packaging is not covered under this Agreement), the airbill affixed to the exterior of the shipping carton and the designated courier service contacted for pickup. If Palo Alto Networks does not receive the returned Product within 10 business days after the date of Customer's receipt of the replacement Product, Customer will be charged current list price of the replacement Product.
- c) **4 Hour RMA Replacement:** Customer shall obtain an RMA Number for the Product that Customer desires to return to Palo Alto Networks by contacting Palo Alto Networks Support via telephone. Palo Alto Networks Support will work with the Customer to confirm the Hardware problem and issue an RMA Number to be used by Palo Alto Networks for administrative purposes. Palo Alto Networks will use its commercially reasonable efforts to have a replacement Product delivered to Customer within four hours of the time the Customer receives an RMA number. Customer must have an authorized representative available to accept delivery of the replacement Product. If Palo Alto Networks (or its subcontractor) is unable to complete delivery because Customer does not have an authorized representative available, Palo Alto Networks reserves the right to charge Customer for costs incurred in making a subsequent delivery.

6. CUSTOMER OBLIGATIONS

During the term of this Agreement, Customer shall:

- a) Operate at the then-current Maintenance Release; and
- b) use reasonable efforts to isolate, collect all error and log files to enable Palo Alto Networks to fulfill its obligations herein.

7. LIMITATIONS

The following services are expressly excluded from the Palo Alto Network Support Plans:

- a) Repair or replacement of Product required as a result of causes other than normal use, including without limitation: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks-authorized personnel; (ii) accident, fault or negligence of Customer; (iii) user error or misuse of the Product; or (iv) causes external to the Product such as, but not limited to, failure of electrical systems or fire or water damage or hardware failure, operation system software failure or any other damage and failure not caused by Palo Alto Networks.
- b) Maintenance or technical services for any third party software or hardware, whether or not such third party software or hardware is provided by Palo Alto Networks.

8. TERM AND TERMINATION

This Agreement will begin on the Effective Date and, unless terminated earlier in accordance with its terms, will remain in effect for one (1) year. At the end of such one (1) year term (and each renewal term thereafter, if any), this Agreement will automatically expire unless Customer renews this Agreement by paying Palo Alto Networks the applicable fee and by following the renewal procedure specified on the Palo Alto Networks Support Web Site. Palo Alto Networks will send Customer renewal reminders in advance of the expiration date of then-current term of this Agreement.

Either party may terminate this Agreement, at any time, in the event that the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days following notice thereof from the non-breaching party.

9. NO WARRANTY

Nothing in this Agreement shall be construed as expanding or adding to the warranty set forth in the EULA. PALO ALTO NETWORKS MAKES, AND CUSTOMER RECEIVES, NO WARRANTIES OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, ARISING IN ANY WAY OUT OF, RELATED TO, OR UNDER THIS AGREEMENT OR THE PROVISION OF MATERIALS OR SERVICES THEREUNDER, AND PALO ALTO NETWORKS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

10. LIMITATION OF LIABILITY

IN NO EVENT WILL PALO ALTO NETWORKS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOSS OF USE, DATA, BUSINESS OR PROFITS, OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES, ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT PALO ALTO NETWORKS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. IN NO EVENT WILL PALO ALTO NETWORKS' TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL PAYMENTS ACTUALLY MADE TO PALO ALTO NETWORKS UNDER THIS AGREEMENT FOR THE THEN-CURRENT TERM OF THIS AGREEMENT. THE PARTIES HAVE AGREED THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

11. GENERAL

This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to or application of conflict of laws rules or principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Customer may not assign or transfer this Agreement or any rights granted hereunder, by operation of law or otherwise, without Palo Alto Networks' prior written consent, and any attempt to do so, without such consent, will be void. Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise. All notices or approvals required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt. All notices or approvals will be sent to the addresses set forth in the applicable ordering document or invoice or to such other address as may be specified by either party to the other in accordance with this section. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this Agreement is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect. This Agreement is the complete and exclusive understanding and agreement between the parties regarding its subject matter, and supersedes all proposals, understandings or communications between the parties, oral or written, regarding its subject matter. Any terms or conditions contained in Customer's purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this Agreement are hereby rejected by Palo Alto Networks and will be deemed null. Palo Alto Networks will not be responsible for any failure or delay in its performance under this Agreement (except for due to causes beyond its reasonable control).



END USER LICENSE AGREEMENT ("EULA")

PLEASE READ CAREFULLY

THIS EULA IS A LEGAL AGREEMENT BETWEEN YOU, EITHER AS AN INDIVIDUAL, COMPANY OR OTHER LEGAL ENTITY (IN ANY CAPACITY REFERRED TO HEREIN AS "END USER", "YOU" or "YOUR") AND (I) PALO ALTO NETWORKS, INC., A DELAWARE CORPORATION WITH OFFICES AT 4401 GREAT AMERICA PARKWAY, SANTA CLARA, CALIFORNIA 95054 UNITED STATES, (II) PALO ALTO NETWORKS (NETHERLANDS) B.V., A COMPANY FORMED UNDER THE LAWS OF THE NETHERLANDS, WITH OFFICES AT OVAL TOWER, DE ENTRÉE 99-197, 5TH FLOOR, 1101 HE AMSTERDAM-ZUIDOOST, OR (III) ANY OTHER PALO ALTO NETWORKS AFFILIATE (COLLECTIVELY, "PALO ALTO NETWORKS").

THIS EULA GOVERNS YOUR USE OF THE PALO ALTO NETWORKS HARDWARE ("HARDWARE"), ANY SOFTWARE THAT IS INCLUDED IN THE HARDWARE AND ANY STANDALONE SOFTWARE THAT IS PROVIDED WITHOUT HARDWARE FOR USE ON YOUR HARDWARE INCLUDING VIRTUAL MACHINE ("VM") SOFTWARE OR ENDPOINT SOLUTIONS ("ENDPOINT") (COLLECTIVELY, "SOFTWARE"), ANY SOFTWARE-AS-A-SERVICE (SaaS), SUBSCRIPTION-BASED SERVICES INCLUDING, BUT NOT LIMITED TO, WILDFIRE, GLOBALPROTECT, URL FILTERING, AND THREAT PREVENTION ("SUBSCRIPTION SERVICES"), OR A COMBINATION OF THE FOREGOING, ALL COLLECTIVELY REFERRED TO HEREIN AS "PRODUCTS", UNLESS YOU AND PALO ALTO NETWORKS HAVE EXECUTED A SEPARATE EULA IN WRITING, SIGNED BY BOTH PALO ALTO NETWORKS AND YOU WHICH EXPRESSLY SUPERSEDES THIS EULA.

BY OPERATING, DOWNLOADING, INSTALLING, REGISTERING OR OTHERWISE USING THE PRODUCTS, YOU ARE EXPRESSLY AND EXPLICITLY ACKNOWLEDGING AND AGREEING THAT THIS IS A BINDING EULA AND YOU HEREBY AGREE TO THE TERMS OF THIS EULA.

IF YOU DO NOT ACCEPT ALL THE TERMS AND CONDITIONS SET FORTH HEREIN, DO NOT OPERATE, DOWNLOAD, INSTALL, REGISTER OR OTHERWISE USE THIS PRODUCT.

PALO ALTO NETWORKS MAINTENANCE AND SUPPORT SERVICES ARE NOT GOVERNED BY THIS EULA, AND ARE GOVERNED BY A SEPARATE GLOBAL SUPPORT SERVICES TERMS AND CONDITIONS ("EUSA") FOUND AT

https://www.paloaltonetworks.com/content/dam/paloaltonetworks-com/en_US/assets/pdf/datasheets/support/global-customer-support-services-terms-conditions.pdf

1. LICENSE GRANT AND RESTRICTIONS.

- 1.1 **Software License Grant.** Subject to the terms and conditions of this EULA, Palo Alto Networks grants to End User a non-exclusive license to (i) use the Software solely as part of the Hardware with which the Software is delivered, or (ii) in accordance with the published specifications. The Software is solely for End User's internal business purposes unless otherwise agreed to with Palo Alto Networks in a separate written agreement. All other rights in the Software are expressly reserved by Palo Alto Networks.
- 1.2 **Subscription Services Limited Right to Use.** Palo Alto Networks grants to End User the limited right to use the Subscription Services solely in connection with the Hardware and/or Software and solely for End User's internal business purposes.
- 1.3 **License Restrictions.** End User shall maintain the Products in strict confidence and shall not: (a) except in accordance with Palo Alto Networks license transfer procedure (<https://www.paloaltonetworks.com/support/support-policies/secondary-market-policy.html>), sell, resell, distribute, transfer, publish, disclose, rent, lend, lease or sublicense the Products, or make the functionality of the Products available to any other party (excluding contractors or other third party providing IT services to Customer) through any means (unless otherwise permitted in writing by Palo Alto Networks as expressly agreed to in a separate Managed Security Services Provider agreement), including, without, limitation, by uploading the Software or Subscription Services to a network or file-sharing service or through any hosting, application services provider, service bureau or other type of services; (b) modify, translate or create derivative works based on the Software or Subscription Services, in whole or in part, or permit or authorize a third party to do so; (c) disassemble, decompile, reverse compile, reverse engineer or otherwise attempt to derive the source code of the Software, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by applicable law in the jurisdiction of use



notwithstanding this prohibition; (d) disclose, publish or otherwise make publicly available any benchmark, performance or comparison tests that End User runs (or has run on its behalf by a third party) on the Products; (e) duplicate the Software except for making a reasonable number of archival or backup copies, provided that End User reproduces on or in such copies the copyright, trademark and other proprietary notices or markings that appear on the original copy of the Software (if any) as delivered to End User.

- 1.4 **Affiliates.** If End User purchases the Product for use by any End User Affiliate (defined below), End User shall: (a) provide each such End User Affiliate with a copy of this EULA; (b) ensure that each such End User Affiliate complies with the terms and conditions therein; and (c) be responsible for any breach of these terms and conditions by any such End User Affiliate. For purposes of this EULA, "Affiliate" means any entity that Controls, is Controlled by, or is under common Control with End User or Palo Alto Networks, as applicable, where "Control" means ownership, directly or indirectly, of 50% or more of the voting interest of End User or Palo Alto Networks, as applicable.

2. OWNERSHIP.

The Software and Subscription Services are licensed, not sold. Palo Alto Networks and its suppliers, as applicable, retain all right, title, interest and ownership of the Software and Subscription Services, including copyrights, patents, trade secret rights, trademarks and any other intellectual property rights therein. End User shall not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Software and Subscription Services or related documentation as delivered to End User. To the extent you provide any suggestions or comments related to the Products to Palo Alto Networks or its authorized third party agent, Palo Alto Networks shall have the right to retain and use any such suggestions or comments in current or future products or services, without your approval or further compensation to you.

3. TERM; TERMINATION; AND EFFECT OF TERMINATION.

This EULA is effective until terminated. End User's rights under this EULA will terminate immediately without notice from Palo Alto Networks if End User fails to comply with or breaches any provision of this EULA. End User may terminate this EULA upon written notice to Palo Alto Networks. Upon termination, End User shall destroy all copies of Software and documentation and cease to use any Subscription Services and/or Hardware.

4. WARRANTY, EXCLUSIONS AND DISCLAIMERS.

4.1 Warranty. Palo Alto Networks warrants that, under normal authorized use (a) the Hardware shall be free from defects in material and workmanship for one (1) year from the date of shipment; and (b) the Software will substantially conform to Palo Alto Networks' published specifications for three (3) months from the date of shipment. As End User's sole and exclusive remedy and Palo Alto Networks' and its suppliers' sole and exclusive liability for breach of warranty, Palo Alto Networks shall, at its option and expense, repair or replace the Hardware or correct the Software, as applicable. All warranty claims must be made on or before the expiration of the warranty period specified herein. Replacement Products may consist of new or remanufactured parts that are equivalent to new. All Products that are returned to Palo Alto Networks and replaced become the property of Palo Alto Networks. Palo Alto Networks shall not be responsible for End User's or any third party's software, firmware, information, or memory data contained in, stored on, or integrated with any Product returned to Palo Alto Networks for repair or upon termination, whether under warranty or not. End User will pay the shipping costs for return of Products to Palo Alto Networks. Palo Alto Networks will pay the shipping costs for shipment of repaired or replacement Products back to End User.

4.2 Exclusions. The warranty set forth above shall not apply if the failure of the Product results from or is otherwise attributable to: (i) repair, maintenance or modification of the Product by persons other than Palo Alto Networks-authorized third party; (ii) accident, negligence, abuse or misuse of a Product; (iii) use of the Product other than in accordance with Palo Alto Networks' specifications; (iv) improper installation or site preparation or any failure by End User to comply with environmental and storage requirements for the Product specified by Palo Alto Networks, including, without limitation, temperature or humidity ranges; or (v) causes external to the Product such as, but not limited to, failure of electrical systems, fire or water damage.

4.3 Disclaimers. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED AND AS OTHERWISE PROHIBITED BY APPLICABLE LAW, THE HARDWARE, SOFTWARE AND SUBSCRIPTION SERVICES ARE PROVIDED "AS IS". PALO ALTO NETWORKS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES AND EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PALO ALTO NETWORKS DOES NOT WARRANT THAT (I) THE PRODUCT WILL MEET END



USER'S REQUIREMENTS, (II) USE THEREOF SHALL BE UNINTERRUPTED OR ERROR-FREE, OR (III) THE HARDWARE, SOFTWARE OR SUBSCRIPTION SERVICES WILL PROTECT AGAINST ALL POSSIBLE THREATS WHETHER KNOWN OR UNKNOWN.

5. LIMITATION OF LIABILITY.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) IN NO EVENT SHALL PALO ALTO NETWORKS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO LOSS OF USE, DATA, BUSINESS OR PROFITS, OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS, SERVICES OR OTHER GOODS), ARISING OUT OF OR RELATING TO THIS EULA, REGARDLESS OF THE THEORY OF LIABILITY AND WHETHER OR NOT PALO ALTO NETWORKS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS; AND (B) IN NO EVENT SHALL PALO ALTO NETWORKS' TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS EULA, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL PAYMENTS ACTUALLY MADE TO PALO ALTO NETWORKS FOR THE PRODUCTS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY ARISING FROM DEATH OR BODILY INJURY. End User agrees that the foregoing limitations of liability constitute a material inducement for Palo Alto Networks to enter into this EULA and that the purchase price and fees charged to End User would be substantially higher without such limitations.

6. INDEMNIFICATION.

6.1 Indemnification and Procedure. Palo Alto Networks will defend, at its expense, any third-party action or suit brought against End User alleging that any Palo Alto Networks Product provided to End User hereunder infringes or misappropriates the third party's patent, copyright, trademark, or trade secret (a "Claim"), and Palo Alto Networks will pay any damages awarded in final judgment against End User or agreed to in settlement by Palo Alto Networks that are attributable to any such Claim; provided that End User: (i) promptly notifies Palo Alto Networks in writing of the Claim; (ii) gives Palo Alto Networks sole control of the defense and settlement of the Claim; and (iii) gives Palo Alto Networks, at Palo Alto Networks' expense, all information and assistance reasonably requested for the defense and settlement of the Claim. Palo Alto Networks will not be bound by any settlement or compromise that End User enters into without Palo Alto Networks' prior written consent.

6.2 Remedy. If the Product becomes, or in Palo Alto Networks' opinion is likely to become, the subject of a Claim, then Palo Alto Networks may, at its sole option and expense: (i) procure for End User the right to continue using the Product; (ii) replace or modify the Product to avoid the Claim; or (iii) if options (i) and (ii) cannot be accomplished despite Palo Alto Networks' reasonable efforts, then Palo Alto Networks may accept return of the Product from End User and grant End User credit for the price of the Product as depreciated on a straight-line five (5) year basis, commencing on the date of receipt by End User of such Product.

6.3 Exceptions. Palo Alto Networks' obligations under this section shall not apply to the extent any Claim results from or is based on (a) modifications to the Product made by a party other than Palo Alto Networks or its designee; (b) the combination, operation, or use of the Product with hardware or software not supplied by Palo Alto Networks, if a Claim would not have occurred but for such combination, operation or use; (c) failure to use the most recent version or release of the Product; (d) Palo Alto Networks' compliance with End User's explicit or written designs, specifications or instructions; or (e) use of the Product that is not in accordance with Palo Alto Networks' published specifications.

THE FOREGOING TERMS STATE PALO ALTO NETWORKS' SOLE AND EXCLUSIVE LIABILITY AND END USER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

7. END USER DATA.

Palo Alto Networks utilizes industry standard practices and policies to maintain administrative, physical and technical safeguards for the protection and security of End User Data (defined below). End User is hereby notified and acknowledges that Palo Alto Networks Products may include interaction and communication with facilities hosted outside of the country where End User purchased or utilizes the Products. End User is further notified and acknowledges that some Subscription Services may allow End User, in its sole discretion, to send data to Palo Alto Networks, where such data may contain personally-identifiable, sensitive, and/or confidential data and information (collectively, "End User Data"). End User represents and warrants that End User's use of the Subscription Services and related submission of End User Data complies with all applicable laws, including those related to data privacy, data security, international communication and the exportation of technical, personal or sensitive data. Palo Alto Networks is not a data processor or data collector, and the inclusion of such personally identifying or sensitive data in End User Data is solely



incidental to the provision of the Subscription Services. Submission of End User Data to Palo Alto Networks shall be at End User's sole discretion and at its own risk, and Palo Alto Networks assumes no responsibility or liability for receipt of such End User Data. End User Data sent to Palo Alto Networks may be stored by Palo Alto Networks. End User further acknowledges that Palo Alto Networks may anonymize such End User Data to use for statistical purposes and share samples of such anonymized End User Data with other third party security-related researchers, vendors and customers.

8. GENERAL.

8.1 Governing Law. Where Palo Alto Networks, Inc., is the contracting entity, this EULA is governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws principles. Where Palo Alto Network (Netherlands) B.V., is the contracting party, this EULA is governed by and construed in accordance with the laws of the Netherlands, excluding its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this EULA.

8.2 Compliance with Laws; Export Control. End User shall be solely responsible for its compliance with, and agrees to comply with, all applicable laws in connection with its use of the Product. End User further agrees that it will not engage in any illegal activity in any relevant jurisdiction, and acknowledges that Palo Alto Networks reserves the right to notify its customers or appropriate law enforcement in the event of such illegal activity. End User agrees to comply fully with the U.S. Export Administration Regulations, and any other export laws, restrictions, and regulations to ensure that the Product and any technical data related thereto is not exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by such laws and regulations.

8.3 Cumulative Remedies. Except as expressly set forth in this EULA, the exercise by either party of any of its remedies will be without prejudice to any other remedies under this EULA or otherwise.

8.4 Notices. All notices shall be in writing and delivered by overnight delivery service or by certified mail sent to the address published on the respective parties' websites or the address specified on the relevant order document (attention: Legal Department), and in each instance will be deemed given upon receipt.

8.5 Waiver and Severability. The failure by either party to enforce any provision of this EULA will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any provision of this EULA will be effective only if in writing and signed by authorized representatives of both parties. If any provision of this EULA is held to be unenforceable or invalid, that provision will be enforced to the maximum extent possible and the other provisions will remain in full force and effect.

8.6 Entire Agreement. This EULA constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings and communications between the parties with respect to the subject matter hereof. Any terms or conditions contained in End User's purchase order or other ordering document that are inconsistent with or in addition to the terms and conditions of this EULA are hereby rejected by Palo Alto Networks and will be deemed null.

8.7 U.S. Government End Users. This section applies to United States Government End Users only and does not apply to any other End Users. The Software and its documentation are "commercial computer software" and "commercial computer software documentation," respectively; as such terms are used in FAR 12.212 and DFARS 227.7202. If the Software and its documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government's rights in the Software and its documentation shall be as specified in this EULA.

8.8 Open Source Software. The Products may contain or be provided with components subject to the terms and conditions of open source software licenses ("Open Source Software"). A list of Open Source Software can be found at <https://www.paloaltonetworks.com/company/third-party-software.html>.

8.9 End User Records. End User grants to Palo Alto Networks and its independent advisors the right to examine End User's books, records, and accounts during End User's normal business hours to verify compliance with this EULA. In the event such audit discloses non-compliance with this EULA, End User shall promptly pay the appropriate license fees to the relevant party, plus reasonable audit costs.

8.10 Authorization Codes, Grace Periods and Registration. Your Product may require an authorization code for activation for support of Your Product or to access Subscription Services. The authorization codes will be issued at the time of order fulfillment



and sent to You via email. The service period will commence in accordance with the grace period policy at <https://www.paloaltonetworks.com/support/support-policies/grace-period.html>. You are hereby notified that, upon applicable grace period expiration, if any, Palo Alto Networks reserves the right to register Your Product and activate support services (if purchased) on Your behalf without further notification to You.

8.11 WildFire Related Microsoft Licenses. End User acknowledges that certain WildFire offerings require licenses for certain Microsoft software, including Windows and Office, as described further in the relevant Wildfire documentation. Where Microsoft software is provided with certain WildFire offerings, Palo Alto Networks has procured or otherwise provided the necessary Microsoft licenses for the WildFire offering. Customer is hereby notified and acknowledges that Microsoft updates and upgrades (software assurance) are not provided with the WildFire product and must be obtained by Customer directly from Microsoft in order for Customer to utilize later versions of Microsoft products beyond the versions initially provided with the WildFire offerings.

8.12 Survival. Sections regarding license restrictions, ownership, term and termination, U.S. Government End Users, limitations of liability, and this General section shall survive termination of this EULA.