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Header @ 4

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General Information [Contact](#) [Default Values](#) [Discount](#) [Document Information](#) [Clarification Request](#)

Procurement Folder: 1782546

Procurement Type: Central Master Agreement

Vendor ID: VS0000036433

Legal Name: International Business Machines Corporation

Alias/DBA:

Total Bid: \$9,123.84

Response Date: 09/23/2025

Response Time: 12:50

Responded By User ID: JoniOrr

First Name: Tony

Last Name: DeVore

Email: Matthew.DeVore@ibm.com

Phone: +15715972470

SO Doc Code: CRFQ

SO Dept: 0702

SO Doc ID: TAX2600000002

Published Date:

Close Date: 9/23/25

Close Time: 13:30

Status: Closed

Solicitation Description: Open ended contract for cloud-base Storage Services

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: 1782546
Solicitation Description: Open ended contract for cloud-base Storage Services
Proc Type: Central Master Agreement

Solicitation Closes	Solicitation Response	Version
2025-09-23 13:30	SR 0702 ESR09232500000002167	1

VENDOR

VS0000036433
International Business Machines Corporation

Solicitation Number: CRFQ 0702 TAX26000000002
Total Bid: 9123.840000000000145519152283 **Response Date:** 2025-09-23 **Response Time:** 12:50:11
Comments:

FOR INFORMATION CONTACT THE BUYER
David H Pauline
304-558-0067
david.h.pauline@wv.gov

Vendor
Signature X

FEIN#

DATE

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

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	Cloud Storage for GenTax	12.00000	MO	760.320000	9123.84

Comm Code	Manufacturer	Specification	Model #
81162000			

Commodity Line Comments: The monthly cost is \$760.32 and for 12 months is \$9,123.84.
 Here is a breakdown of pricing based on bid:
 Cloud based monthly storage:
 Unit Cost: .0144/GB
 Price per month: \$691.20
 Write Operations x10,000:
 Unit Cost: .0100/1K requests
 Price per month: \$0.60
 List and create container operations monthly
 Unit Cost: n/a
 Price per month: n/a
 Read operations
 Unit Cost: \$0.0100/10K operations
 Price per month: \$0.05
 All other operations monthly charge
 Unit Cost: Advanced support
 Price per month: \$69.12
 SFTP for Storage
 Unit Cost: n/a
 Price per month: n/a
 Upfront Costs:
 Unit Cost: n/a
 Price per month: \$0

Extended Description:
 Cloud Storage for GenTax

Data Processing Addendum

This Data Processing Addendum (DPA) and its applicable DPA Exhibit (to be provided after project kickoff), apply to the Processing of Personal Data by IBM (Client Personal Data) in order to provide services (Services) pursuant to the Agreement between Client and IBM. This DPA is incorporated into the Agreement and the DPA Exhibits for each Service will be provided in the applicable Statement of Work (SOW). In the event of conflict, the DPA Exhibit prevails over the DPA which prevails over the rest of the Agreement.

Capitalized terms used have the meanings given below.

Controller means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of Processing Personal Data.

Data Subject means a natural person who can be identified, directly or indirectly.

Data Protection Laws means all legislation and regulations applicable to the Processing of Personal Data under the Agreement.

Non-Adequate Countries means countries not providing an adequate level of data protection pursuant to Data Protection Laws or a decision of a Supervisory Authority.

Personal Data means any information relating to a Data Subject.

Personal Data Breach means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Client Personal Data.

Process or Processing means any operation or set of operations performed on Client Personal Data, including storage, use, access and reading.

Processor means a natural or legal person which Processes Client Personal Data on behalf of Client.

Subprocessor means any other Processor IBM engages to Process Client Personal Data.

Supervisory Authority means an independent public authority responsible for monitoring the application of the applicable Data Protection Laws.

1. Processing

- 1.1 Client is: (a) a Controller of Client Personal Data; or (b) acting as Processor on behalf of other Controllers and has been instructed by and obtained the authorization of the relevant Controller(s) for the Processing of Client Personal Data by IBM as Client's subprocessor as set out in this DPA. Client appoints IBM as Processor to Process Client Personal Data. If there are other Controllers, Client will identify and inform IBM of any such other Controllers if required by the applicable Data Protection Laws.
- 1.2 A list of categories of Data Subjects, types of Client Personal Data and Processing activities is set out in the applicable DPA Exhibit for each Service. The duration of the Processing corresponds to the duration of the Service. The purpose and subject matter of the Processing is the provision of the Service as described in the Agreement.
- 1.3 IBM will Process Client Personal Data to provide, secure and improve the Service and other IBM services that utilize the same underlying technology and tools, according to Client's documented instructions or as otherwise set out in the Agreement. The scope of Client's instructions for the Processing of Client Personal Data is defined by the Agreement, and, if applicable, by Client's use of the features of the Service.

When providing Services, IBM will not further combine, use, retain or disclose Client Personal Data outside of the direct business relationship between IBM and Client or for any purpose other than to perform the Services and business purposes specified in the Agreement. IBM will not sell or share Client Personal Data as required by the applicable Data Protection Laws.

- 1.4 Client may provide further instructions regarding the Processing of Client Personal Data (Additional Instructions) as described in Section 10.2 and IBM will use commercially reasonable efforts to follow any Additional Instructions.

If IBM notifies Client that an Additional Instruction is not feasible or that IBM can no longer meet its obligations as Processor, the parties shall work together to find an alternative. If IBM notifies Client that no alternative is feasible, Client may terminate the affected Service, in accordance with any applicable terms of the Agreement. If IBM believes an instruction violates the applicable Data Protection Laws, IBM will immediately inform Client, and may suspend the performance of such instruction until Client has modified or confirmed its lawfulness in documented form.

- 1.5 Client shall serve as a single point of contact for IBM. As other Controllers may have certain direct rights against IBM, Client undertakes to exercise all such rights on their behalf and to obtain all necessary permissions from the other Controllers. IBM shall be discharged of its obligation to inform or notify another Controller when IBM has provided such information or notice to Client. Similarly, IBM will serve as a single point of contact for Client with respect to its obligations as a Processor under this DPA.

- 1.6 Each party will comply with its respective obligations under the applicable Data Protection Laws for the processing of Client Personal Data and is responsible for determining the requirements of laws or regulations applicable to its own business. Client will not use the Services in a manner that would violate applicable Data Protection Laws.

2. Technical and Organizational Measures

Client and IBM agree that IBM will implement and maintain the technical and organizational measures set forth in the applicable DPA Exhibit (TOMs) which ensure a level of security appropriate to the risk for IBM's scope of responsibility. TOMs are subject to technical progress and further development. Accordingly, IBM reserves the right to modify the TOMs provided that the functionality and security of the Services are not degraded.

3. Data Subject Rights and Requests

IBM will inform Client of requests from Data Subjects exercising their Data Subject rights addressed directly to IBM, where the Data Subject has provided information to identify Client. If not, IBM will ask the Data Subject to redirect its request to Client. Client shall be responsible to handle such requests of Data Subjects. IBM will reasonably assist Client in handling such Data Subject requests in accordance with Section 10.2.

4. Third Party Requests and Confidentiality

- 4.1 IBM will not disclose Client Personal Data to any third party, unless authorized by the Client or required by law. If a government or Supervisory Authority demands access to Client Personal Data:

- a. IBM will notify Client of such request to enable Client to take all necessary actions to communicate directly with the relevant authority and respond to such request.
- b. If IBM is prohibited by law to notify Client of such request, it will make best reasonable efforts to challenge such prohibition and it commits to providing the minimum amount of information permissible when responding, based on a reasonable interpretation of the order.
- c. IBM will provide to Client general information relative to any such request received from a government or Supervisory Authority during the preceding 12-month period.

- 4.2 IBM requires all of its personnel authorized to Process Client Personal Data to commit themselves to the requirements of this section.

5. Audit

Subject to the appropriate confidentiality and Section 10.2, IBM shall allow for, and contribute to, audits conducted by Client or another auditor mandated by Client, who shall be not a direct competitor of IBM, including inspections to the extent required by the applicable Data Protection Laws, in accordance with the following procedures:

- a. IBM will provide Client or its mandated auditor with the most recent certifications and/or summary audit report(s), which IBM has procured to regularly test, assess and evaluate the effectiveness of the TOMs.
- b. IBM will reasonably cooperate with Client by providing available additional information concerning the TOMs, to help Client better understand such TOMs.
- c. If further information is needed by Client to comply with its own or other Controllers audit obligations or a competent Supervisory Authority's request, Client will inform IBM in writing to enable IBM to provide such information or to grant access to it.
- d. To the extent it is not possible to otherwise satisfy an audit right mandated by applicable law or expressly agreed by the Parties, only legally mandated entities (such as a governmental regulatory agency having oversight of Client's operations), Client or its mandated auditor may conduct an onsite visit of the IBM facilities used to provide the Service, during normal business hours and only in a manner that causes minimal disruption to IBM's business, subject to coordinating the timing of such visit in order to reduce any risk to IBM's other customers.

6. Return or Deletion of Client Personal Data

Upon termination or expiration of the Agreement IBM will either delete or return Client Personal Data in its possession as set out in the respective DPA Exhibit, unless otherwise required by applicable law.

7. Subprocessors

7.1 Client authorizes the engagement of the Subprocessors listed in the respective DPA Exhibit. IBM will notify Client in advance of any addition or replacement of the Subprocessors, as reported in the applicable DPA Exhibit or in the Agreement. Within 30 days after IBM's notification, Client may object on the basis that such Subprocessor does not provide sufficient guarantees to meet the requirements under the applicable Data Protection Laws. Client's objection shall be in writing and include Client's specific reasons for its objection and options to mitigate, if any. If Client does not object within such period, the additional or replacement Subprocessor may be commissioned to Process Client Personal Data. IBM shall impose substantially similar but no less protective data protection obligations as set out in this DPA on any approved Subprocessor prior to the Subprocessor initiating any Processing of Client Personal Data.

7.2 If Client reasonably objects to the addition of a Subprocessor and IBM cannot reasonably accommodate Client's objection, IBM will notify Client. Client may terminate the affected Services, otherwise the parties shall cooperate to find a feasible solution in accordance with the dispute resolution process, as set out in the Agreement, if applicable.

8. Transborder Data Processing and Country Required Terms

8.1 In the case of a transfer of Client Personal Data to Non-Adequate Countries, the parties shall cooperate to ensure compliance with the applicable Data Protection Laws by relying on the Transborder Data Processing information set forth in Exhibit "D", as applicable. If Client believes the measures are not sufficient to satisfy the legal requirements, Client shall notify IBM and the parties shall work together to find an alternative.

8.2 Depending on the applicable Data Protection Laws, the parties can be subject to additional country required terms set forth in Exhibit "D".

9. Personal Data Breach

IBM will notify Client without undue delay after becoming aware of a Personal Data Breach with respect to the Services. IBM will promptly investigate the Personal Data Breach if it occurred on IBM infrastructure or in another area IBM is responsible for and will assist Client as set out in Section 10.

10. Assistance

- 10.1 IBM will assist Client by technical and organizational measures for the fulfillment of Client's obligation to comply with the rights of Data Subjects and in compliance with Client's obligations relating to the security of Processing, the notification and communication of a Personal Data Breach and the data protection impact assessment, including prior consultation with the responsible Supervisory Authority, if required, taking into account the nature of the processing and the information available to IBM.
- 10.2 Client will make a written request for any assistance, or any Additional Instructions, referred to in this DPA. IBM may charge Client no more than a reasonable charge to perform such assistance or an Additional Instruction, such charges to be set forth in a quote and agreed in writing by the parties, or as set forth in an applicable change control provision of the Agreement. If Client does not agree to the quote, the parties agree to reasonably cooperate to find a feasible solution in accordance with the dispute resolution process.



IBM Cloud for Government

This Service Description describes IBM's Cloud for Government available to Clients under the Federal Cloud Service Agreement. Client means the contracting party and its authorized users and recipients of the Cloud Service.

Cloud Services

IBM Cloud for Government includes Infrastructure Services that allow Client to deploy selected services and Client content, including Client applications and data, within IBM's Cloud for Government public Cloud for Government offering environment. Cloud for Government also supports Client's hybrid cloud strategy with Cloud for Government dedicated and local offerings, which allow Client to deploy selected services in a dedicated IBM data center environment or directly on Client's own local infrastructure.

Infrastructure Services provide access to computing, storage, and network resources to enable Client to quickly provision or set-up cloud computing infrastructure environments.

Infrastructure Services are self-managed by Client, including selection of available data centers and selection, configuration, and management of services (such as security, backup, failover, restore, and monitoring), which Client determines are necessary to meet Client's requirements and applicable laws, including regulatory requirements for content.

Cloud for Government User Interface (UI)

Upon IBM's acceptance of Client's Purchase Order or other authorized contract or funding document, IBM will activate a Cloud for Government Services account to enable Client's order and manage available Cloud Services via the Cloud for Government using the standard procedures via the on-line Cloud for Government Portal, or, if applicable, set-up of the dedicated or local environment. Client can use the Cloud for Government UI, which consists of on-line portals, mobile apps, APIs, command line interfaces, or, where available, assisted ordering (Client order placement via IBM sales support staff).

The Cloud for Government UI, support, and other information may be presented only in English and English governs any conflict with a translation. Client is responsible for actions of Client's authorized users, including their use and associated charges for such use. Client is responsible for saving, maintaining, and protecting all access keys generated for each Cloud Service.

The "Effective Date" for a Cloud Services or any upgrade is when the order is accepted by IBM. You will receive notice of acceptance through the Portal. Upon acceptance, the Portal ticketing system will initiate or change Cloud Services based upon Client's selections and Client may begin using the Cloud Services, including creating or uploading content.

Client is responsible for monitoring the term and funding allocated on Client's current Purchase Order or Contract and issue a modification prior to the term expiration or depletion of funds to continue to use the Cloud Services. All Cloud Services continue until funds are depleted or the term ends on the governing Purchase Order or Contract, or until cancelled by you or upon termination.

Additional Service Descriptions

Additional terms, if any, such as specific service levels, specific data processing and protection provisions, or identification of enabling software, for a specific offering are available by clicking on the offering's "Terms" link in the IBM Cloud UI catalog. Any conflicting terms in the Additional SD that override terms in this base IBM Cloud Service Description or the base agreement will be identified in the Additional SD and accepted by Client by provisioning the Cloud Service.

Cloud Service Use

Specific services and offerings within Cloud for Government have additional terms, such as service levels, unique security provisions, or identification of enabling software, provided in an additional Service Description or Attachment available in the Cloud for Government UI, which override inconsistent provisions in this Service Description. Non-IBM services are provided by the third party service provider under the provider's agreement terms as disclosed in the Cloud for Government UI or via a link to the provider's website. IBM is not a party to such agreements and is not responsible for the provision of or support for the third party services, even if IBM invoices for them. Client should review the additional or third party terms before placing an order or deploying the service. Do not place an order if you do not agree or have the authority to agree with the applicable TPA Agreement terms.

IBM will provide Client at least 30 days' notice in the Cloud for Government UI of any changes to Service Descriptions or Attachments or of the withdrawal of a particular service. Any renewal would constitute the Client's acceptance of the changed terms. IBM may enable Client to continue to use existing instances of a withdrawn service during a transition period. For those services that are identified as Tier 1 in the Cloud for Government UI, IBM will not withdraw the service without making a functional equivalent available or provide in at least five years' notice of the withdrawal.

Client agrees to provide IBM complete access to and control over the required cloud infrastructure during the term of the Cloud Service, except as Client may need to retain access to perform mandatory maintenance and support activities on the infrastructure as described in such requirements.

IBM will maintain and update public instances of the Infrastructure Services on a regular basis during scheduled maintenance windows as published in support documentation available from the Cloud for Government UI portal. IBM will deploy software updates to Client's dedicated and local environments as scheduled in advance, with appropriate notification to Client, with the goal of keeping the dedicated and local environments as scheduled in advance, with reasonably current with the public instances.

Client Solutions

Client may combine the Cloud Service with Client's value add to create a commercially available Client Solution that Client makes available to its end customers. Client agrees to comply with the additional terms of the Attachment for Client Solutions (<https://www-03.ibm.com/software/sla/sladb.nsf/sla/8096WW01>) IBM marketing, credit programs, or other IBM partner support is not provided, except as may be available under an IBM partner program and separate agreement.

Network Access

Infrastructure Services connect to the Cloud for Government private network, the public network (except for services not normally exposed to the public network), and IBM's internal administrative network, and are assigned to a Client dedicated private VLAN. Client may be able to disable public network access as described in Cloud for Government documentation (available in the Cloud for Government UI). The private network enables a VPN connection for administrative access, intra-application communications, communications from different points of delivery/data centers, and for access to shared Infrastructure Service. The administrative VPN enables Client to administer and manage ordered services, and to upload, download, and manage content.

Client has no ownership or transfer rights to any IP address assigned to Client and may not use IP addresses or VLANs not assigned to Client. The IP Address Policy (available in the UI) governs use and provisioning of IP addresses, including IP addresses Client provides. If an Infrastructure Service is suspended, depending on the violation, public network or private network access may be disabled until resolution of the violation. Temporary access using the private network VLAN to remedy a violation may be available. Upon cancellation of the Cloud Services, Client must relinquish use of IP addresses, including pointing the DNS for Client's domain names away from the Cloud Services.

For Cloud for Government dedicated environments, Client's authorized users may access the environment through a secure VPN. IBM will provide the necessary application side, and Client will be responsible for providing the necessary user side, VPN infrastructure.

Policies

Client's requirements and applicable laws, including regulatory requirements, for the type of content Client or its end users may provide or use with the Cloud Service, or any resulting application. The Federal Cloud for Government Cloud Services provided via our Federal Data Centers are FISMA moderate and FEDRAMP compliant. Except for available certifications, a Cloud Service is not designed to any specific security requirements for regulated data, such as personal or sensitive personal information. Client will not include any regulated content which requires additional IBM commitments to meet regulatory requirements, such as export, privacy, or security without specific agreement from IBM.

For payment card data (PCI-regulated content), IBM is responsible only to the extent of physical security of the underlying computing environment and up to specified IBM system authorizations. Client is responsible to determine if PCI DSS requirements apply to Client's or its end users' use of the Cloud Service and implement any additional and necessary measures to meet such requirements.

Data Collection and Content

IBM will not access Client's or Client's end users' content except and only to extent necessary: i) when Client expressly authorizes it; ii) as specifically described in a Service Description, or a mutually agreed addendum; or iii) as required by law. In the event of a legal or governmental request for access to Client's

content, and to the extent reasonably able, IBM will provide notice to Client. For content containing personal information subject to EU Data Privacy regulations, IBM's Data Processing Agreement at <https://www.ibm.com/cloud/info/softlayer-is-now-ibm-cloud> applies, except to the extent that such agreement is superseded by U.S. Federal law or regulation.

Access to the Cloud for Government UI may be suspended at any time for unauthorized access or suspected misuse. Client must promptly report any security concerns, lost or stolen account information, or unauthorized access to <https://www.ibm.com/cloud/info/softlayer-is-now-ibm-cloud>

Service Level Agreements

IBM provides service level agreements (SLAs) for IBM-branded Cloud for Government services. Service levels based on downtime do not include time related to exclusions, Cloud for Government UI unavailability, or time to reload, configure, enable, or access content or include other services indirectly affected by an outage (Downtime).

SLAs are available only if Client is compliant with the Agreement terms and do not apply to any third party including Client's end users. SLAs do not apply to beta, experimental, trial, or no-charge Cloud Services. SLAs are not a warranty and are Client's exclusive remedy for IBM's failure to meet a specified service level.

IBM will validate SLA claims based upon information provided and IBM system records. IBM will provide Cloud for Government UI or other notice of approved credits. IBM's reasonable determination of a credit is final. Client agrees to continue to make payment in full for Cloud Services while an SLA claim is being reviewed. Credits may not reduce payments due for a service below zero for any billing period.

If an IBM Business Partner sold Client a subscription to the Cloud Service, the monthly charge will be calculated on the then-current list price for the service that causes the SLA claim, discounted by 50%.

Exclusions

No credits will be due for failure to meet an SLA because of: scheduled or announced maintenance; problems with Client or community content, technology, designs, or instructions; non-IBM build-packs; unsupported system configurations and platforms; Client infrastructure failures, including network, hardware, facility, or power; Client system administration actions, commands, or file transfers; Client errors or failures to provide

needed information or access to resolve an outage; Client-caused security incidents or Client security testing; or other causes beyond IBM's reasonable control.

For Cloud for Government local environments, even though the Cloud Service is designed and deployed to survive most network or hardware failures, examples of failures or events that could cause an interruption in the expressed as a percentage, is calculated as the total number of minutes in a contracted month minus the total number of minutes of Downtime in that month divided by the total number of minutes in that month.

IBM provides a 99.95% availability SLA for Platform Services: i) configured for high availability and distributed across multiple Cloud for Government public regions; or ii) provisioned across multiple dedicated or local environments in geographically separated data-centers. In addition, IBM provides a 99.5% availability service level for multiple instances of a Platform Service provisioned within a single dedicated or local environment. Client is eligible for a credit as follows:

High Availability Multiple Public Region or Multiple Dedicated/Local Environments Availability Service Level	Single Dedicated/Local Environment Availability Service Level	Credit
< 99.95%	< 99.5%	10%
< 99.90%	< 99.0%	25%

- Client must submit an SLA claim by using the form at control.usgov.softlayer.com and create an SLA request using category "Accounting" for the new ticket. The SLA request must be submitted within 60 days after the end of the contracted month that the service level was missed, providing sufficient information to identify the affected service, error messages, and other information necessary to validate the claim, referencing IBM support tickets, as applicable. The credit will be the highest applicable compensation based on the cumulative availability of the affected service during a contracted month and calculated using the monthly charges for such affected service. Credits cannot exceed 25% of such monthly charge.

Infrastructure Services

IBM will use reasonable efforts to minimize downtime when replacing failed hardware and hardware components or performing a scheduled hardware upgrade. IBM will provide the specified credit:

- for hardware replacement, except as noted below, based on the time to replace, from the time IBM verifies a Client reported hardware failure;
- for planned hardware upgrades, based on the total downtime of the service receiving the upgrade.

Service level time periods exclude any time required to reload the operating system or applications or time performance may be degraded.

For failure to meet a specified service level time period, Client will be eligible for a credit based on the monthly charge for the service affected by the hardware replacement or upgrade, as follows:

Service Level Time Period	Credit Percent *
≤ 2 hours	none
> 2 hours	20%
> 6 hours	40%
> 10 hours	60%
> 14 hours	80%
> 18 hours	100%

* For POWER8 servers, the service level does not apply; IBM will use commercially reasonable efforts to replace a failed POWER8 server, and there is no credit for failure to meet the above service levels.

Technical Support

IBM provides basic level support at no additional charge for the Cloud Services. Advance support is included as part of a Cloud for Government dedicated or local environment for services executed within those environments. Client can select fee-based technical support offerings that provide Client additional support benefits.

Client may submit a support ticket describing the issue in accordance with the applicable support policy procedures. The support policies for Infrastructure Services are available in the Cloud for Government UI

and provide details of available support options, as well as information on access, support business hours, severity classification, and support resources and limitations. IBM uses commercially reasonable efforts to respond to support requests; however, there is no specified response time objective for basic level support.

Unless otherwise agreed in writing, support is available only to Client (and its authorized users) and not to any end users of Client's solutions. Client is solely responsible for providing all customer support and services to its end users.

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Charges

Cloud Services will be charged on a pay-as-you-go basis unless Client purchases a subscription. Client is responsible to provide and keep a funding document timely and current with sufficient funds to cover the term so as not to interrupt Cloud Service. Service charges and pricing metrics (the units measured by the service) will be identified in the Cloud for Government UI or may be defined in a Service Description. The following charging models apply:

Monthly Charges for Cloud Services are generally billed in arrears and begin upon acceptance of a funding document (Purchase Order or Contract) and when the service is available for use, or for services that need to be configured by IBM based on Client input, when the service would be available for use if Client provides timely input.

- ☐ Charges for dedicated or local environments are generally billed in advance and will be based on the specified configuration. There are no usage charges for individual services executed within a dedicated or local environment. Components may indicate a specific configured capacity (such as gigabytes or transactions per second). Since actual capacity in practice for any configuration of the Cloud Service varies depending on many factors, the actual capacity in practice may be more or less than the configured capacity.
- Usage and overage charges are based on actual usage of the specified unit of measure, and billed in arrears. Partial usage is rounded up to the next full unit of measure.

- One-time charges for a particular activity will be billed upon acceptance of an order.

Charges will continue monthly until Client submits a cancellation ticket for the Cloud Service, the funding is depleted on the funding document (Contract, Purchase Order), the term has ended on the governing Purchase Order or Contract, or upon any termination of the Cloud Service.

Trial Period

Client's account may be eligible for a 30-day trial period during which charges for certain eligible services are waived.

Client will be charged for use of other services Client orders. If Client has administrative authority over an account, Client may upgrade from trial to production at any time. If an account is not

upgraded prior to the expiration of the trial period, services in that account will be disabled until the account is upgraded.

Billing

Client will be billed charges each month , by invoice for payment due in accordance with the Prompt Payment Act.

Ordered Services Renewals

Monthly Service Periods and Cancellation of Individual Services

Monthly service periods begin for Infrastructure Services on: the IBM established account billing date, or last day of the month if that date does not exist. For monthly Infrastructure Services, to downgrade or cancel a specific service, Client must cancel using the Cloud for Government UI at least 24 hours prior to the end of the monthly service period (in time zone GMT-6). A service can continue to be available until the end of such monthly period and Client will be billed for any usage until the service is cancelled within the system Client is responsible to monitor status of any request to cancel or downgrade a service to ensure it was successful.

Suspension and Termination

Suspension and Termination of Individual Services

The term for a Cloud Service will start on the “Effective Date” and continues until funding is depleted, the term has ended on the governing Purchase Order or Contract, Client submits a cancellation order, or upon any termination of the Cloud Services.

Suspension and Termination:

IBM may suspend Cloud Services without liability as set forth in the Agreement if IBM reasonably determines: i) a security breach affecting Client or Cloud for Government infrastructure, network, or other customers; ii) a violation of law; or iii) Client's use may subject Cloud for Government, IBM or a Cloud for Government third party provider to liability. Client agrees to cooperate with IBM in any investigation to resolve a party provider to liability. Client agrees to cooperate with IBM in any investigation to resolve a suspension. IBM will only suspend the Cloud for Government Services causing, or the basis for, a suspension.

IBM will try to give reasonable advance notice of a suspension and an opportunity to remedy the cause of a suspension, unless immediate suspension is necessary to protect Cloud for Government or its customers from operational, security, or other risk, or if ordered by a court or other judicial body.

If use is suspended for all or any portion of the Cloud Services, for the service that is suspended:

- a. Client remains responsible for all charges incurred for any Cloud Services Client has continued access during or after a suspension;

- b. Client is not entitled to any SLA Credits for any period of suspension; and
- c. IBM or Cloud for Government is not liable for any damages or losses Client may incur as a result of loss of access to content during a suspension

Client may cancel or terminate a Cloud Service at any time as described in the section titled Cloud Service Order.

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Client instructs IBM to delete content upon expiration, cancellation, or termination, and Client understand that deletion is automatic and content is not recoverable. Client must discontinue use of the Cloud Services on such effective date, and relinquish use of IP addresses, infrastructure and all other materials provided in connection with the Cloud Services, including pointing the Domain Name System (DNS) for Client's domain names away from the Cloud Services.

Account Termination

Upon initial account set-up, IBM will continue to process Client's account to validate contact, account, and payment information within the initial 14 days of account activation. During this initial period, IBM may suspend Client's account as specified in section 7.1 IBM may terminate Client's account for multiple violations of the Agreement terms in accordance the Contract Disputes Act process. IBM may close Client's account if no Cloud Services are ordered or remain active after the term of the Purchase Order or Contract expires.

General

Enabling Software

Enabling software may be provided by IBM to facilitate the use of the Cloud Service. Unless other terms are provided in a Service Description, Client may use the enabling software only in connection with use of the Cloud Service. If the enabling software contains sample code, Client has the additional right to make derivative works of the sample code and use them consistent with the above grant. The enabling software is provided subject to the applicable availability SLA, if any, but is otherwise provided AS IS.

Third Party Software

Certain Cloud Services require or allow the Client to use IBM-provided third party software on the condition that Client has separately acquired proper license entitlements. By provisioning such Cloud Services, Client represents it has and will maintain all required licenses from the third party.

For Microsoft products used on shared servers using Client's separately acquired license entitlements, Client must follow Microsoft's procedures and execute Microsoft's "Mobility Verification Form". For further details see the Microsoft License Mobility Verification Guide.

Apple Licensed Applications

The following terms of use apply to any enabling software that runs, or is acquired from the Apple App store to run on, the Apple operating system (iOS). These terms are between Client and IBM and not with Apple. Apple is not responsible for the enabling software or the content thereof and has no obligation to furnish any maintenance or support services with respect to the enabling software.

These terms include the restrictions set forth in the App Store Terms of Service (Usage Rules).

If the enabling software fails to conform to any applicable warranty, Client may notify Apple, and Apple may refund any purchase price for the enabling software to Client; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the enabling software.

Apple is not responsible for addressing any claims Client or a third party may have relating to, or Client's possession and/or use of, the enabling software, including, but not limited to: (i) product liability claims; (ii) any claim that the enabling software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

Apple is not responsible for any third party claim that the enabling software or Client's possession and use of the enabling software infringes that third party's intellectual property rights.

Submit a support ticket for any questions, complaints or claims with respect to the Apple iOS enabling software.

Beta Services

Cloud Services provided as a beta or experimental service will be identified as such in the IBM Cloud UI. A beta or experimental service may not be at a level of performance or compatibility of generally available services, is not fully tested, and may not comply with the normal Cloud Service security practices. Such services are not designed for any type of Content that contains personal data or for use in a production environment. Client agrees not to provide or input Content that contains personal data. Client is responsible to remove content Client wishes to retain prior to expiration or termination of the beta service.

Complete Agreement: This Federal Cloud Services Agreement (FCSA) and applicable Attachments and Transaction Documents are the complete agreement regarding each transaction under this FCSA (together, the Agreement) under which Client may order Cloud Services which may consist of IBM Cloud Services or other labor based Services to support use of Cloud Services IBM provides (IBM Products) or cloud or other services a third party provides that Client acquires from IBM (Non-IBM Products). Cloud Services are commercial services under FAR 2.101 and offered to the Government under terms and conditions similar to those customarily provided to the public to the extent they do not conflict with federal law.

Transaction Documents: Transaction Documents (TDs) provide the specifics of transactions, such as charges and a description of and information about the IBM Products and Non-IBM Products. Examples of TDs include statements of work, service descriptions, task orders, ordering documents and invoices. There may be more than one TD applicable to a transaction.

Attachments: Documents identified as Attachments provide supplemental terms that apply across certain types of transactions such as a solution attachment.

In the event of conflict, an Attachment prevails over this CSA and a TD prevails over both the CSA and any Attachment. Any conflicting terms in an Attachment or TD that override terms of this FCSA will be identified in the TD or Attachment accepted by the Client and only apply to the specific transaction.

1. Cloud Services

a. IBM Cloud Services	<ul style="list-style-type: none"> IBM Cloud Services are “as a service” IBM offerings that IBM makes available via a network, such as software as a service, platform as a service, infrastructure as a service, or other network delivered services. Each IBM Cloud Service is described in a TD. IBM Cloud Services are designed to be available 24/7, subject to maintenance. IBM will provide advance notice of scheduled maintenance. Technical support and service level commitments, if any, are specified in an Attachment or TD.
b. Non-IBM Products	<ul style="list-style-type: none"> IBM may offer Non-IBM Product, or an IBM Product may enable access to a Non-IBM Product. A TD will identify any applicable third party terms that govern Client's use of Non-IBM Products Linking to or use of Non-IBM Products constitutes Client's agreement with such terms. Third-party terms and privacy practices govern use of a Non-IBM Cloud Service or other Service, including Content Client may provide, grant access to or input to. IBM will invoice Client for charges due and submit Client's order details to the third-party provider for the enablement and delivery of the Non-IBM Product. IBM is not a party to any third party terms or agreement and is not responsible for Non-IBM Products. Access to ongoing Non-IBM Products may be discontinued at any time if the third party discontinues or IBM no longer makes available such Non-IBM Products.
c. Order Acceptance	<ul style="list-style-type: none"> Client accepts the applicable Attachment or TD for Cloud Services by ordering or otherwise entering into an authorized order, to include, enrolling, using, or making a payment when permitted. IBM accepts Client's order by confirming the order or enabling access.
d. What IBM Provides	<ul style="list-style-type: none"> IBM provides the facilities, personnel, equipment, software, and other resources necessary for IBM to provide IBM Cloud Services. IBM provides generally available user guides and documentation to support Client's use of IBM Cloud Services.

e. Enabling Software	<ul style="list-style-type: none"> Enabling Software is software that Client downloads to Client systems that facilitates the use of a Cloud Service and will be identified in a TD. Enabling Software is not part of the Cloud Service and Client may use Enabling Software only in connection with use of the Cloud Service in accordance with any licensing terms specified in a TD. The licensing terms will specify applicable warranties, if any. Otherwise, Enabling Software is provided as is, without warranties of any kind.
f. What Client Provides	<ul style="list-style-type: none"> Client will provide hardware, software and connectivity to access and use the Cloud Services, including any required Client-specific URL addresses and associated certificates.
g. Right to Use and Client Responsibilities	<ul style="list-style-type: none"> Client's authorized users may access Cloud Services only to the extent of authorizations Client acquires. Client is responsible for the use of Cloud Services by any user who accesses the Cloud Services with Client's account credentials.
h. Acceptable Use Terms	<ul style="list-style-type: none"> Cloud Services may not be used to undertake any activity or host Content that: <ol style="list-style-type: none"> (1) is unlawful, fraudulent, harmful, malicious, obscene, or offensive; (2) threatens or violates the rights of others; (3) disrupts or gains (or intends to disrupt or gain) unauthorized access to data, services, networks, or computing environments within or external to IBM; (4) sends unsolicited, abusive, or deceptive messages of any type; or (5) distributes any form of malware. Client may not use Cloud Services: i) for crypto-mining, unless otherwise agreed by IBM in writing; or ii) if failure or interruption of the Cloud Services could lead to death, serious bodily injury, or property or environmental damage. Client may not: <ol style="list-style-type: none"> (1) reverse engineer any portion of a Cloud Service; (2) assign or resell direct access to a Cloud Service to a third party outside Client's Enterprise (as defined herein); or (3) combine a Cloud Service with Client's value add to create a Client-branded solution that Client markets to its end user customers unless otherwise agreed by IBM in writing.
i. Preview Cloud Services	<ul style="list-style-type: none"> Cloud Services or features of Cloud Services are considered "preview" when IBM makes such services or features available at no charge, with limited or pre-release functionality, or for a limited time to try available functionality. Examples of preview Cloud Services include beta, trial, no-charge, or preview-designated Cloud Services. Any preview Cloud Service is excluded from available service level agreements and may not be supported. IBM may change or discontinue a preview Cloud Service at any time and without notice. IBM is not obligated to release preview Cloud Services or make an equivalent service generally available.

2. Content and Data Protection

a. Content Client Provides	<ul style="list-style-type: none"> Content consists of all data, software, and information that Client or its authorized users provides, authorizes access to, or inputs to IBM Cloud Services or information or data Client may provide, make available or grant access to, in connection with IBM providing other Services.
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	<ul style="list-style-type: none"> Client grants the rights and permissions to IBM, its affiliates, and contractors of either, to use, provide, store, and otherwise process Content solely for the purpose of providing the IBM Cloud Services or other Services. Use of the IBM Cloud Services or other Services will not affect Client's ownership or license rights in Content.
b. Use of Content	<ul style="list-style-type: none"> IBM, its affiliates, and contractors of either, will access and use the Content solely for the purpose of providing and managing the applicable IBM Cloud Service or other Services. IBM will treat Content as confidential by only disclosing to IBM employees and contractors to the extent necessary to provide the IBM Cloud Services or perform other Services.
c. Client Responsibilities	<ul style="list-style-type: none"> Client is responsible for obtaining all necessary rights and permissions to permit processing of Content in the IBM Cloud Services or to provide other Services. Client will make disclosures and obtain consent required by law before Client provides, authorizes access, or inputs individuals' information, including personal or other regulated data, for processing in the IBM Cloud Services or use by IBM in providing other Services. If any Content could be subject to governmental regulation or may require security measures beyond those specified by IBM for the IBM Cloud Services or to provide other Services, Client will not provide, allow access to, or input the Content for processing in the IBM Cloud Services or provide or allow access of Content to IBM to provide Services unless specifically permitted in the applicable TD or unless IBM has first agreed in writing to implement additional security and other measures. Client is responsible for adequate back-up of Content on Client managed systems prior to providing or allowing access to IBM to provide Services.
d. Data Protection	<ul style="list-style-type: none"> IBM Data Security and Privacy Principles (DSP), at http://www.ibm.com/cloud/data-security, apply for generally available standard IBM Cloud Services and other Services. Please contact your IBM representative for a copy of the DSP. Validation of this provision is required at the order level by the ordering activity Contracting Officer. Specific security features and functions of an IBM Cloud Service or other Services will be described in the applicable Attachment or TD. Client is responsible for selecting, ordering, enabling, and using available data protection features appropriate to support Client's use of the Cloud Services. Client is responsible for assessing the suitability of the Cloud Services for the Content and Client's intended use or the use of Content with other Services IBM will provide. Client acknowledges that the use of Cloud Services or other Services meets Client's requirements and processing instructions required to comply with applicable laws.
e. IBM's Data Processing Addendum	<ul style="list-style-type: none"> IBM's Data Processing Addendum (DPA) is found at http://ibm.com/dpa. A DPA Exhibit will specify how IBM will process personal data contained in Content. The DPA and applicable DPA Exhibit(s) apply to personal data contained in Content, if and to the extent: i) the European General Data Protection Regulation (EU/2016/679); or ii) other data protection laws identified at http://www.ibm.com/dpa/dpl apply. Please contact your IBM representative for a copy of the DPA and DPL. Validation of this provision is required at the order level by the ordering activity Contracting Officer. Upon request by either party, IBM, Client or affiliates of either, will enter into additional agreements as required by law in the prescribed form for the protection of regulated personal data included in Content. The parties agree (and will ensure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

f. Removal of Content	<ul style="list-style-type: none"> For IBM Cloud Services with self-managed features, Client can remove Content at any time. Otherwise, IBM will return or remove Content from IBM computing resources upon the expiration or cancellation of the IBM Cloud Services, other Services, or earlier upon Client's request. IBM may charge for certain activities performed at Client's request (such as delivering Content in a specific format). IBM does not archive Content; however, some Content may remain in the IBM Cloud Services backup files until expiration of such files as governed by IBM's backup retention practices.
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3. Changes and Withdrawal of Cloud Services

a. IBM Right to Change Cloud Services	<ul style="list-style-type: none"> At any time and at IBM's discretion, IBM may change: <ol style="list-style-type: none"> the IBM Cloud Services, including the corresponding published descriptions; and the DSP and other published data security and privacy documentation for the IBM Cloud Services. The intent of any change to the above will be to: <ol style="list-style-type: none"> make available additional features and functionality; improve and clarify existing commitments; or maintain alignment to current adopted operational and security standards or applicable laws. <p>Changes will not degrade the security or data protection features or functionality of the IBM Cloud Services.</p> Changes to the published descriptions, DSP, or published other documents as specified above, will be effective when published or on the specified effective date. Any changes that do not meet conditions specified above will only take effect, and Client accepts, upon: <ol style="list-style-type: none"> a new order; renewal order; or notification from IBM of the change effective date for ongoing services
b. Withdrawal of a Cloud Service	<ul style="list-style-type: none"> Unless otherwise stated in a TD, IBM may withdraw an IBM Cloud Services on 12 months' notice. IBM will continue to provide withdrawn IBM Cloud Service for the remainder of Client's unexpired term or work with Client to migrate to another generally available IBM offering. Non-IBM Products may be discontinued at any time if the third party discontinues or IBM no longer makes available such services.

4. Warranties

a. IBM Warrants	<ul style="list-style-type: none"> IBM warrants that it provides IBM Cloud Services or IBM Services using commercially reasonable care and skill and as described in the applicable TD. These warranties end when the IBM Cloud Services or other Services end. These warranties are the exclusive warranties from IBM and replace all other warranties, including the implied warranties or conditions of satisfactory quality, merchantability, non-infringement, and fitness for a particular purpose.
b. Warranty Limitations	<ul style="list-style-type: none"> IBM does not warrant uninterrupted or error-free operation of the IBM Cloud Services. IBM does not warrant it will correct all defects.

- While IBM endeavors to provide security measures to keep all data secure, IBM does not warrant IBM can prevent all third party disruptions or unauthorized third party access.
- IBM warranties will not apply if there has been misuse, modification, damage not caused by IBM, or failure to comply with written instructions provided by IBM.
- IBM makes preview Cloud Services or Non-IBM Products under the Agreement as-is, without warranties of any kind. Third parties may provide their own warranties to Client for Non-IBM Services.

5. Charges, Taxes, and Payment

a. Charges

- Client's right to use an IBM Product or Non-IBM Product is contingent on Client paying applicable charges as specified in a TD or applicable agreement under which Client acquired the entitlements. Client is responsible to acquire additional entitlements in advance of any increase of its use.
- Client agrees to pay all applicable charges and taxes specified in a TD in accordance with the Contract, including charges for use in excess of authorizations.
- IBM shall state separately on invoices taxes excluded from the fees, and the Client agrees either to pay the amount of the taxes or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3)
- Charges are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from Client's acquisitions under the Agreement and will be invoiced in addition to such charges.
- Amounts are due upon receipt of the invoice from IBM and payable within 30 days of the invoice receipt date to an account specified by IBM and late payment fees may apply under the Prompt Payment Act.
- Prepaid IBM Products or Non-IBM Products must be used within the applicable period.
- IBM does not give credits or refunds for any prepaid, one-time charges, or other charges already due or paid, except as may be specified in an Agreement.
- If IBM commits to pricing for Cloud Services as specified in a TD, IBM will not change such pricing during the specified term. If there is not a specified commitment, then IBM may change pricing pursuant to the terms of the Contract, on thirty days' notice. A change applies on the invoice date or the first day of the charging period or new term on or after the effective date IBM specifies in the notice.

b. Withholding Taxes

- If taxes are applicable, Client agrees to:
 - (1) pay any withholding tax directly to the appropriate government entity where required by law;
 - (2) furnish a tax certificate evidencing such payment to IBM;
 - (3) pay IBM only the net proceeds after tax; and
 - (4) fully cooperate with IBM in seeking a waiver or reduction of such taxes and promptly complete and file all relevant documents.
- If Client imports, exports, transfers, accesses, or uses an IBM Product or Non-IBM Product across a border, Client agrees to be responsible for and pay authorities any custom, duty, tax, or similar levy assessed by the authorities. This excludes those taxes based on IBM's net income.
- Where taxes are based upon the location(s) receiving the benefit of the Cloud Services, Client has an ongoing obligation to notify IBM of such location(s) if different than Client's business address listed in the applicable Attachment or TD.

c. Invoicing

- Unless otherwise stated in a TD, IBM will invoice:
 - (1) recurring charges at the beginning of the selected billing frequency term;
 - (2) overage and usage charges in arrears; and
 - (3) one-time charges upon IBM's acceptance of an order.

6. Liability and Intellectual Property Protection

a. Liability for Damages	<ul style="list-style-type: none">IBM's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client up to the amounts paid (if recurring charges, up to 12 months' charges apply) for the service that is the subject of the claim, regardless of the basis of the claim.IBM will not be liable for special, incidental, exemplary, indirect or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.These limitations apply collectively to IBM, its affiliates, contractors, and suppliers.
b. What Damages are Not Limited	<ul style="list-style-type: none">The following amounts are not subject to the above cap:<ul style="list-style-type: none">(1) third party payments related to in the infringement claims described in subsection c below;(2) personal injury or death resulting from IBM's negligence.(3) fraud by IBM; and(4) damages that cannot be limited under applicable law.
c. Infringement Claims	<ul style="list-style-type: none">If a third party asserts a claim against Client that the IBM Product infringes a patent or copyright, IBM will assist and defend Client against that claim and pay amounts finally awarded by a court against Client or included in a settlement approved by IBM.To obtain IBM's defense against and payment of infringement claims, Client must promptly:<ul style="list-style-type: none">(1) notify IBM in writing of the claim;(2) supply information requested by IBM; and(3) allow IBM such opportunity as is offered by applicable laws, rules, and regulations to participate in, the defense and settlement, including mitigation efforts of such claim; provided that such participation will be under the control of the Department of Justice.IBM's defense and payment obligations for infringement claims extend to claims of infringement based on open-source code that IBM selects and embeds in an IBM Product.
d. Claims Not Covered	<ul style="list-style-type: none">IBM has no responsibility for claims based on:<ul style="list-style-type: none">(1) Non-IBM Products;(2) items not provided by IBM; or(3) any violation of law or third party rights caused by Content, or any Client materials, designs, or specifications.

7. Term and Termination

a. Term of a Cloud Service	<ul style="list-style-type: none">The term begins on the date IBM notifies Client that Client can access the Cloud Services.The ordering TD will specify the term and whether and when the Cloud Services renew, proceed on a continuous use basis, or terminate.For continuous use, the Cloud Services will continue to be available on a month to month basis until Client provides 30 days written termination notice to IBM or the IBM Business Partner involved in the Cloud Services. The Cloud Services will remain available until the termination effective date.
b. Suspension of an IBM Cloud Service	<ul style="list-style-type: none">Subject to the Contract Disputes Act for Federal Ordering Activities and Clause "552.238-114 Use of Federal Supply Schedule Contracts by

Non-Federal Entities (May 2019)" for Non-Federal Ordering Activities, IBM may suspend or limit, to the extent necessary, Client's use of an IBM Cloud Service if IBM reasonably determines there is a:

- (1) material breach of Client's obligations;
- (2) security breach;
- (3) violation of law; or
- (4) breach of the Acceptable Use Terms.

- IBM will provide notice prior to a suspension as commercially reasonable.
- If the cause of a suspension can reasonably be remedied, IBM will provide notice of the actions Client must take to reinstate the IBM Cloud Services. If Client fails to take such actions within a reasonable time, IBM may terminate the IBM Cloud Services.

c. Termination of Cloud Services	<ul style="list-style-type: none"> • Client may terminate the IBM Cloud Services on 30 days' notice: • At the rights within the Federal Acquisition Regulation or written recommendation of a government or regulatory agency following a change in either applicable law or the IBM Cloud Services; <ol style="list-style-type: none"> (1) Subject to the Contracts Disputes Act, IBM may terminate this FCSA for cause if Client is in material breach of this Agreement. Failure to pay applicable charges is a material breach (2) if IBM notifies Client of a change to the IBM Cloud Services that has a material adverse effect on Client's use of the IBM Cloud Services, provided that IBM will have 90 days to work with Client to minimize such effect. • In the event of any such Client termination above or a similar termination of a Non-IBM Product, IBM will refund a portion of any prepaid amounts for the applicable Cloud Service for the period after the date of termination. • Client may terminate the IBM Cloud Services for material breach of IBM's obligations by giving notice and reasonable time to comply. • If the Cloud Services are terminated for any other reason, Client will pay to IBM, on the date of termination, the total amounts due per the Agreement. • Upon termination, IBM may assist Client in transitioning Content to an alternative technology for an additional charge and under separately agreed terms.
d. Termination of this FCSA	<ul style="list-style-type: none"> • Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees. • Termination of this FCSA does not terminate TDs, and provisions of this FCSA as they relate to such TDs remain in effect until fulfilled or otherwise terminated in accordance with their terms. • Each party will allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Client's failure to pay, or Client providing inaccurate or fraudulent Client account or payment information to acquire IBM Products or Non-IBM Products, is a material breach.

8. Governing Laws and Geographic Scope

a. Compliance with Laws	<ul style="list-style-type: none"> • Each party is also responsible for complying with: <ol style="list-style-type: none"> (1) laws and regulations applicable to its business and Content; and (2) import, export and economic sanction laws and regulations, including the defense trade control regime of the United States of America and any applicable jurisdictions that prohibit or restrict the import, export, re-export, or transfer of products, technology, services or data, directly or indirectly, to or for certain countries, end uses or end users. • IBM will not serve as Client's exporter or importer, except as required by data protection laws, for: i) any Content; or ii) use of any portion of a Cloud Service from a country outside Client's business address.
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b. Enforcement and Other Rights	<ul style="list-style-type: none"> • This FCSA is governed by U.S. Federal law. • If any provision of the Agreement is invalid or unenforceable, the remaining provisions remain in full force and effect. • Nothing in the Agreement affects statutory rights of consumers that cannot be waived or limited by contract. • The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.
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9. General

a. IBM's Role	<ul style="list-style-type: none"> • IBM is an independent contractor, not Client's agent, joint venturer, partner, or fiduciary. • IBM does not undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's business or operations, and Client is responsible for its use of IBM Products and Non-IBM Products. • IBM is acting as an information technology provider only. • IBM's direction, suggested usage, or guidance or use of an IBM Product does not constitute medical, clinical, legal, accounting, or other licensed professional advice. Client and its authorized users are responsible for the use of the Cloud Services within any professional practice and should obtain their own expert advice. • Each party is responsible for determining the assignment of its and its affiliates personnel, and their respective contractors, and for their direction, control, and compensation.
b. FCSA Changes	<ul style="list-style-type: none"> • In accordance with federal law, IBM may change the non-material terms and conditions of this FCSA. IBM will provide at least three months' notice prior to changing this FCSA. • FCSA changes are not retroactive. They will only apply as of the effective date to: <ul style="list-style-type: none"> (1) new orders; (2) continuous IBM Products and Non-IBM Products that do not expire; and (3) renewals. • For transactions with a defined renewable contract period stated in a TD, Client may request that IBM defer the change effective date until the end of the current contract period. • Client accepts changes by placing new orders, continuing use after the change effective date, or allowing transactions to renew after receipt of the change notice. • Except as provided in this section and the Changes and Withdrawal of Cloud Services section above, all other changes to the Agreement must be in writing accepted by both parties.
c. Business Conduct	<ul style="list-style-type: none"> • IBM maintains a robust set of business conduct and related guidelines covering conflicts of interest, market abuse, anti-bribery and corruption, and fraud. • IBM and its personnel comply with such policies and require contractors to have similar policies.
d. Business Contact and Account Usage Information	<ul style="list-style-type: none"> • IBM, its affiliates, and contractors of either require use of business contact information and certain account usage information. This information is not Content. • Business contact information is used to communicate and manage business dealings with the Client. Examples of business contact information include name, business telephone, address, email, user ID, and tax registration information. • Account usage information is required to enable, provide, manage, support, administer, and improve IBM Products. Examples of account usage information include digital information gathered using tracking technologies, such as cookies and web beacons during use of the IBM Cloud Services.

	<ul style="list-style-type: none"> • The IBM Privacy Statement at https://www.ibm.com/privacy/ provides additional details with respect to IBM's collection, use, and handling of business contact and account usage information. Please contact your IBM representative for a copy of the DSP. Validation of this provision is required at the order level by the ordering activity Contracting Officer. • When Client provides information to IBM and notice to, or consent by, the individuals is required for such processing, Client will notify individuals and obtain consent.
e. IBM Business Partners	<ul style="list-style-type: none"> • IBM Business Partners who use or make available IBM Products or Non-IBM Products are independent from IBM and unilaterally determine their prices and terms. IBM is not responsible for their actions, omissions, statements, or offerings. • If IBM notifies Client their current IBM Business Partner will no longer resell Cloud Services, an IBM Product, Client may select to acquire auto renewing or continuous use Cloud Services directly from IBM or from another authorized IBM Business Partner.
f. Assignment	<ul style="list-style-type: none"> • Neither party may assign the Agreement, in whole or in part, without the prior written consent of the other. • IBM may assign rights to receive payments. IBM will remain responsible to perform its obligations. • IBM may share this Agreement and related documents in conjunction with any assignment.
g. Enterprise	<ul style="list-style-type: none"> • This FCSA applies to IBM and Client (accepting this FCSA) and the respective EnterprisesClient's Enterprise means the Government agency, department, bureau, division, or office identified in a TD that is authorized to access a Cloud Service.
h. Notices and Administration	<ul style="list-style-type: none"> • All notices under the Agreement must be in writing and sent to the business address specified for the Agreement, unless a party designates in writing a different address. • The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing. • Any reproduction of the Agreement made by reliable means is considered an original. • The Agreement supersedes any course of dealing, discussions, or representations between the parties. • Where approval, acceptance, consent, access, cooperation, or similar action by either party is required, such action will not be unreasonably delayed or withheld.
i. Cause of Action	<ul style="list-style-type: none"> • No right or cause of action for any third party is created by this FCSA or any transaction under it. • Neither party will bring a legal action arising out of or related to the Agreement more than two years after the cause of action arose. • Neither party is responsible for failure to fulfill its non-monetary obligations due to causes beyond its control.
j. Global Resources	<ul style="list-style-type: none"> • IBM may use personnel and resources in locations worldwide, including contractors, to support the delivery of IBM Products and Non-IBM Products. • Client's use of the IBM Products and Non-IBM Products may result in the transfer of Content, including personal data, across country borders. • A list of countries where Content may be transferred and processed is described the applicable TD or support documentation. • IBM is responsible for the obligations under the Agreement even if IBM uses a contractor and will have appropriate agreements in place to enable IBM to meet its obligations.

**k. Use of Client
Requested Third
Party Services**

- If IBM and Client agree to use a Client requested third party service to support the procurement or payment activities associated with an Agreement, IBM agrees to submit or receive applicable documents (such as invoices or similar contracting documents) using the third party service.
- In the event: i) the third party service becomes unavailable for any reason; or ii) the third party provider modifies the service or terms of use in a manner IBM deems commercially unacceptable, the Client agrees to directly accept documents.
- Client remains responsible to IBM for timely payments of invoices.
- **If there is a claim or proceeding against IBM related to IBM's proper use of Client's requested third party service**, IBM reserves the right, subject to the Contract Disputes Act, to seek reimbursement from the Client for reasonable costs and amounts IBM is required to pay associated with such claims or proceedings. This includes claims or proceedings due to the third party service provider's use, misuse, or disclosure of data or confidential information disclosed through the third party service or the third party's failure to comply with applicable data protection laws. IBM agrees to promptly notify **Client in writing of any such claim or proceeding**.



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: 1782546			Reason for Modification:
Doc Description: Open ended contract for cloud-base Storage Services			
Proc Type: Central Master Agreement			
Date Issued	Solicitation Closes	Solicitation No	Version
2025-09-09	2025-09-23 13:30	CRFQ 0702 TAX2600000002	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 :

Address :

Street :

City :

State : **Country :** **Zip :**

Principal Contact :

Vendor Contact Phone: **Extension:**

FOR INFORMATION CONTACT THE BUYER

David H Pauline
304-558-0067
david.h.pauline@wv.gov

Vendor Signature X	FEIN#	DATE
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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 the West Virginia Tax Division to establish an open-end contract to provide a reliable, secure, and accessible cloud-based storage service for its GENTAX tax system backups per the specifications, terms, and conditions, and bid requirements per the attached documentation.

INVOICE TO

TAX DIVISION OF
PO BOX 11748

CHARLESTON WV
US

SHIP TO

TAX DIVISION OF
1001 LEE STREET STE M

CHARLESTON WV
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Cloud Storage for GenTax	12.00000	MO		

Comm Code	Manufacturer	Specification	Model #
81162000			

Extended Description:
Cloud Storage for GenTax

SCHEDULE OF EVENTS

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Vendor Technical Questions Due By 11:00 am., EST.	2025-09-15

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.

REQUEST FOR QUOTATION – CRFQ TAX26*03
Cloud-Based Storage Services

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Tax Division is soliciting bids to establish an open-end contract for a cloud-based backups.
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 **"Contract Item" or "Contract Items"** means the list of items identified in Section 3.1 below and on the Pricing Pages.
 - 2.2 **"Pricing Pages"** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
 - 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. **GENERAL REQUIREMENTS:**
 - 3.1 **Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.
 - 3.1.1 **Cloud-Based Storage**
 - 3.1.1.1 Must provide 48TB of cloud-based backup storage
 - 3.1.1.2 Must be able to automate and schedule backups
 - 3.1.1.3 Must have fast and reliable data restoration options
 - 3.1.1.4 Must have End-to-encryption (both in transit and at rest)
 - 3.1.1.s Must support SSH file support protocol
 - 3.1.1.6 Must have multi-region replication
 - 3.1.1.7 MUst have User access controls and audit logging
 - 3.1.1.8 Must be housed in FEDRAMP Medium or higher data centers

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Cloud-Based Storage Services

3.1.1.9 Data must never be transmitted out of the continental United States.

3.1.1.10 Must provide scalability to accommodate future data growth

4. CONTRACT AWARD:

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

4.2 **Pricing Pages:** Vendor should complete the Pricing Pages by completing Exhibit A in its entirety. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

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

5. ORDERING AND PAYMENT:

5.1 Ordering: Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept online orders through a secure internet ordering portal/website. If Vendor has the ability to accept online orders, it should include in its response a brief description of how Agencies may utilize the online ordering system. Vendor shall ensure that its online ordering system is properly secured prior to processing Agency orders online.

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

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Cloud-Based Storage Services

6. DELIVERY AND RETURN:

6.1 Delivery Time: Vendor shall deliver standard orders within 15 days after orders are received. Vendor shall deliver emergency orders within 3 working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

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

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

6.3 Delivery Payment/Risk of Loss: Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

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

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

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7. VENDORDEFAULT:

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

- 7.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2 Failure to comply with other specifications and requirements contained herein.
- 7.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4 Failure to remedy deficient performance upon request.

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

- 7.2.1 Immediate cancellation of the Contract.
- 7.2.2 Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3 Any other remedies available in law or equity.

8. MISCELLANEOUS:

- 8.1 **No Substitutions:** Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.
- 8.2 **Vendor Supply:** Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.
- 8.3 **Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

REQUEST FOR QUOTATION
Cloud-Based Storage Services

- 8.4 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: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____

