



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.

Header # 1

Last View

General Information Contact Default Values Discuss Document Information Clarification Request

Procurement Folder: 1636678

Procurement Type: Central Contract - Fixed Amt

Vendor ID: 450669915825

Legal Name: Software Information Resource Corp

Alias/DBA: SIRC

Total Bid: \$88,632.88

Response Date: 04/11/2006

Response Time: 13.29

Responded By User ID: gpr1@sic.net

First Name: Ajay

Last Name: Gajjar

Email: gpr1@sic.net

Phone: 2025352068

SO Doc Code: CRFG

SO Dept: 0011

SO Doc ID: DEP2500000017

Published Date: 3/15/05

Close Date: 4/1/06

Close Time: 15:30

Status: Closed

Solicitation Description: STD07388-25 TOAD for Oracle Data Models, SQL

Total of Header Attachments: 4

Total of All Attachments: 4



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

State of West Virginia
Solicitation Response

Proc Folder: 1636670
Solicitation Description: BTOIT308-25 TOAD for Oracle, Data Modeler, SQL
Proc Type: Central Contract - Fixed Amt

Solicitation Closes	Solicitation Response	Version
2025-04-01 13:30	SR 0313 ESR04012500000005862	1

VENDOR

VS0000015925
Software Information Resource Corp

Solicitation Number: CRFQ 0313 DEP2500000017
Total Bid: 86652.88000000000465661287307 **Response Date:** 2025-04-01 **Response Time:** 13:20:58
Comments:

FOR INFORMATION CONTACT THE BUYER
Joseph E Hager III
(304) 558-2306
joseph.e.hageriii@wv.gov

Vendor 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	Toad for Oracle: DBF-TOD-TK	2.00000	EA	3225.230000	6450.46

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad for Oracle: DBF-TOD-TK

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	Toad Data Modeler: DMA-CHW-TB	2.00000	EA	350.240000	700.48

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad Data Modeler: DMA-CHW-TB

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
3	Toad for SQL Server: TTE-TOD-TK	2.00000	EA	820.950000	1641.90

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad for SQL Server: TTE-TOD-TK

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
4	Toad for Oracle: DBF-TOD-TK renewal year 2	2.00000	EA	5959.630000	11919.26

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad for Oracle: DBF-TOD-TK renewal year 2

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
5	Toad for Oracle: DBF-TOD-TK renewal year 3	2.00000	EA	9808.060000	19616.12

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad for Oracle: DBF-TOD-TK renewal year 3

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
6	Toad for Oracle: DBF-TOD-TK renewal year 4	2.00000	EA	12970.990000	25941.98

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad for Oracle: DBF-TOD-TK renewal year 4

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
7	Toad Data Modeler: DMA-CHW-TB renewal year 2	2.00000	EA	609.280000	1218.56

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad Data Modeler: DMA-CHW-TB renewal year 2

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
8	Toad Data Modeler: DMA-CHW-TB renewal year 3	2.00000	EA	981.950000	1963.90

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad Data Modeler: DMA-CHW-TB renewal year 3

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
9	Toad Data Modeler: DMA-CHW-TB renewal year 4	2.00000	EA	1284.860000	2569.72

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad Data Modeler: DMA-CHW-TB renewal year 4

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
10	Toad for SQL Server: TTE-TOD-TK renewal year 2	2.00000	EA	1517.000000	3034.00

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad for SQL Server: TTE-TOD-TK renewal year 2

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
11	Toad for SQL Server: TTE-TOD-TK renewal year 3	2.00000	EA	2496.570000	4993.14

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad for SQL Server: TTE-TOD-TK renewal year 3

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
12	Toad for SQL Server: TTE-TOD-TK renewal year 4	2.00000	EA	3301.680000	6603.36

Comm Code	Manufacturer	Specification	Model #
81112200			

Commodity Line Comments:

Extended Description:

Toad for SQL Server: TTE-TOD-TK renewal year 4



730 24th ST NW, STE 3, Washington DC 20037-2500

SIRC is a Women Owned Small Business

Price Quotation
Non-Cancellable / Non-Refundable

Date:	04/01/2025
Quote No:	D25-G0308
Quote Expires:	04/24/2025
Shipping Point:	FOB DEST
Terms:	Net 30
Shipping Method:	ESD
Pricing:	OPEN MARKET
Lead Time:	Renewal
Payment Method:	EFT
Discount Terms:	NONE
RFQ Number:	CRFQ-0313-DEP2500000017-1

SIRC POC	POC Email	POC TEL	Cage Code	FEIN	DUNS	UEI	URL
Dennis Alameda	dennis.alameda@sirc.net	202-536-2800	1PQ53	54-1727076	93-826-5865	EJMMJHYDFH6	www.sirc.net

Customer Name	Ship To Customer
Joseph E Hager Iii WVOASIS 601 57TH ST SE CHARLESTON WV 25304 US Email: joseph.e.hageriii@wv.gov Tel: (304) 558-3970	Joseph E Hager Iii WVOASIS 601 57TH ST SE CHARLESTON WV 25304 US Email: joseph.e.hageriii@wv.gov Tel: (304) 558-3970

#	Item	Item Desc	Start Date	End Date	OM GSA	Qty	U/M	Cost USD	Total USD
1-YEAR									
1	DBF-TOD-TK	TOAD FOR ORACLE DBA EDITION PER SEAT TERM LICENSE/MAINT PACK (TAA)	19-MAY-2025	18-MAY-2026	OM	2.00	EA	\$3,225.23	\$6,450.46
2	DMA-CHW-TB	TOAD DATA MODELER PER SEAT TERM LICENSE/MAINT (TAA)	01-APR-2025	18-MAY-2026	OM	2.00	EA	\$350.24	\$700.48
3	TTE-TOD-TK	TOAD FOR SQL SERVER DEVELOPER EDITION PER SEAT TERM LICENSE/MAINT PACK (TAA)	19-MAY-2025	18-MAY-2026	OM	2.00	EA	\$820.95	\$1,641.90
SUBTOTAL		1-YEAR TOTAL							\$8,792.84
2-YEAR									

4	DBF-TOD-TK	TOAD FOR ORACLE DBA EDITION PER SEAT TERM LICENSE/MAINT PACK (TAA)	19-MAY-2025	18-MAY-2027	OM	2.00	EA	\$5,959.63	\$11,919.26
5	DMA-CHW-TB	TOAD DATA MODELER PER SEAT TERM LICENSE/MAINT (TAA)	01-APR-2025	18-MAY-2027	OM	2.00	EA	\$609.28	\$1,218.56
6	TTE-TOD-TK	TOAD FOR SQL SERVER DEVELOPER EDITION PER SEAT TERM LICENSE/MAINT PACK (TAA)	19-MAY-2025	18-MAY-2027	OM	2.00	EA	\$1,517.00	\$3,034.00
SUBTOTAL		2-YEAR TOTAL							\$16,171.82
3-YEAR									
7	DBF-TOD-TK	TOAD FOR ORACLE DBA EDITION PER SEAT TERM LICENSE/MAINT PACK (TAA)	19-MAY-2025	18-MAY-2028	OM	2.00	EA	\$9,808.06	\$19,616.12
8	DMA-CHW-TB	TOAD DATA MODELER PER SEAT TERM LICENSE/MAINT (TAA)	01-APR-2025	18-MAY-2028	OM	2.00	EA	\$981.95	\$1,963.90
9	TTE-TOD-TK	TOAD FOR SQL SERVER DEVELOPER EDITION PER SEAT TERM LICENSE/MAINT PACK (TAA)	19-MAY-2025	18-MAY-2028	OM	2.00	EA	\$2,496.57	\$4,993.14
SUBTOTAL		3-YEAR TOTAL							\$26,573.16
4-YEAR									
10	DBF-TOD-TK	TOAD FOR ORACLE DBA EDITION PER SEAT TERM LICENSE/MAINT PACK (TAA)	19-MAY-2025	18-MAY-2029	OM	2.00	EA	\$12,970.99	\$25,941.98
11	DMA-CHW-TB	TOAD DATA MODELER PER SEAT TERM LICENSE/MAINT (TAA)	01-APR-2025	18-MAY-2029	OM	2.00	EA	\$1,284.86	\$2,569.72
12	TTE-TOD-TK	TOAD FOR SQL SERVER DEVELOPER EDITION PER SEAT TERM LICENSE/MAINT PACK (TAA)	19-MAY-2025	18-MAY-2029	OM	2.00	EA	\$3,301.68	\$6,603.36
SUBTOTAL		4-YEAR TOTAL							\$35,115.06

Breakdown by Subtotal

LINE#	ITEM#	ITEM_DESC	TOTAL_AMT
	3.1	SUBTOTAL 1-YEAR TOTAL	\$8,792.84
	6.1	SUBTOTAL 2-YEAR TOTAL	\$16,171.82
	9.1	SUBTOTAL 3-YEAR TOTAL	\$26,573.16
	12.1	SUBTOTAL 4-YEAR TOTAL	\$35,115.06

Report Total: \$86,652.88

*** For better order processing, please reference D25-G0308 when issuing an Order to SIRC ***

*** We cannot use your shipment account. Third-party shipment account will not be allowed ***

Please note that due to the high discount level extended on this quote, credit cards will not be accepted for this particular pricing structure. If it is requested that payment be made with a credit card, then the above pricing is subject to change and a processing fee will be added. Payment via Purchase Order and WAWF will incur no additional fee.

**** NOTE ****

No discounts will be provided for early payments.
SIRC does not have an active Facility Clearance

Please note, any software provided in this quote is identified as Commercial Computer Software.

The pricing and discounts being provided in this quote is based off of a complete bill of materials. Any changes to the configuration may cause an overall adjustment to the discount structure. Please contact your sales rep listed on the quote if any configuration changes are needed.
All items are subject to availability. We will make our best efforts to inform you as soon as possible if the goods you have ordered are not available or if shipment may be delayed.

SIRC cannot honor the pricing if quoted item becomes End of Life (EOL)

SIRC CONFIDENTIAL. SIRC is a SBA certified Women-Owned Small Business (WOSB). This is Confidential Pricing.

All maintenance and support services on this quote are quoted as prepaid annual maintenance unless otherwise explicitly specified.

Manufacturer Terms and conditions apply except where specifically contradicted by the FAR Clauses.

If you are a commercial entity, applicable sales tax will be added to the Invoice, unless you provide a Sales Tax Exemption Certificate.

THIS QUOTE AND ANY RESULTING AWARD OR ORDER IS SUBJECT TO THE QUEST'S SOFTWARE TRANSACTION AGREEMENT **ATTACHED VIA SEPARATE DOCUMENT** AND POSTED AT http://sirc.net/mt-content/uploads/2023/07/quest-software-inc_gsa-sta-2023-clean.pdf. THESE TERMS CONTROL THE TERMS OF SALES AS WELL AS THE END USER'S USE OF THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTE. BUYER IS DIRECTED TO INCORPORATE (BY REFERENCE) THIS QUOTE IN ANY RESULTING AWARD OR ORDER. THE TERMS AND CONDITIONS AT THE ABOVE LINK ARE THE ONLY CONTROLLING TERMS THAT WILL APPLY TO A RESULTING ORDER AND THE USE OF THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTE. ANY ADDITIONAL OR INCONSISTENT TERMS ON BUYER'S ORDER THAT IN ANY WAY, MODIFY, ALTER OR NEGATE THE TERMS OF SALE OR THE MANUFACTURER'S END USER LICENSE AGREEMENT WILL NOT BE BINDING ON SIRC OR ITS MANUFACTURERS AND SHALL NOT APPLY UNLESS SPECIFICALLY AGREED TO IN WRITING BY SIRC AND THE MANUFACTURER. NO RETURNS ARE AUTHORIZED OF THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTE. THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTE ARE NONRECOURSE, NONCANCELLABLE, AND NON-RETURNABLE UNLESS EXPLICITLY AGREED TO IN WRITING BY SIRC.



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

State of West Virginia
Centralized Request for Quote
Info Technology

Proc Folder: 1636670			Reason for Modification:
Doc Description: BTOIT308-25 TOAD for Oracle, Data Modeler, SQL			
Proc Type: Central Contract - Fixed Amt			
Date Issued	Solicitation Closes	Solicitation No	Version
2025-03-18	2025-04-01 13:30	CRFQ 0313 DEP2500000017	1

BID RECEIVING LOCATION

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

VENDOR

Vendor Customer Code:

Vendor Name : Software Information Resource Corp (SIRC)

Address : 730 24th ST NW, STE 3

Street :

City : Washington

State : DC **Country :** United States **Zip :** 20037

Principal Contact : Dennis Alameda

Vendor Contact Phone: 202-536-2800 **Extension:** 206

FOR INFORMATION CONTACT THE BUYER

Joseph E Hager III
(304) 558-2306
joseph.e.hageriii@wv.gov

Vendor Signature X	FEIN# 54-1727076	DATE 04/01/2025
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All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION

The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Environmental Protection to establish a contract for Toad Modeler, Oracle and SQL Software per the attached specifications and terms and conditions.

INVOICE TO				SHIP TO			
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US				ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US			

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Toad for Oracle: DBF-TOD-TK	2.00000	EA	\$3,225.23	\$6,450.46

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:

Toad for Oracle: DBF-TOD-TK

INVOICE TO				SHIP TO			
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US				ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US			

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Toad Data Modeler: DMA-CHW-TB	2.00000	EA	\$350.24	\$700.48

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:

Toad Data Modeler: DMA-CHW-TB

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Toad for SQL Server: TTE-TOD-TK	2.00000	EA	\$820.95	\$1,641.90

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for SQL Server: TTE-TOD-TK

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Toad for Oracle: DBF-TOD-TK renewal year 2	2.00000	EA	\$5,959.63	\$11,919.26

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for Oracle: DBF-TOD-TK renewal year 2

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Toad for Oracle: DBF-TOD-TK renewal year 3	2.00000	EA	\$9,808.06	\$19,616.12

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:

Toad for Oracle: DBF-TOD-TK renewal year 3

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Toad for Oracle: DBF-TOD-TK renewal year 4	2.00000	EA	\$12,970.99	\$25,941.98

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:

Toad for Oracle: DBF-TOD-TK renewal year 4

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	Toad Data Modeler: DMA-CHW-TB renewal year 2	2.00000	EA	\$609.28	\$1,218.56

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
 Toad Data Modeler: DMA-CHW-TB renewal year 2

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	Toad Data Modeler: DMA-CHW-TB renewal year 3	2.00000	EA	\$981.95	\$1,963.90

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
 Toad Data Modeler: DMA-CHW-TB renewal year 3

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	Toad Data Modeler: DMA-CHW-TB renewal year 4	2.00000	EA	\$1,284.86	\$2,569.72

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad Data Modeler: DMA-CHW-TB renewal year 4

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
10	Toad for SQL Server: TTE-TOD-TK renewal year 2	2.00000	EA	\$1,517.00	\$3,034.00

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for SQL Server: TTE-TOD-TK renewal year 2

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
11	Toad for SQL Server: TTE-TOD-TK renewal year 3	2.00000	EA	\$2,496.57	\$4,993.14

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for SQL Server: TTE-TOD-TK renewal year 3

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
12	Toad for SQL Server: TTE-TOD-TK renewal year 4	2.00000	EA	\$3,301.68	\$6,603.36

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for SQL Server: TTE-TOD-TK renewal year 4

SCHEDULE OF EVENTS		
Line	Event	Event Date

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. **PRE-BID MEETING:** The item identified below shall apply to this Solicitation.

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

☐ 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 individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying 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. 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.

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.

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 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 emails should have the solicitation number in the subject line. Question

Submission Deadline:

Submit Questions to:

2019 Washington Street, East Charleston, WV 25305

Fax: (304) 558-3970

Email:

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 on or before the date and time of the bid opening listed in section 7 below. Vendors can submit bids electronically through wvOASIS, in paper form delivered to the Purchasing Division at the address listed below either in person or by courier, or in facsimile form by faxing to the Purchasing Division at the number listed below. Notwithstanding the foregoing, the Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS. The Purchasing Division will not accept bids or modification of bids via email.

Bids submitted in paper, facsimile, or via wvOASIS must contain a signature. Failure to submit a bid in any form without a signature will result in rejection of your bid.

A bid submitted in paper or facsimile form should contain the information listed below on the face of the submission envelope or fax cover sheet. Otherwise, the bid may be rejected by the Purchasing Division.

VENDOR NAME:

BUYER:

SOLICITATION NO.:

BID OPENING DATE:

BID OPENING TIME:

FAX NUMBER:

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.

Bid Delivery Address and Fax Number:

Department of Administration, Purchasing Division 2019 Washington Street East

Charleston, WV 25305-0130

Fax: 304-558-3970

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 or via delivery by mail).

Bid Opening Date and Time:

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 Acknowledgement Form. 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. **ALTERNATE MODEL OR BRAND:** Unless the box below is checked, 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 **shall** 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.

[] This Solicitation is based upon a standardized commodity established under W. Va. Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

11. **COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6.2, 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.

12. **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.

13. **UNIT PRICE:** Unit prices **shall** prevail in cases of a discrepancy in the Vendor's bid.

14. **PREFERENCE:** Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at: www.state.wv.us/admin/purchase/vrc/Venpref.pdf.

15A. RECIPROCAL PREFERENCE: The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: www.state.wv.us/admin/purchase/vrc/Venpref.pdf.

15. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:

For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37 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.

16. 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 § 148-1-4.7.

17. ELECTRONIC FILE ACCESS RESTRICTIONS: Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Purchasing Division staff immediately upon bid opening. The Purchasing Division will consider any file that cannot be immediately accessed and 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 to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the Purchasing Division to print or electronically save documents provided that those documents are viewable by the Purchasing Division prior to obtaining the password or removing the access restriction.

18. NON-RESPONSIBLE: The Purchasing Division Director reserves the right to reject the bid of any vendor as Non-Responsible in accordance with W. Va. Code of State Rules § 148-1-5.3, when the Director determines that the vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.”

19. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.6. and § 148-1-6.3.”

20. **WITH THE BID REQUIREMENTS:** In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Director of the Purchasing Division reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. CSR § 148-1-4.7. This authority does not apply to instances where state law mandates receipt with the bid.

21. **EMAIL NOTIFICATION OF AWARD:** The Purchasing Division will attempt to provide bidders with e-mail notification of contract award when a solicitation that the bidder participated in has been awarded. For notification purposes, bidders must provide the Purchasing Division with a valid email address in the bid response. Bidders may also monitor wvOASIS or the Purchasing Division's website to determine when a contract has been awarded.

22. **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.

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

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

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

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

☐ **Term Contract**

Initial Contract Term: The Initial Contract Term will be for a period of _____. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to _____ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

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

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

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for _____ years;

☐ the contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's Office (Attorney General approval is as to form only).

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

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

☐ **Other:** Contract Term specified in _____

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One-Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

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

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute 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.

7. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☐ **Commercial General Liability Insurance** in at least an amount of: _____ per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: _____ per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

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

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

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9. WORKERS' COMPENSATION INSURANCE: Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

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

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence regarding all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

23. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

25. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

26. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

28. WARRANTY: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

29. STATE EMPLOYEES: State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

30. PRIVACY, SECURITY, AND CONFIDENTIALITY: The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in www.state.wv.us/admin/purchase/privacy.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.

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

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. NO DEBT CERTIFICATION: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

38. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

39. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

[] Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

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

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

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

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

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

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

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

43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

44. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

45. VOID CONTRACT CLAUSES: This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

46. ISRAEL BOYCOTT: Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name and Title) _____

(Address) _____

(Phone Number) / (Fax Number) _____

(email address) _____

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; that I am authorized by the Vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on Vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

(Company)

(Signature of Authorized Representative)

(Printed Name and Title of Authorized Representative) (Date)

(Phone Number) (Fax Number)

(Email Address)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.:

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.

Company

Authorized Signature

Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.

REQUEST FOR QUOTATION
**BTOIT308-25 Toad Modeler, Oracle and SQL Database Administration and
Monitoring Software**

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Environmental Protection to establish a contract for Toad Modeler, Oracle and SQL Software.
- 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 “Licenses”** means Agency’s licenses to utilize Toad Modeler, Oracle and SQL Software.
 - 2.2 “Pricing Page”** means the pages contained wvOASIS or attached hereto as Exhibit A, upon which Vendor should list its proposed price for the software maintenance and support.
 - 2.3 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
- 3. QUALIFICATIONS: VENDOR,** or Vendor’s staff if requirements are inherently limited to individuals rather than corporate entities, shall have the qualifications listed below. Compliance will be determined prior to contract award by the State through documentation provided by the Vendor with its bid or upon request, Vendor must provide any documentation requested by the State to assist in confirmation of compliance with this provision. References, documentation, or other information to confirm compliance with this experience requirement are preferred with the bid submission but may be requested after bid opening and prior to contract award.
 - 3.1.** Vendor must be authorized by Quest to provide software maintenance and support for the Licenses.
- 4. MANDATORY REQUIREMENTS:**
 - 4.1. Software Maintenance and Support:** Vendor must provide maintenance and support for the Licenses as follows:
 - 4.1.1.** Six (6) Licenses must be covered by maintenance and support.

REQUEST FOR QUOTATION
**BTOIT308-25 Toad Modeler, Oracle and SQL Database Administration and
Monitoring Software**

- 4.1.1.1.** Agency owned License Numbers: 154-908-506, 154-908-517, 155-055-044
- 4.1.1.1.1.** Manufacture Part Number: DBF-TOD-TK – Two (2) each – TOAD for SQL Server Development Edition Per Seat Term License/Maintenance Pack.
- 4.1.1.1.2.** Manufacture Part Number: TTE-TOD-TK – Two (2) each – TOAD for Oracle DBA Edition Per Seat Term License/Maintenance Pack.
- 4.1.1.1.3.** Manufacture Part Number: DMA-CHW-TD – Two (2) each - TOAD Data Modeler Per Seat Term License/Maintenance Pack.
- 4.1.2.** Software and Maintenance Pack must be provided for one (1) year.
- 4.1.3.** Three (3) one (1) year optional renewal should also be quoted.
- 4.1.4.** Current maintenance and support for Toad for Oracle DBA & SQL Maintenance and Support began on 05/19/2022 and ends on 05/18/2025.
- 4.1.5.** Current maintenance and support for Toad Data Modeler began on 04/01/2023 and ends on 03/31/2025.
- 4.1.6.** Automatic renewal of this contract is prohibited, renewals must be approved by the vendor and agency
- 4.1.7.** Reinstatement fees for lapsed support must be included in the first year of maintenance and support costs, if applicable.
- 4.1.8.** Vendor must provide a copy of all applicable maintenance and support agreements prior to contract award for review and approval by the State of West Virginia.

5. CONTRACT AWARD:

- 5.1. Contract Award:** The Contract will be awarded to the Vendor that provides the Software Maintenance and Support meeting the required specifications for the lowest total contract cost as shown on the Pricing Pages.

REQUEST FOR QUOTATION
**BTOIT308-25 Toad Modeler, Oracle and SQL Database Administration and
Monitoring Software**

5.2. Pricing Page: Vendor should complete the Pricing Page by entering the unit price on the commodity line item as shown in wvOasis.

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. Vendors should type or 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: **joseph.e.hageriii@wv.gov**

- 6. PAYMENT: Agency** shall pay flat fee, as shown on the Pricing Pages, for all Software Maintenance and Support. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.
- 7. FACILITIES ACCESS:** In the event that performance of Software Maintenance and Support requires access to Agency facilities, access cards and/or keys may be required to gain entrance. In the event that access cards and/or keys are required:
 - 7.1.** Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
 - 7.2.** Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
 - 7.3.** Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
 - 7.4.** Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
 - 7.5.** Vendor shall inform all staff of Agency's security protocol and procedures.

REQUEST FOR QUOTATION
**BTOIT308-25 Toad Modeler, Oracle and SQL Database Administration and
Monitoring Software**

8. VENDOR DEFAULT:

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

8.1.1. Failure to perform Contract Services 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. MISCELLANEOUS:

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: Ajay Gandhi

Telephone Number: 202-5362800

Fax Number: (202) 315-3796

Email Address: ajay.gandhi@sirc.net



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

State of West Virginia
Centralized Request for Quote
Info Technology

Proc Folder: 1636670			Reason for Modification:
Doc Description: BTOIT308-25 TOAD for Oracle, Data Modeler, SQL			
Proc Type: Central Contract - Fixed Amt			
Date Issued	Solicitation Closes	Solicitation No	Version
2025-03-18	2025-04-01 13:30	CRFQ 0313 DEP2500000017	1

BID RECEIVING LOCATION

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

VENDOR

Vendor Customer Code:

Vendor Name : Software Information Resource Corp (SIRC)

Address :

Street : 730 24th ST NW, STE 3

City : Washington

State : DC

Country : United States

Zip : 20037

Principal Contact : Dennis Alameda

Vendor Contact Phone: 202-536-2800

Extension:206

FOR INFORMATION CONTACT THE BUYER

Joseph E Hager III
(304) 558-2306
joseph.e.hageriii@wv.gov

Vendor
Signature X

FEIN# 54-1727076

DATE 04/01/2025

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

ADDITIONAL INFORMATION

The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Environmental Protection to establish a contract for Toad Modeler, Oracle and SQL Software per the attached specifications and terms and conditions.

INVOICE TO				SHIP TO			
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US				ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US			

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Toad for Oracle: DBF-TOD-TK	2.00000	EA	\$3,225.23	\$6,450.46

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:

Toad for Oracle: DBF-TOD-TK

INVOICE TO				SHIP TO			
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US				ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US			

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Toad Data Modeler: DMA-CHW-TB	2.00000	EA	\$350.24	\$700.48

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:

Toad Data Modeler: DMA-CHW-TB

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
3	Toad for SQL Server: TTE-TOD-TK	2.00000	EA	\$820.95	\$1,641.90

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for SQL Server: TTE-TOD-TK

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
4	Toad for Oracle: DBF-TOD-TK renewal year 2	2.00000	EA	\$5,959.63	\$11,919.26

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for Oracle: DBF-TOD-TK renewal year 2

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
5	Toad for Oracle: DBF-TOD-TK renewal year 3	2.00000	EA	\$9,808.06	\$19,616.12

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:

Toad for Oracle: DBF-TOD-TK renewal year 3

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
6	Toad for Oracle: DBF-TOD-TK renewal year 4	2.00000	EA	\$12,970.99	\$25,941.98

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:

Toad for Oracle: DBF-TOD-TK renewal year 4

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
7	Toad Data Modeler: DMA-CHW-TB renewal year 2	2.00000	EA	\$609.28	\$1,218.56

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad Data Modeler: DMA-CHW-TB renewal year 2

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
8	Toad Data Modeler: DMA-CHW-TB renewal year 3	2.00000	EA	\$981.95	\$1,963.90

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad Data Modeler: DMA-CHW-TB renewal year 3

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
9	Toad Data Modeler: DMA-CHW-TB renewal year 4	2.00000	EA	\$1,284.86	\$2,569.72

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad Data Modeler: DMA-CHW-TB renewal year 4

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
10	Toad for SQL Server: TTE-TOD-TK renewal year 2	2.00000	EA	\$1,517.00	\$3,034.00

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for SQL Server: TTE-TOD-TK renewal year 2

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
11	Toad for SQL Server: TTE-TOD-TK renewal year 3	2.00000	EA	\$2,496.57	\$4,993.14

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for SQL Server: TTE-TOD-TK renewal year 3

INVOICE TO			SHIP TO		
ENVIRONMENTAL PROTECTION OFFICE OF ADMINISTRATION 601 57TH ST SE CHARLESTON WV US			ENVIRONMENTAL PROTECTION 601 57TH ST CHARLESTON WV US		

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
12	Toad for SQL Server: TTE-TOD-TK renewal year 4	2.00000	EA	\$3,301.68	\$6,603.36

Comm Code	Manufacturer	Specification	Model #
81112200			

Extended Description:
Toad for SQL Server: TTE-TOD-TK renewal year 4

SCHEDULE OF EVENTS

Line	Event	Event Date
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	Document Phase	Document Description	Page 8
DEP2500000017	Final	BTOIT308-25 TOAD for Oracle, Data Modeler, SQL	

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

Quest Software Inc.
Software Transaction Agreement

This Software Transaction Agreement (the “**Agreement**”) is made between you, the Customer (“**Customer**” or “**Ordering Activity**”) and the Provider, as defined below.

1. Definitions. Capitalized terms not defined in context shall have the meanings assigned to them below:

- (a) “**Affiliate**” means any legal entity controlling, controlled by, or under common control with a party to this Agreement, for so long as such control relationship exists.
- (b) “**Appliance**” means a computer hardware product upon which the Software is pre-installed and delivered.
- (c) “**Documentation**” means the then current user manuals and documentation that Provider makes available for the Software either through the electronic download of the Software or from the Support Site, and all copies of the foregoing.
- (d) “**Effective Date**” means the earliest date that Customer signs or accepts this Agreement or an Order (including a signing referencing this Agreement with a Partner).
- (e) “**eStore**” means Provider’s online Software ordering system located at <https://shop.quest.com>.
- (f) “**License Type**” means the model by which the Software is licensed (e.g., by server, by mailbox, by managed user) as indicated in the applicable Order and defined in the Product Guide.
- (g) “**Maintenance Services**” means Provider’s then current maintenance and support offering specified in the applicable Order and made available to Customer as stated in the *Maintenance Services* Section below.
- (h) An “**Order**” is defined in Section 2 (Ordering).
- (i) “**Partner**” means a reseller or distributor that is under contract with Provider or another authorized party and is authorized via such contract to resell the Products and/or Maintenance Services.
- (j) “**Product(s)**” means the Software and/or Appliance(s) provided to Customer by Provider.
- (k) “**Product Guide**” means the document available at https://quest.com/docs/Product_Guide.pdf that contains the Product Terms.
- (l) “**Product Terms**” means the terms associated with each License Type and any other terms associated with an individual Product. The Product Terms for Products in a Signed Order or a Governing Quotation shall be as stated in the Signed Order or Governing Quotation. If no Product Terms are stated in the Signed Order or Governing Quotation, if the Order is placed with a Purchase Order (“PO”) only, if the Order is placed through the eStore, or if the Products are purchased from a Partner, then the Product Terms for such Products shall be as stated in the Product Guide as of the date of the Order or purchase.
- (m) “**Provider**” means Quest Software Inc., with its principal place of business located at 20 Enterprise, Suite 100, Aliso Viejo, CA 92656. If an Order is placed through and approved by an Affiliate of Provider, then that Affiliate shall be the Provider under this Agreement.
- (n) “**Software**” means any and all software that is provided or made available to Customer under this Agreement as well as any new versions and releases of such software that are made available to Customer pursuant to this Agreement, and, where applicable, all copies of the foregoing. Software includes On-Premises Software and SaaS Software (as defined in Appendix A Software License Terms), along with software that is delivered on an Appliance.
- (o) “**Support Site**” means Provider’s website defining support, available at <https://support.quest.com/essentials/support-guide> and <https://support.quest.com/>.
- (p) “**Use**” means Customer’s installation, deployment, access of or provision of access to, or operation of a Product.

2. Ordering. Customer may place an order for Products through (i) an ordering document signed by Customer and Provider (“**Signed Order**”), (ii) a Provider quotation referenced on a PO that states that it is governed exclusively by such quotation (“**Governing Quotation**”) and the applicable GSA Schedule Contract pursuant to which the order was issued, (iii) an order placed through the eStore, (iv) an order placed through a Partner, or (v) a Customer PO submitted to Provider (each of which is referred to herein as an “**Order**”). Each Order shall be Customer’s irrevocable commitment to purchase and pay for the Products and/or Maintenance Services stated in the Order, subject to the cancellation and termination rights set forth in the applicable GSA Schedule Contract and applicable Federal Acquisition Regulation (FAR) and each Order placed with Provider shall be subject to approval by Provider in writing or by performance. Customer may place Orders for professional services and training under Provider’s then current professional services terms.

3. Software License. Subject to Customer’s compliance with the terms of this Agreement, Provider grants to Customer, and Customer accepts from Provider, a non-exclusive, non-transferable (except as otherwise set forth herein) and non-sublicensable license to Use the

quantities of each item of Software licensed from Provider or a Partner within the parameters of the Product Terms associated with the applicable Software and License Type referenced in the Order and as described in Appendix A (a **“License”**). Except for MSP Licenses (as defined in Appendix A), Customer shall only Use the Software to support the internal business operations of itself and its worldwide Affiliates.

4. Restrictions. Customer may not, nor allow any third party to (a) Use the Software except as licensed hereunder, (b) reverse engineer, decompile, or otherwise seek to access the source code of the Software, except to the extent these restrictions are prohibited by applicable law and then only upon advance written notice to Provider, (c) copy, modify, create derivative works of, or remove proprietary notices from the Products or Documentation, (d) resell, sublicense, distribute or rent the Products or Documentation, (e) use the Software to provide a hosted or managed service to third parties, except for MSP Licenses, (f) use the Products or Documentation to create or enhance a competitive offering or for any other purpose which is competitive to Provider, or (g) conduct security or vulnerability tests of the Software, interfere with its operation or circumvent any access, licensing or copying restrictions.

5. Proprietary Rights. Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and treaties, (ii) Provider, its Affiliates and/or its licensors own the copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, (iv) this Agreement does not grant Customer any rights to use Provider’s trademarks or service marks, and (v) Provider reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement.

6. Title, Risk of Loss and Delivery. Provider, its Affiliates and/or its licensors own the title to all Software. Title and risk of loss to an Appliance shall pass from Provider to Customer upon shipment (unless the Appliance is rented, leased or loaned to Customer). Delivery of or access to Products shall be by electronic download, access credentials, or FOB Destination.

7. Payment and Taxes. Customer agrees to pay to Provider (or, if applicable, Partner) the fees specified in each Order, Customer will be invoiced promptly following delivery of, or granting of access to, the Products or prior to the commencement of any renewal Maintenance Period or renewed Software term. Customer shall make all payments due to Provider in accordance with FAR 52-212-4. Any amounts properly invoiced and payable to Provider by Ordering Activity that remain unpaid after the due date and after written notification from Provider, shall be subject to the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315. Amounts payable under this Agreement shall be paid in full without set-off or deduction by the Customer, and such amounts shall not be subject to any other limitations or exclusions, whether under this Agreement or otherwise arising in law.

This Section does not apply to taxes based on Provider’s income. FAR 52.212-4(k) shall take precedence over any contrary provision of this Agreement relating to taxes.

8. Term and Termination.

(a) **Termination.** Ordering Activity’s termination rights shall be governed by FAR 52.212-4(l) and (m) and Provider’s termination rights shall be governed by the FAR 52.212-4(d).

(b) **Effect of License Termination.** Upon termination of this Agreement or expiration or termination of a License for any reason, all rights granted to Customer for the applicable Software shall immediately cease and, Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) remove all copies, installations, and instances of the applicable Software from all Customer computers and any other devices on which the Software was installed, and ensure that all applicable Third Party Users and Clients do the same, (iii) return the applicable Software to Provider together with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items, (iv) cease using the Maintenance Services associated with the applicable Software, (v) pay Provider or the applicable Partner all amounts due and payable up to the date of termination, and (vi) give Provider a written certification, within ten (10) days, that Customer, Third Party Users and Clients, as applicable, have complied with all of the foregoing obligations.

(c) **Survival.** Any provision of this Agreement that requires or contemplates continued performance after (i) termination of this Agreement, (ii) a termination or expiration of a License, or (iii) the expiration of a SaaS Term, is enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration, including, without limitation, the *Restrictions, Export, Payment, Taxes, Effect of License Termination, Survival, Warranty Disclaimer, Indemnity, Limitation of Liability, Confidential Information, Compliance Verification, and General* sections of this Agreement. Termination of this Agreement or a License shall be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement.

9. Export. The Products and Maintenance Services are subject to the export control laws, rules, regulations, restrictions, sanctions and national security controls of the United States, Europe, and other applicable countries and regions (the **“Export Controls”**) and each party agrees to abide by the Export Controls. Customer hereby agrees to use the Products and Maintenance Services in accordance with the Export Controls, and shall not Use, export, re-export, sell, lease or otherwise transfer the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls. Customer is solely responsible for obtaining all necessary licenses or authorizations relating to the Use, export, re-export, sale, lease or transfer of the Products and for ensuring compliance with the requirements of such licenses or authorizations.

10. Maintenance Services. If ordered, Maintenance Services are provided in accordance with Provider’s then current Support Guide available on Provider’s Support Site, which describes the Maintenance Services, including support offering levels, severity levels, response times, and contact information. The time period during which Customer is entitled to receive Maintenance Services is the **“Maintenance Period.”**

The Support Guide is incorporated in this Agreement and the non-material terms and conditions are subject to change at Provider's discretion; however, Provider will not materially reduce the level of technical support services provided during a paid support period. As part of the Maintenance Services Provider will (i) make available new releases and corrections of the Software when Provider makes them generally available to its supported customers at no additional license fee, and (ii) provide technical support for issues that are demonstrable in the currently supported release(s) of the Software. Maintenance Services fees are due and payable annually at the time of purchase of a support period. Except for non-perpetual Licenses (for which the Maintenance Period is equal to the duration of the License) and unless otherwise stated in the Order, each License includes an initial Maintenance Period beginning on the date of the initial delivery of the Software following an Order and lasting for twelve (12) months thereafter.

Following the initial Maintenance Period for perpetual Licenses and subject to availability at then current prices stated on a Maintenance Services renewal Quotation provided by Provider, Maintenance Services shall only be provided to Customer pursuant to a separate Order (each, a "Renewal Maintenance Period"). Maintenance Services must be ordered for all copies of each licensed Product and may not be purchased for a subset of licenses of a Product only. The procedure and fees for reinstating Maintenance Services for Software after it has lapsed is posted on the Support Site. Any payment of fees in excess of the amount of past fees for the lapsed period is prohibited. The rate of any past fees shall be at the current GSA Schedule rate.

11. Warranties and Remedies.

(a) **Software Warranty and Remedies.** Provider warrants that, during the applicable Warranty Period, the operation of the Software, as provided by Provider, will substantially conform to its Documentation (the "**Software Warranty**"). For On-Premises Software, the warranty shall be for ninety (90) days following the initial delivery of the Software pursuant to an Order; and for SaaS Software shall be the duration of the SaaS Term, (the "**Warranty Period**").

Provided Customer notifies Provider of any breach of the foregoing warranty within the Warranty Period, Provider shall at its option (i) correct or provide a workaround for reproducible errors in the Software that caused the breach within a reasonable time considering the severity of the error and its effect on Customer or (ii) refund the license fees paid for the applicable nonconforming On-Premises Software in exchange for a return of such nonconforming On-Premises Software or provide a credit of the fees allocable to the period during which the SaaS Software was not operating in substantial conformance with the applicable Documentation. These are Customer's sole and exclusive remedies and Provider's sole obligation for any such breach of the Software Warranty.

(b) **Appliance Warranties.** Appliances are warranted in accordance with the warranty document delivered with the Appliance and/or included on the hardware manufacturers' website.

(c) **Warranty Exclusions.** The warranties set forth in this Section shall not apply to any non-conformance (i) that Provider cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the applicable Product or by using the Product in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Product by anyone other than Provider.

(d) **Warranty Disclaimer.** THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION OR IN A SIGNED ORDER OR GOVERNING QUOTATION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY PROVIDER HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, INTEROPERABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. PROVIDER DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS.

(e) **High-Risk Disclaimer.** THE PRODUCTS ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE AND MAY NOT BE USED IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, LIFE SUPPORT MACHINES, OR ANY OTHER POTENTIALLY LIFE CRITICAL USES (COLLECTIVELY, "**HIGH RISK ACTIVITIES**"). PROVIDER SHALL NOT BE LIABLE FOR ANY CLAIMS BY CUSTOMER IN RESPECT OF OR WHICH RELATE DIRECTLY OR INDIRECTLY TO HIGH-RISK ACTIVITIES.

12. Indemnity.

(a) **Provider Software Indemnity.** Provider shall indemnify Customer from any claim, suit, action, proceeding brought by a third party (a "**Third Party Claim**") to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which Provider has authorized Customer to use the Software, including the country to which the Software is delivered to Customer, or misappropriates a trade secret in such country. Provider shall have no obligation hereunder to indemnify Customer as described under section (a) above against any Third Party Claim resulting from (1) Use of the Software other than as authorized by this Agreement, a Signed Order, or a Governing Quotation; (2) a modification of the Software other than by Provider, (3) Customer's Use of any release of the Software after Provider has provided a non-infringing update at no charge, or (4) Use of the Software in conjunction with other products, services, or data not supplied by Provider if the infringement would not have occurred but for such use. If, as a result of a Third Party Claim or an injunction, Customer must stop using any Software ("**Infringing Software**"), Provider shall at its expense and option either (1) obtain for Customer the right to continue using the Infringing Software, (2) replace the Infringing Software with a functionally equivalent non-infringing product, (3) modify the Infringing Software so that it is non-infringing, or (4) terminate the License for the Infringing

Software and (A) for On-Premises Software, accept the return of the Infringing Software and refund the license fee paid for the Infringing Software, pro-rated over a sixty (60) month period from the date of initial delivery of such Software following an Order, or (B) for SaaS Software, discontinue Customer's right to access and use the Infringing Software and refund the unused pro-rated portion of any license fees pre-paid by Customer for such Software. This Section states Provider's entire liability and its sole and exclusive indemnification obligations with respect to a Third Party Claim and Infringing Software. Notwithstanding the foregoing, if the Ordering Activity is an agency or instrumentality of the U.S. Government, the U.S. Department of Justice shall represent the Government in any such proceedings in accordance with 28 USC 516, and any termination rights shall be subject to the Government's authorization and consent rights under 28 USC 1498.

(b) **Export Compliance Indemnity.** Either party shall indemnify the other from and against a Third Party Claim arising from their own party's violation of Section 9 (Export).

(c) **Customer Data Indemnity.** Intentionally Omitted.

(d) **Indemnification Obligations.** Indemnification for a Third Party Claim shall exclusively consist of the following: Provider shall (1) defend or settle the Third Party Claim at its own expense, (2) pay any judgments finally awarded against Customer under a Third Party Claim or any amounts assessed against Customer in any settlements of a Third Party Claim, and (3) reimburse Customer for the reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees, it necessarily incurs in responding to the Third Party Claim. Provider's obligations are conditioned upon Customer (i) giving prompt written notice of the Third Party Claim to Provider, (ii) permitting Provider to retain sole control of the investigation, defense or settlement of the Third Party Claim as long as such settlement shall not include a financial obligation on or admission of liability by Customer, and (iii) providing Provider with cooperation and assistance as Provider may reasonably request in connection with the Third Party Claim.

13. Limitation of Liability.

(A) EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE STATED IN SUBSECTION (C) BELOW, IN NO EVENT SHALL CUSTOMER OR ITS AFFILIATES OR PROVIDER, ITS AFFILIATES OR SUPPLIERS BE LIABLE FOR (X) ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR (Y) LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF ANTICIPATED SAVINGS, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA, HOWSOEVER ARISING, WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES.

(B) LIABILITY CAP. EXCEPT OTHERWISE STATED IN SUBSECTION (C) BELOW, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF CUSTOMER AND ITS AFFILIATES AND PROVIDER, ITS AFFILIATES AND SUPPLIERS, FOR DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL BE THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER OR ITS AFFILIATES FOR THE ON-PREMISES PRODUCTS THAT ARE THE SUBJECT OF THE BREACH.

FOR MAINTENANCE SERVICES OR A PRODUCT SUBJECT TO RECURRING FEES SUCH AS SAAS SOFTWARE, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY SHALL BE THE ANNUALIZED AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH MAINTENANCE SERVICE OR PRODUCT GIVING RISE TO THE BREACH.

(C) EXCLUSIONS FROM LIABILITY CAP. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT A PARTY'S LIABILITY FOR: (I) ANY AMOUNTS DUE AND PAYABLE TO PROVIDER UNDER THIS AGREEMENT; (II) ANY BREACH OF THE *RESTRICTIONS* SECTION; (III) INDEMNITY OBLIGATIONS UNDER THE *INDEMNITY* SECTION; OR (IV) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW.

The waivers and limitations in this Limitation of Liability section apply regardless of the form of action, whether in contract, tort (including negligence), strict liability, breach of statutory duty or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose and even if a party has been advised of the possibility of such liabilities or failures.

THE FOREGOING EXCLUSION/LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM PROVIDER'S NEGLIGENCE; (2) FOR FRAUD; (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW OR (4) EXPRESS REMEDIES PROVIDED UNDER ANY FAR, GSAR OR SCHEDULE 70 SOLICITATION CLAUSES INCORPORATED INTO THE CONTRACT.

14. Confidential Information

(a) **Definition.** "**Confidential Information**" means information or materials disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer, and the terms and conditions of this Agreement.

Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the Effective Date; (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third party without that third party's breach of agreement or obligation of trust; or (iv) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party's Confidential Information

(b) **Obligations.** The Receiving Party shall (i) not disclose the Disclosing Party's Confidential Information to any third party, except as permitted in subsection (c) below, and (ii) protect the Disclosing Party's Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party's Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this Section shall apply to all disclosures of the parties' Confidential Information as of the Effective Date, whether or not specifically arising from a party's performance under this Agreement.

(c) **Permitted Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent to any of its Affiliates, directors, officers, employees, consultants, contractors or representatives (collectively, the "**Representatives**"), but only to those Representatives that (i) have a "need to know" in order to carry out the purposes of this Agreement or to provide professional advice in connection with this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section. The Receiving Party shall be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would be a breach of this Agreement. Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction. Provider recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

15. Data Protection.

(a) **Data Privacy.** Provider shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to this Agreement, such as but not limited to, the California Consumer Privacy Act as amended by the California Privacy Rights Act, the General Data Protection Regulation, including any implementation act(s) related thereto, or any other applicable laws regulations and other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data ("**Privacy Laws**"). Customer shall comply with the Federal Privacy Laws of the United States. Each party is responsible for obtaining any necessary authorizations and consents prior to disclosing personal data to the other party or to any third party. The terms "controller", "personal data" and "processing" used in this Section shall have the meaning set out in the applicable Privacy Laws. Either party may use personal data consisting of ordinary business contact data (e.g., name, phone number, email address, etc.) in its capacity as a controller strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the party's business relationship and performance of their obligations under this Agreement.

(b) **General Security.** Details on Provider's information security practices, data incident response policies, technical and organizational measures, and software development security practices are available at: <https://www.quest.com/legal/security.aspx> (collectively "Security Site"). Customer agrees that Provider may modify its Security Site so long as it does not materially decrease the overall level of protection provided.

16. License Verification.

(a) **Reporting and Self-Audit.** Customer shall maintain and use systems and procedures that allow Customer to accurately and completely track, document, and report Customer's installations, deployment, access of or provision of access to, or operation of each Product in the quantities and versions used in compliance with the Product Terms and this Agreement and allow Provider to audit the same (the "**Audit**"). Customer agrees it will perform an internal audit of Software quantities in use upon Provider's request not more than once a year and will use its best efforts to keep full and accurate accounts that may be used to properly ascertain and verify numbers of licenses and authorized use. Upon Provider's written request, Customer will provide within 30 calendar days of such request audit reports (signed by an authorized representative) to Provider from Customer's internal audit records not more than once a year as the sole means of satisfying the Provider's requests for audit. Customer shall notify Provider of the software quantity no later than 30 calendar days, after the request that the Customer perform a self-audit. Customer shall provide and will require its Clients and Third Party Users to provide, their full cooperation and assistance with such audit and provide access to the applicable records and computers.

(b) **Confidentiality.** Provider agrees that any Customer information gathered during the performance of an audit shall be Customer's Confidential Information under this Agreement. Customer agrees that it will not require any further confidentiality or nondisclosure agreements to be executed by Provider or its designated agents in connection with the Audit. Prior to the Audit, Provider shall ensure that its agents are subject to confidentiality obligations at least as protective as those set forth herein.

(c) **Excess Use.** If an Audit indicates that Customer's installations, deployment, access of or provision of access to, or operation of each Product exceeds the quantity of licenses owned or is otherwise not in compliance with the scope of the license granted ("**Overuse**"), then

Customer will be invoiced for the over-deployed quantities at Provider's then current GSA Schedule list price plus the applicable Maintenance Service fees. All such amounts shall be payable in accordance with this Agreement. Strict performance by Customer in accordance with this provision is an express condition to all or any licenses granted in this Agreement.

17. General.

(a) **Governing Law and Venue.** Disputes regarding this Agreement shall be governed by applicable Federal law of the United States. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated.

(b) **Assignment.** Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of this Agreement, the Licenses granted under this Agreement or any other rights, interest or obligations hereunder, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order, or otherwise without the prior written consent of Provider. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.

(c) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible by law to affect the intent of the parties and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite any failure or unenforceability thereof. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.

(d) **Use by U.S. Government.** The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government is prohibited except as expressly permitted by the terms of this Agreement. In addition, when Customer is a U.S. government entity, the language in Subsection (a)(ii) of the *Infringement Indemnity* Section of this Agreement and the *Injunctive Relief* Section of this Agreement shall not be applicable.

(e) **Notices.** All notices provided hereunder shall be in writing and addressed to the legal department of the respective party or to such other address as may be specified in an Order or in writing by either of the parties to the other in accordance with this Section. Except as may be expressly permitted herein, notices may be delivered personally, sent to an email address specified by the receiving party, sent via a nationally recognized courier or overnight delivery service, or mailed by first class mail, postage prepaid. All notices, requests, demands or communications shall be deemed effective upon personal delivery or, if sent by mail, four (4) days following deposit in the mail in accordance with this paragraph. Provider may also send operational notices via the SaaS Software, Documentation, or make available on the Support Site.

(f) **Disclosure of Customer Status.** Provider may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Provider in its marketing communications, to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

(g) **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(h) **Injunctive Relief.** Intentionally Omitted.

(i) **Force Majeure.** Excusable delays shall be governed by FAR 552.212-4(f).

(j) **Equal Opportunity.** Provider is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).

(k) **Headings.** Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."

(l) **Legal Fees.** Intentionally Omitted.

(m) **Entire Agreement.** This Agreement contains the total agreement between the two parties regarding the subject matter covered herein and supersedes any other agreements, written, oral, expressed, or implied, including any confidentiality agreement between the parties. Unless there is a prevailing signed Agreement between the Parties, all Orders are governed solely and exclusively by this Agreement, the GSA Schedule contract pursuant to which the Order(s) is placed, and any additional or varying terms stated on a Signed Order or a Governing Quotation. In the event of a conflict between the terms of this Agreement and the terms contained in a Signed Order or Governing Quotation, the terms of a Signed Order or Governing Quotation shall control. For all other Orders, the terms of this Agreement shall exclusively control. Neither this Agreement, nor an Order, may be modified or amended except by a written agreement executed by a duly authorized

representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or an Order and Customer agrees that all additional or inconsistent terms that may be contained in any purchase order or other documentation submitted by Customer in connection with an Order are not applicable. Customer agrees that all of Customer's licenses for such Product, regardless of license date, will be governed by this version of the Software Transaction Agreement.

APPENDIX A: SOFTWARE LICENSE TERMS

(1) **On-Premises Software.** If Software is delivered to Customer for (i) Customer's installation and use on its own equipment or (ii) pre-installed by Provider on an Appliance ("**On-Premises Software**"), the License term shall be perpetual (unless otherwise stated on the Order) and shall also include the right to (i) make a reasonable number of additional copies of the On-Premises Software to be used solely for non-productive archival or passive disaster recovery purposes, provided such copies are kept in a secure location and are not used for production purposes unless the associated primary copy of the On-Premises Software is no longer being used for production purposes, and (ii) make and use copies of the Documentation as reasonably necessary to support Customer's authorized users in their Use of the On-Premises Software. Each License for On-Premises Software shall only be installed by Customer in the country in which the On-Premises Software is initially delivered to Customer.

(2) **Software as a Service.** If an Order provides Customer with a right to access and use Software installed on equipment hosted by Provider or its suppliers ("**SaaS Software**"), the License for such SaaS Software shall be granted for the duration of the term stated in the Order (the "**SaaS Term**"), as such SaaS Term may be extended by automatic or agreed upon renewals. If any item of On-Premises Software to be installed on Customer's equipment is provided in connection with SaaS Software, the License duration for such Software shall be for the corresponding SaaS Term, and Customer shall promptly install any updates to such Software as may be provided by Provider. "**SaaS Environment**" means the systems to which Customer is provided access in connection with its use of the SaaS Software.

(a) **Availability.** Provider will make commercially reasonable efforts to make the SaaS Software available twenty-four hours a day, seven days a week except for scheduled maintenance, the installation of updates, those factors that are beyond the reasonable control of Provider, Customer's failure to meet any minimum system requirements communicated to Customer by Provider, and any breach of the Agreement or this Addendum by Customer that impacts the availability of the SaaS Software. Provider shall provide reasonable advance notice to Customer of any scheduled maintenance. Provider can limit or suspend Customer's access to the SaaS Software if it is sufficiently probable that the continued use of the SaaS Software may result in harm to the SaaS Software, other Provider customers, or the rights of third parties in such a way that immediate action is required to avoid damages or Customer is in breach of the Agreement. If circumstances allow and if reasonably practicable, Provider will give Customer notice so that Customer may seek to promptly avoid the issue and avoid suspension.

(b) **Customer Data.** Customer represents and warrants that it (i) has all rights necessary to use any data, content or materials that Customer (including its users) submits or includes from third-party platforms to the SaaS Environment ("**Customer Data**") without violating third-party intellectual property, privacy or other rights and grants Provider the right to access, transmit, process and use Customer Data to provide and support the SaaS Software as set out in the Agreement, and (ii) will use industry-standard measures to avoid introducing viruses, malicious code or similar harmful materials into the SaaS Environment. Between the parties, Customer is responsible for the content and accuracy of Customer Data.

(c) **Data Processing.** If Provider processes any personal data on behalf of the Customer through the Customer's use of the SaaS Software, then Provider's standard data processing addendum that is available upon written request, or such separate terms as mutually agreed in writing, will apply to such data processing and will become a part of this Agreement. For clarity, any data protection or security agreement relating to data processed under this Agreement will always be considered a part of this Agreement and not a stand-alone agreement.

(d) **Cooperation.** Customer shall cooperate with Provider's reasonable investigation of SaaS Environment outages, security issues, and any suspected breach of this *Software as a Service* section.

(3) **MSP License.** If an Order indicates that Software is to be used by Customer as a managed service provider, Customer shall be granted a License to use such Software and the associated Documentation to provide Management Services (a "**MSP License**"). "**Management Services**" include, without limitation, application, operating system, and database implementation, performance tuning, and maintenance services provided by Customer to its customers (each, a "**Client**" or "**MSP Client**"). If an Order indicates that an MSP License will be used to support a specific Client, Customer may not Use the MSP License to support any Client other than the Client named on the Order.

(a) **Customer Responsibilities.** Customer shall ensure that (i) each Client only uses the Software and Documentation as part of the Management Services provided to it by Customer, (ii) such use is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the *Restrictions* and *Export* sections of this Agreement, and the applicable Order, and (iii) each Client cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent. Customer agrees that the acts and omissions of its Clients in connection with their use of the Software and Documentation shall be deemed the acts and omissions of Customer.

(b) **Client Support.** Customer shall be solely responsible for supporting its Client, including but not limited to, conducting all activities required to install the Software and for providing any training to its Client and any system integrators regarding the installation, use and

operation of the Software. Customer will provide Management Services to its Client in a manner that does not degrade the goodwill and reputation of Provider or the Software and will not undertake any action that would impair or disrupt Provider's relationship with its customers or potential customers. Customer will make no representations or warranties related to the Software in excess of Provider's representations or warranties contained in this Agreement. At the conclusion of any Management Services engagement with a Client, Customer shall promptly remove any Software installed on its Client's computer equipment or require the Client to do the same.

(c) *Perpetual MSP License Assignment.* In the event Customer acquires a perpetual MSP License, Customer may assign the Software to its Client for the Clients' internal use, provided that Customer obtains Provider's prior written consent for the assignment and the Client agrees to be bound by Provider's then current license agreement. Customer understands and agrees that Customer shall have no right to charge a fee to its Client(s) for such an assignment and that following such an assignment, Customer shall have no further rights to use the assigned Software, and the applicable License shall terminate in accordance with the terms of this Agreement. Any attempted transfer or assignment of the Software to a Client in violation of the foregoing shall be null and void.

(4) **Evaluation License.** If an Order indicates that Software is to be used by Customer for evaluation purposes, or if Software is otherwise obtained from Provider for evaluation purposes, Customer shall be granted a License to Use such Software and the associated Documentation solely for Customer's own non-production, internal evaluation purposes (an "**Evaluation License**"). Each Evaluation License shall be granted for an evaluation period of up to thirty (30) days from the date of delivery of the On-Premises Software or from the date that access is granted to the SaaS Software, plus any extensions granted by Provider in writing (the "**Evaluation Period**"). There is no fee for an Evaluation License during the Evaluation Period, however, Customer is responsible for any applicable shipping charges or taxes which may be incurred, and any fees which may be associated with Use beyond the scope permitted herein. Customer will only be granted one Evaluation License per release of any item of Software. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Evaluation Licenses are provided "AS IS" and that Provider does not provide warranties or Maintenance Services for Evaluation Licenses.

(5) **Freeware License.** Intentionally Omitted.

(6) **Use by Third Parties.** Customer may allow its services vendors, outsourcing providers, and contractors (each, a "**Third Party User**") to Use the Software and Documentation, provided that Customer ensures that (i) the Third Party User's access to or use of the Software and Documentation is subject to the restrictions and limitations contained in this Agreement, including, but not limited to those in the Export Section, and the applicable Order(s), (ii) the Third Party User cooperates with Provider during any compliance review that may be conducted by Provider or its designated agent, and (iii) the Third Party User promptly removes any Software installed on its computer equipment upon the completion of the Third Party's need to access or use the Software as permitted by this Section.

(7) **Open Source.** Software distributed to Customer (if any) may include third-party open source software ("**Open Source**") as listed in the Documentation or by Provider upon request. If Customer elects to use the Open Source on a stand-alone basis, that use is subject to the applicable Open Source license and not this Agreement.

End of Appendix A / End of Software Transaction Agreement