



The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at ***wvOASIS.gov***. As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at ***WVPurchasing.gov*** with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

## Header 3

List View

## General Information

Contact

Default Values

Discount

Document Information

Procurement Folder: 390621

SO Doc Code: CRFQ

Procurement Type: Central Purchase Order

SO Dept: 0702

Vendor ID: 000000223374

SO Doc ID: TAX1800000010

Legal Name: CINCINNATI BELL TECHNOLOGY SOLUTIONS INC

Published Date: 11/8/17

Alias/DBA:

Close Date: 11/28/17

Total Bid: \$32,832.00

Close Time: 13:30

Response Date: 11/28/2017

Status: Closed

Response Time: 12:39

Solicitation Description: Addendum 1 - Storage Area Network

Total of Header Attachments: 3

Total of All Attachments: 3



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

State of West Virginia  
Solicitation Response

Proc Folder : 390621

Solicitation Description : Addendum 1 - Storage Area Network

Proc Type : Central Purchase Order

Date issued	Solicitation Closes	Solicitation Response	Version
	2017-11-28 13:30:00	SR 0702 ESR11281700000002308	1

**VENDOR**

000000223374

CINCINNATI BELL TECHNOLOGY SOLUTIONS INC

Solicitation Number: CRFQ 0702 TAX1800000010

Total Bid : \$32,832.00

Response Date: 2017-11-28

Response Time: 12:39:00

Comments:

**FOR INFORMATION CONTACT THE BUYER**

Michelle L Childers  
(304) 558-2063  
michelle.l.childers@wv.gov

Signature on File

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	Computer data storage management systems	1.00000	EA	\$24,890.000000	\$24,890.00

Comm Code	Manufacturer	Specification	Model #
43212200			

Extended Description :	SEE ATTACHED SPECIFICATIONS

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	Maintenance and Warranty for SAN 3 years	1.00000	EA	\$7,942.000000	\$7,942.00

Comm Code	Manufacturer	Specification	Model #
81112303			

Extended Description :	SEE ATTACHED SPECIFICATIONS



## GENERAL TERMS

### Terms for All Transactions

These General Terms ("Terms") apply to the sale of Products and Services by NetApp, Inc., NetApp B.V. or any of their affiliates ("NetApp") directly to a customer acquiring Products and Services for its own use ("Customer"), unless Customer has entered into a separate agreement with NetApp governing such sale. By ordering, accepting delivery, keeping, or using Products or otherwise proceeding with any transaction with NetApp, Customer agrees to these Terms. NetApp and Customer may each be referred to as a "Party" or collectively, as the "Parties."

#### 1. DEFINITIONS

- 1.1. **Cloud-Based Offering.** Hardware, Software, and any Services offered, distributed, marketed or otherwise sold by NetApp for use through a Cloud Provider.
- 1.2. **Cloud Provider.** A third party designated by NetApp which offers off premises cloud-based services such as hosting, computing, networking, or storage.
- 1.3. **Documentation.** NetApp supplied then current technical documentation describing the features and functions of the associated Products.
- 1.4. **Hardware.** NetApp-branded hardware, including its components and spare parts, but excluding any firmware and Third Party Branded Products.
- 1.5. **Order Documentation.** The applicable NetApp price quotation (and the NetApp engagement document, if required for the purchase of applicable Services), the corresponding Purchase Order, and the associated Documentation for the Products or Services purchased or licensed hereunder.
- 1.6. **Price List.** NetApp's then-current list of Products and Services, and their associated prices for the country of destination.
- 1.7. **Products.** Hardware, Software, associated Documentation, and any Third Party Branded Products.
- 1.8. **Purchase Order.** A written or electronic order provided to NetApp consistent with the corresponding price quotation for the purchase of Products and Services.
- 1.9. **Services.** NetApp's consulting services ("Professional Services") and/or its generally available technical support and maintenance services programs ("Support Services").
- 1.10. **Software.** NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency, and management software.
- 1.11. **Third Party Branded Products.** Any hardware or software that is manufactured, developed, licensed or otherwise made available by any entity other than NetApp and is distributed or licensed by NetApp for use in conjunction with Hardware and Software.

#### 2. ORDERS, DELIVERY and ACCEPTANCE

- 2.1. **Orders.** All Purchase Orders are subject to acceptance by NetApp.
- 2.2. **Changes, Cancellation, and Rescheduling.** Customer may modify or cancel Purchase Orders up to ten (10) days prior to any scheduled shipment date, and Customer may reschedule a requested delivery date one time per Purchase Order without additional charge. Product returns are subject to NetApp approval and applicable charges.
- 2.3. **Delivery.** Delivery of hardware and software pre-installed on the hardware occurs according to the applicable trade term specified on the NetApp price quotation or as agreed to by NetApp on a case by case basis. Delivery of software that is not pre-installed on hardware occurs when NetApp makes the enabling key available to

Customer or, if an enabling key is not required, when NetApp makes such software available for download or use by Customer.

- 2.4. **Risk of Loss.** Risk of loss or damage to the Products and title to any hardware in the Products will pass to Customer upon delivery.
- 2.5. **Acceptance.** Acceptance by Customer of Products will occur upon delivery, and acceptance by Customer of Services will occur when such Services are rendered, unless otherwise agreed in a NetApp engagement document.

#### 3. PRICING AND PAYMENTS

- 3.1. **Pricing.** NetApp may, at its sole discretion, change the prices set forth in its Price List and add or remove Products and Services from its Price List at any time. A Purchase Order received after the effective date of a price change, but pursuant to a valid and current NetApp quotation, will be invoiced at the price stated on the NetApp quotation.
- 3.2. **Payment Terms.** Customer will make full payment in the currency specified in the invoice, without set-off and in immediately available funds, not later than thirty (30) days from the date of NetApp's invoice.
- 3.3. **Remedies for Non-payment.** Customer payment of an amount less than the invoice amount will not be deemed as acceptance of payment in full, nor will any endorsement or statement on any check or letter accompanying any payment or check be deemed an accord and satisfaction. NetApp may accept such payment or check without prejudice to NetApp's right to recover the balance of any amount due or pursue any other remedy provided for in these Terms or by law or in equity. NetApp has the right to apply any payment received from Customer to any account of Customer which is due and/or delinquent. If Customer fails to make timely payment, in addition to all other available remedies, NetApp may decline to make further deliveries of Product and provision of Services to Customer.
- 3.4. **Taxes and Duties.** Customer is solely responsible for the payment of taxes (except taxes based on NetApp's net income), fees, duties and charges, and all related penalties and interest, that arise from its utilization or NetApp's provision of the Products and/or Services. If Customer is tax-exempt, then Customer will provide NetApp with tax exemption certificates or other documentation acceptable to the taxing authorities not later than thirty (30) days from the date Customer places a Purchase Order with NetApp. If Customer does not provide such documentation to NetApp, NetApp reserves the right to include such taxes in the invoice. In addition to the stated prices, Customer will be liable for all applicable duties, license fees and taxes for Products shipped across international borders in accordance with the applicable trade terms set forth in Section 2.3 or as otherwise may apply.

#### 4. SOFTWARE LICENSE

**4.1. License Grant.** Subject to these Terms and any limitations or restrictions set forth in the corresponding Order Documentation, NetApp grants to Customer a personal, non-exclusive, non-transferable, worldwide, limited, and revocable license, without the right to sublicense, to (a) install and use the Software for Customer's internal business purposes only, and (b) use the Documentation in support of Customer's use of the Software. The Software associated with Customer's license is either bundled with a specific storage controller identified by a unique serial number ("Controller-based licenses"), or is independent of a storage controller ("Standalone licenses"), and the license is one of the following license types: (a) "Life-of-controller": Controller-based licenses granted for the period of time during which Customer's controller is operable; (b) "Perpetual": Standalone licenses granted in perpetuity; (c) "Term": Controller-based licenses or Standalone licenses granted for a fixed period of time; (d) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity or usage; and (e) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis. Certain license types may require the installation and use of NetApp's AutoSupport™ Remote support diagnostic system. Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based licenses as the other storage controllers in that cluster, high-availability pair, or group. Subject to NetApp's prior written agreement, and in the context of non-disruptive operations within a cluster, Customer may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.

**4.2. License Restrictions.** Customer will not, nor will Customer allow any third party to, (a) reverse engineer, decompile or disassemble the Software or otherwise reduce it to human-readable form except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses; (b) remove or conceal any product identification, proprietary, intellectual property, or other notices in the Software and Documentation; (c) use the Software and Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services, or similar environment; (d) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller; (e) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market Hardware that Customer has not purchased from NetApp or a NetApp partner; (f) modify, adapt, or create a derivative work of the Software or Documentation; and (g) publish or provide any Software benchmark or comparison test results.

**4.3. Third Party Licenses.** Customer represents and warrants that it has obtained and/or will obtain, all applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for NetApp to freely and without interruption perform the Services hereunder.

**4.4 Software Copyright Information and Notices.** Software copyright information and other related details are included as part of notices in the Documentation or other documentation published by NetApp (e.g. NOTICES.TXT or NOTICES.PDF).

#### 5. SERVICES

**5.1. Services.** Services are provided by or on behalf of NetApp. Additional terms and conditions applicable to Services are set forth on

NetApp's How to Buy website, at <http://netapp.com/us/how-to-buy/stc.html>.

#### 6. DIRECT WARRANTY

**6.1. Hardware Warranty.** NetApp warrants that the Hardware will materially conform to the Documentation for a period of three (3) years from the date of delivery, unless otherwise specified in the applicable Documentation ("Hardware Warranty Period"). In the event of any material nonconformity in the Hardware during the Hardware Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Hardware, or refund the amounts received by NetApp for the non-conforming Hardware. Replacement parts will be warranted for the remainder of the Hardware Warranty Period in effect for the original Hardware purchased, unless otherwise mandated by applicable law.

**6.2. Software Warranty.** NetApp warrants that (a) the initially-shipped version of the Software will materially conform to the Documentation; and (b) the Software media will be free from physical defects, for a period of ninety (90) days from the date of delivery or such other minimum period required under applicable law ("Software Warranty Period"). NetApp does not warrant that Customer's use of the Software will be error-free or uninterrupted. In the event of any material nonconformity in the Software during the Software Warranty Period that is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the Software, or refund the amounts received by NetApp for the non-conforming Software. This warranty does not cover software, other items, or any services provided by persons other than NetApp.

**6.3. Limitations.** NetApp will not be liable under this warranty for claims arising from Customer's, Customer's subcontractor's, or any unauthorized third person's misuse, neglect, improper installation or testing, attempts to repair, or any other cause beyond the range of the intended use. The Hardware warranty will become void if a Hardware component is installed as an add-on to or replacement for the original Hardware, without NetApp's prior written approval. The Software warranty will become void if the Software is modified or otherwise used in violation of the Software license terms set forth in Section 4, except as authorized in writing by NetApp.

**6.4. Exclusive Warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE FOREGOING WARRANTIES ARE CUSTOMER'S SOLE AND EXCLUSIVE WARRANTIES AND REMEDIES. NETAPP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

#### 7. INTELLECTUAL PROPERTY RIGHTS AND PROTECTION

**7.1. General.** The Software and Documentation is licensed, not sold, to Customer. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to Customer. No right, title or interest to any trademark, service mark, logo, or trade name of NetApp or its licensors is granted to Customer.

**7.2. IP Claims.** Subject to the terms and conditions of this Section, NetApp will defend or settle any claim brought by a third party against Customer that Hardware, Software, and Documentation sold and delivered by or for NetApp to Customer under these Terms infringe any patent, trademark, or copyright ("IP Claim"). NetApp will pay settlement amounts or, if applicable, damages and costs finally awarded by a court of competent jurisdiction (collectively, "Damages") against Customer to the extent such Damages are specifically attributable to the IP Claim, provided that Customer: (a) promptly

notifies NetApp in writing of the IP Claim; (b) provides information and assistance to NetApp to defend such IP Claim; and (c) provides NetApp with sole control of the defense or settlement negotiations.

**7.3. Remedies.** NetApp may, at its option, substitute or modify the Product, or the relevant portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the Product. If NetApp determines that none of these alternatives is reasonably available, then Customer may return the Product and NetApp will refund Customer's purchase price.

**7.4. Exclusions.** Notwithstanding anything to the contrary in these Terms, NetApp has no obligation or liability for any claim of infringement that arises from or relates to: (a) NetApp's compliance with or use of designs, specifications, inventions, instructions, or technical information furnished by or on behalf of Customer; (b) Product modifications made by or on behalf of Customer without NetApp's authorization; (c) Customer's failure to upgrade or use a new version of the Product, to make a change or modification requested by NetApp, or to cease using the Product if requested by NetApp; (d) the Product, or any portion thereof, in combination with any other product or service; (e) Third Party Branded Products; (f) services offered by Customer or revenue earned by Customer for such services; or (g) any content or information stored on or used by Customer or a third party in connection with a Product.

**7.5. Entire Liability.** Notwithstanding anything to the contrary in these Terms, this Section 7 states NetApp's entire liability and Customer's sole and exclusive remedies for IP Claims.

## **8. CONFIDENTIALITY**

**8.1. General.** "Confidential Information" means any information disclosed by a Party to the other Party in connection with these Terms that (a) is marked "confidential" or "proprietary" at the time of disclosure; (b) if disclosed orally or visually, is designated "confidential" or "proprietary" at the time of disclosure and summarized in a writing delivered to the receiving Party within thirty (30) days of disclosure; or (c) by its nature or the circumstances surrounding disclosure, should reasonably be considered confidential or proprietary. "Confidential Information" shall include any reproduction of such information, but shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the receiving Party; (b) was in the receiving Party's lawful possession prior to the disclosure and had not been obtained by the receiving Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the receiving Party by a third party without restriction on the disclosure; or (d) is independently developed by the receiving Party.

**8.2. Treatment of Confidential Information.** Confidential Information will remain the property of the disclosing Party. Each Party will have the right to use the other's Confidential Information solely for the purpose of fulfilling its obligations under these Terms. Each Party agrees (a) to hold the other Party's Confidential Information in confidence for a period of three (3) years from the date of disclosure; and (b) to disclose the other Party's Confidential Information only to those employees or agents who have a need to know in furtherance of these Terms and who are required to protect such Confidential Information against unauthorized disclosure under terms no less restrictive than those set forth herein. The receiving Party will protect the Confidential Information from unauthorized use, access or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in any event with at least a reasonable degree of care. The receiving Party may disclose the disclosing Party's Confidential Information to the extent such disclosure is required pursuant to a judicial or administrative proceeding, provided

that the receiving Party gives the disclosing Party prompt written notice thereof and the opportunity to seek a protective order or other legal remedies.

**8.3. Return/Destruction.** Upon the disclosing Party's written request, all Confidential Information (including all copies thereof) of the disclosing Party will be returned or destroyed, unless the receiving Party is required to retain such information by law, and the receiving Party will provide written certification of compliance with this Section 8.3.

## **9. LIMITATION OF LIABILITY**

**9.1. Liability Exclusions.** Regardless of the basis of claim (e.g., contract, tort, or statute), in no event will NetApp or its suppliers or subcontractors be liable to Customer for special, incidental, indirect or consequential damages; downtime costs; loss or corruption of data; loss of revenues, profits, goodwill, or anticipated savings; procurement of substitute goods and/or services; interruption of business; Customer's failure to comply with applicable "non-erasable" and "non-rewriteable" U.S. government regulations; the acts and omissions of any Cloud Provider; and Customer's failure to obtain any applicable third party licenses necessary to operate any third party software required in connection with the use of the Products and for NetApp to freely and without interruption perform the Services. This exclusion is independent of any remedy set forth in these Terms.

**9.2. Cumulative Liability.** To the extent that limitation of liability is permitted by law, NetApp's liability to Customer is limited to US\$1,000,000. This limitation is cumulative and not per incident.

**9.3. Exceptions.** The limitations set forth in Sections 9.1 and 9.2 will not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud, any other liability which cannot be excluded under applicable laws, or to IP Claims under Section 7.

## **10. COMPLIANCE WITH LAWS**

**10.1. Compliance.** Each Party will comply with all applicable laws and regulations.

**10.2. Export.** Customer acknowledges that Products and Services supplied by NetApp under these Terms are subject to export controls under the laws and regulations of the United States, and other countries as applicable, and that Products and Services may include export controlled technologies, including without limitation encryption technology. Customer agrees to comply with such laws and regulations and, in particular, represents and warrants that it: (a) will not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export Products and Services to (or use Products and Services in) countries subject to U.S. embargoes or trade sanctions programs; (b) is not a party, nor will it export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and (c) will not use Products and Services for any purposes prohibited by United States law, including but without limitation, the development, design, manufacture, or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction. Customer agrees to provide NetApp end use and end user information upon NetApp's request. Customer will obtain all required authorizations, permits, or licenses to export, re-export or import, as required. Customer agrees to obligate, by contract or other similar assurances, the parties to whom it re-exports or otherwise transfers Products and Services to comply with all obligations set forth herein.



**10.3. Anti-Bribery.** Each Party will comply with all applicable country laws relating to anti-corruption or anti-bribery, including but not limited to the requirements of the U.S. Foreign Corrupt Practices Act, as amended, the U.K. Bribery Act, and legislation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

## **11. MISCELLANEOUS**

**11.1. Termination.** These Terms are effective until terminated. Customer may terminate these Terms at any time upon written notice to NetApp. NetApp may terminate these Terms immediately upon written notice to Customer if Customer commits a material breach of these Terms, including failure to remit payments when due (whether payable to NetApp or its authorized third party financing partners in connection with an Approved Financing Agreement, described in Section 11.8 below) and, in the event that the breach is remediable, Customer fails to remedy it within thirty (30) days of NetApp's written notice requiring Customer to do so. Upon termination of these Terms, all rights to use the Software and Documentation cease and Customer will, at NetApp's request, promptly return or destroy all copies of the Software and Documentation, including any license enablement keys, in Customer's possession or under Customer's control, unless the license granted to Customer under Section 4.1 is a perpetual license and Customer remains in full compliance with these Terms. Sections 4.2. - 4.4., 6, 7, 8, 9, 10, and 11 will survive expiration or termination of these Terms.

**11.2. U.S. Federal Government Customers.** This Section 11.2 applies only to U.S. Federal Government Customers. The Software and Documentation is "commercial" computer software and documentation and is licensed in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARS) pertaining to commercial computer software and documentation. U.S. Federal Government customers will not be subject to applicable audit costs specified in Section 11.16. Disputes will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in these terms is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other Terms remain in effect as written.

**11.3. Cloud-Based Offering Notice.** Customers buying Cloud-Based Offerings must also comply with the Cloud Provider's applicable terms. Customer is responsible for its Cloud Provider selection, including but not limited to assessing Cloud Provider's services, compliance, and security. Customers using Cloud-Based Offerings to provide customer services may only do so if: (a) its users agree to terms limiting NetApp's liability in a manner no less protective than these Terms; (b) its users provide legally required consents for data storage, use, transfer or handling; and (c) its services comply with applicable laws and regulations, including but not limited to data protection regulations.

**11.4. Force Majeure.** Neither Party will be liable to the other for any alleged loss or damages resulting from acts of God, acts of civil or military authority, governmental priorities, fire, floods, earthquakes, epidemics, quarantine, energy crises, strikes, labor trouble, terrorism, war, riots, accidents, shortages, delays in transportation, or any other causes beyond the reasonable control of a Party (collectively, "Force Majeure"). Force Majeure will not relieve the obligation of any payments due hereunder for delivered Products or Services actually performed. If the Force Majeure event continues for more than thirty (30) days, the Parties will negotiate in good faith the termination of the affected Order Documentation(s).

**11.5. Data Privacy and Recovery.** Customer is solely responsible for personal data managed or stored using Products and agrees to comply with all applicable data privacy laws. Customer will be solely responsible for management of its data back-up, data recovery, and disaster recovery measures. Customer assumes responsibility for undertaking the supervision, control and management of Hardware and Software including following industry-standard processes, procedures and requirements: (a) for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of a Force Majeure event or a Hardware or Software error or malfunction; and (b) for reconstruction of lost or altered files, data, and programs. NetApp will not be responsible or held liable for Customer's internal processes and procedures related to the protection, loss, confidentiality, or security of Customer's data or information.

**11.6. Hazardous Environments.** Products are not designed or intended for use in or in the design, construction, operation, or maintenance of a nuclear facility or similar hazardous environment. NetApp will not be liable for any damages resulting from such use.

**11.7. Product Evaluation.** Subject to these Terms, as amended by this Section, NetApp may loan Products to Customer at no cost for a ninety (90) day period from the initial delivery of the Products to Customer, or such other period as agreed by NetApp in writing, for evaluation purposes. Such Products may only be used in a non-production environment to assess the suitability of the Products for Customer's needs. Notwithstanding Section 6 above, these Products are provided and licensed to Customer on an "AS IS" basis and all warranties, whether express, implied, statutory or otherwise are excluded to the maximum extent permitted by applicable laws.

**11.8. NetApp Approved Financing.** These Terms also apply to "Financed Software," which means Software and Documentation licensed to Customer for a limited period of use pursuant to the terms of a financing agreement between Customer and NetApp or its authorized third party financing partner (an "Approved Financing Agreement" or "AFA"), subject to the following: (a) the particular Financed Software, period of use, installation site, and other transaction-specific conditions will be as agreed in the applicable AFA; and (b) notwithstanding anything to the contrary in these Terms, all licenses for Financed Software terminate at the expiration of the term of the AFA unless otherwise expressly agreed in the AFA, or when sooner terminated by NetApp (whether in accordance with these Terms or the AFA). Customer agrees that the license granted under Section 4 above and NetApp's termination rights under Section 11.1 above may be affected by an authorized third party financing partner's rights under the applicable AFA, even if such partner has paid to NetApp all or any portion of the license fees for the Financed Software. Title and risk of loss will pass as specifically provided in the AFA, and Customer agrees that such provisions take precedence to the extent of any conflict or inconsistency with Sections 2.4 and 2.5 of these Terms.

**11.9. Modification, Substitution, Discontinued Product.** NetApp will have sole discretion, at any time, to change, substitute, or discontinue Products. NetApp will use commercially reasonable efforts to provide sixty (60) calendar days' prior notice of any such changes.

**11.10. Waiver.** Any waiver or failure to enforce any provision of these Terms on any occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Either Party's exercise of any right or remedy provided in these Terms will be without prejudice to its right to exercise any other right or remedy.

**11.11. Severability.** In the event any provision of these Terms is held by a court of competent jurisdiction to be unenforceable for any reason, such provision will be changed and interpreted to accomplish



the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions hereof will be unaffected and remain in full force and effect.

**11.12. Assignment.** Customer may not assign any rights or delegate any obligations under these Terms without the prior written consent of NetApp. Any purported assignment by Customer without NetApp's prior written consent will be null and void.

**11.13. Subcontractors.** NetApp may use subcontractors to fulfill its obligations under these Terms.

**11.14. Independent Contractors.** The relationship of the Parties under these Terms is that of independent contractors. Nothing set forth in these Terms will be construed to create the relationship of principal and agent, franchisor/franchisee, joint venture, or employer and employee between the Parties. Neither Party will act or represent itself, directly or by implication, as an agent of the other Party.

**11.15. Publicity.** No advertising, publicity releases, or similar public communications concerning these Terms, the Products, or the Services will be published or caused to be published by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Customer agrees to be mentioned in the list of buyers of NetApp Products and/or Services and that its logo and trademark may be used for this purpose only.

**11.16. Audit.** Customer grants NetApp and its independent accountants the right to audit Customer or Customer's subcontractors once annually during regular business hours upon reasonable notice to verify compliance with these Terms. If the audit discloses Software over-usage or any other material noncompliance, Customer will promptly pay to NetApp any additional fees, notified to Customer, and the reasonable costs of conducting such audit.

**11.17. General.** These Terms will be construed pursuant to the laws of (a) the State of California, United States, excluding its conflicts of law provisions, if Customer is located in the United States or in a country in which NetApp has no local sales subsidiary, or (b) the country in which Customer is located if NetApp has a local sales subsidiary in that country. The Parties agree to disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Customer's use of the Products. If required by NetApp's agreement with a third party licensor, NetApp's licensor will be a direct and intended beneficiary of these Terms and may enforce them directly against Customer. These Terms may not be changed except by an amendment accepted by an authorized representative of each Party. In the event of a dispute between the English and non-English version of these Terms (where translated for local requirements), the English version of the Terms will govern, to the extent permitted by applicable laws. These Terms represent the entire agreement and understanding between NetApp and Customer with respect to the Products. They supersede any previous communications, representations or agreements between NetApp and Customer and prevail over any conflicting or additional terms in any quote, Purchase Order, acknowledgement, or similar communications between the Parties. Order Documentation(s) issued by Customer will be deemed to incorporate and be subject to these Terms, except where the Parties expressly agree in writing to variations thereto. The pre-printed terms or general terms and conditions on any Purchase Order, Order Documentation form, contractual document or other similar correspondence originating by either Party will have no effect.

**11.18. Use Restriction.** Products and Services are for Customer's use and are not for resale or redistribution.



## PROFESSIONAL SERVICES TERMS

These Professional Services Terms ("Terms") set forth the terms and conditions under which NetApp will provide Professional Services to Customer. For Customers purchasing Professional Services directly from NetApp, the NetApp General Terms (posted at <http://netapp.com/us/how-to-buy/stc.html>) also apply. For Customers purchasing Professional Services from an authorized NetApp distributor or reseller, the NetApp Channel End User Terms (posted at <http://netapp.com/us/how-to-buy/stc.html>) also apply. To the extent there is any conflict between these Terms and those contained in the NetApp General Terms or NetApp Channel End User Terms, these Terms will control and take precedence. These Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Professional Services

1. **DEFINITIONS.** In addition to the definitions set forth in the General Terms or Channel End User Terms, the following definitions shall apply:

1.1. **Deliverables.** Tangible materials expressly designated as Deliverables in the relevant Engagement Document.

1.2. **Engagement Document.** A NetApp-approved document, including but not limited to a statement of work, service brief or service description that defines the tasks, schedule of performance and/or Deliverables to be provided by NetApp.

1.3. **IP Rights.** Patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.

1.4. **Pre-Existing IP.** IP Rights, existing, owned, or otherwise licensed by Customer or NetApp prior to entering into these Terms.

1.5. **Professional Services.** The consulting services to be provided by or on the behalf of NetApp as specified in an Engagement Document.

1.6. **Professional Services Materials.** Deliverables, materials, software, know-how, and/or information used, generated, created, developed or reduced to practice, including any modifications thereof or thereto, by or for NetApp during the provision of the Professional Services

1.7. **Professional Services Resource.** A NetApp employee, supplier or subcontractor which NetApp utilizes to provide Professional Services to Customer.

## 2. SCOPE OF SERVICES

2.1. **Projects.** NetApp will perform Professional Services in accordance with the Order Documentation, including the Engagement Document, and these Terms. NetApp may at its sole discretion require an Engagement Document to be executed prior to commencement of the Professional Services

2.2. **Change Orders.** Changes to the Professional Services specified in a statement of work will not be effective unless a change request form has been executed by authorized representatives of both Parties and NetApp has received the applicable Order Documentation supporting the change.

2.3. **No Unique Services.** Professional Services are of a scalable, repeatable nature and, as such, the same or similar Professional Services have been and will continue to be provided to other NetApp customers. Any unique services requested by Customer shall be subject to separate written agreement. No custom development activity shall be performed as Professional Services.

2.4. **No Superuser Access.** In no event will Customer grant to a Professional Services Resource root or "superuser" access at a server or network level and NetApp will have no responsibility or liability for loss or damage that results from or is related thereto. Such services shall be subject to a separate written agreement.

3. **FEES.** An Engagement Document or the associated price quotation will state the fees to be paid by Customer to NetApp for

Professional Services rendered and any related payment schedules. Customer's execution of an Engagement Document or NetApp's acceptance of a Purchase Order, as applicable, will indicate acceptance of the stated fees and payment schedules. No changes in fees or payment schedules will be effective absent a mutually executed change order.

4. **EXPENSES.** In addition to the foregoing, if specified in an Engagement Document, Customer will pay NetApp its actual out-of-pocket expenses, including travel, as reasonably incurred by NetApp during the performance of the Professional Services.

5. **DURATION AND EXPIRATION OF PROFESSIONAL SERVICES BASED ON TIME AND MATERIAL ENGAGEMENT.** In relation to Time and Material ("T&M") Professional Services, NetApp will provide to Customer a Professional Services Resource qualified at the skill level purchased by Customer, to perform T&M Professional Services, at an agreed Customer site or remotely, for the total amount of hours and/or days set forth in NetApp's price quotation and Customer's Purchase Order. T&M Professional Services purchased on an hourly basis will be performed in minimum increments of four (4) consecutive hours. For T&M Professional Services purchased on a daily basis, a "day" constitutes at least four (4) hours but not more than eight (8) hours in a single calendar day; or whenever aggregate overtime hours (those exceeding eight (8) hours on a calendar day), exceed four (4) hours but not more than eight (8) hours. T&M Professional Services will be available to Customer for one (1) year from the Purchase Order date. Customer payments are nonrefundable, and credit for any unused T&M Professional Services will not be available.

6. **PROFESSIONAL SERVICES WARRANTY.** NetApp warrants to Customer that the Professional Services will be performed in a professional, workmanlike manner consistent with generally accepted industry practices. If the Professional Services materially fail to conform to this Professional Services warranty, NetApp will re-perform such Professional Services. This is Customer's sole and exclusive remedy in relation to breach of warranty.

7. **INTELLECTUAL PROPERTY RIGHTS.** Each Party will retain all right, title and interest in and to its Pre-Existing IP. NetApp will retain all right, title, and interest in and to the Professional Services, Professional Services Materials, and IP Rights embodied therein. In no event will Professional Services Materials be deemed to include Customer Pre-Existing IP or Customer Confidential Information. Customer hereby grants NetApp a non-exclusive, worldwide, royalty-free, fully paid-up license to use such Pre-Existing IP and Confidential Information for the sole purpose of performing or producing the Professional Services and Professional Services Materials. Upon receipt of full payment, NetApp hereby grants to Customer a limited, non-exclusive, non-transferable, terminable license, with no right to sublicense, to use the Professional Services Materials for Customer's internal business purposes. Customer will not re-distribute the Professional Services Materials to any third parties without NetApp's prior written consent.

**8. DATA PROTECTION.** Performance of Professional Services under these Terms may result in Customer providing NetApp access to personal data. NetApp does not need nor request access to personal data in order to provide Professional Services. In the event Customer does provide personal data to NetApp, NetApp will protect all personal data in accordance with its responsibility as a data processor. Customer accepts sole responsibility and liability for the disclosure and protection of such data to NetApp in accordance with applicable data protection laws.

**9. TERMINATION; REMEDIES FOR NON-PAYMENT.** Customer may terminate an Engagement Document for convenience upon thirty (30) days prior written notice. Such termination will not relieve Customer from its obligations to pay NetApp any sums accrued prior to such termination, including all expenses and time and material costs incurred or expended

by NetApp, which will be immediately due upon termination. Customer may request that NetApp complete the Professional Services in progress after notice of termination. NetApp may, in its sole discretion, elect to perform, and, upon completion, will be entitled to full compensation for the completion of such Professional Services. If Customer fails to make payment in accordance with the payment terms, then, in addition to any other available remedies, NetApp will have the right to decline to render further Professional Services to Customer. NetApp may terminate an Engagement Document immediately on written notice to Customer if Customer commits a material breach of these Professional Services Terms.



## SUPPORT SERVICES TERMS

These Support Services Terms ("Terms") set forth the terms and conditions under which NetApp will provide Support Services to Customer. For Customers purchasing Support Services directly from NetApp, the General Terms posted at <http://netapp.com/us/how-to-buy/stc.html> also apply. For Customers purchasing Support Services from an authorized NetApp distributor or reseller, the Channel End User Terms (posted at <http://netapp.com/us/how-to-buy/stc.html>) also apply. To the extent that there is any conflict between these Terms and those contained in the NetApp General Terms or the NetApp Channel End User Terms, these Terms will control and take precedence. These Terms shall not apply if Customer has a separate applicable agreement with NetApp for the provision of Support Services.

**1. DEFINITIONS** In addition to the definitions set forth in the General Terms or the Channel End User Terms, the following definitions shall apply:

**1.1. AutoSupport.** NetApp's AutoSupport™ remote support diagnostic system.

**1.2. Business Day.** Monday through Friday, 8:00 a.m. to 5:00 p.m. Customer local time, except: (i) In Japan, Business Day means Monday through Friday, 9:00 a.m. to 6:00 p.m.; and (ii) in the Middle East and Israel, Business Day means Sunday through Thursday, 8:00 a.m. to 5:00 p.m. Designated local holidays are not considered Business Days.

**1.3. Customer Replaceable Unit (CRU).** Any FRU which can be replaced by Customer following guidelines and documentation provided by NetApp.

**1.4. Field Replaceable Unit (FRU).** A component or disk in the Hardware, excluding filter heads, which can be replaced at a Customer location without pre-configuration by NetApp. FRUs will be new or equivalent to new, at NetApp's reasonable discretion.

**1.5. NetApp Support Site.** <http://mysupport.netapp.com>

**1.6. Remote Technical Support.** Telephone and web-based support.

**1.7. Software Updates.** (i) Enhancements made generally available at no charge by NetApp to existing Software versions; (ii) Software releases made generally available by NetApp to resolve known issues with existing versions of Software; and (iii) Temporary software modifications developed for individual, known Software issues as part of the applicable Support Services.

**1.8. Support Services.** NetApp's generally available technical support and maintenance services for Hardware and Software, as described on the NetApp Support Site.

**1.9. Support Services Period.** The period of time specified in the Order Documentation during which NetApp will provide Support Services.

**1.10. TRO.** The Target Response Objective for timing of delivery of Support Services.

## 2. SUPPORT SERVICES

**2.1. Scope of Support Services.** NetApp agrees to provide the Support Services purchased by Customer as set forth in the Order Documentation during the Support Services Period. On a case by case basis, and as explicitly set forth in the Order Documentation, NetApp may also offer Support Services in relation to Third Party Branded Products. In such cases, references to Hardware and Software in these Terms shall also be deemed to include Third Party Branded Products. NetApp reserves the right to revise or update the scope of Support Services at its sole discretion.

**2.2. Combined Use.** Customer must purchase the same level of service entitlement for all components and controllers in a system. Customer will notify NetApp prior to any combined use of Hardware and Software initially purchased for use in separate systems, and will upgrade to the highest level of Support Services entitlement existing in the newly combined system. Customer also will pay any additional Support Services fees required by NetApp, as calculated in accordance with the Price List.

**2.3. Out-of-Scope Services.** The following services are not included in the scope of Support Services:

- (a) Subject to Section 2.1 above, services related to third party products;
- (b) Transit or relocation of Hardware and related services, including services to remediate any associated damage;
- (c) Provision of accessories, batteries, supplies or replacement of disposable parts, including without limitation power cords, rack mounting kits and cables;
- (d) Customer education, training and consulting services;
- (e) Implementation or installation assistance for hardware and software not procured from a NetApp authorized source;
- (f) Services related to any work performed at Customer's site except as specified in the Order Documentation;
- (g) Services relating to issues arising from Customer or third-party modifications, customizations, or enhancements to Software;
- (h) Services relating to issues arising from a change in Customer's system configuration which is not in conformance with the NetApp Interoperability Matrix located on the NetApp Support Site at <http://support.netapp.com/matrix/mtx/login.do>; and
- (i) Services relating to issues arising from Customer or third party error, use of software other than Software, or modification of Software.

**2.4. Hardware and Software Warranty Disclaimers.** All NetApp warranties related to Hardware and Software will be voided where:

- (a) Hardware has been mishandled, altered, damaged or rendered inoperable (e.g., degaussed disk drives) due to willful or negligent acts or omissions, accident, force majeure, or operation of the Hardware other than as specified in the Documentation;
- (b) A solid state drive or flash device has been used in excess of its rated life as set forth in the Documentation and/or as determined by its original manufacturer;
- (c) Services have been performed by a person or entity other than NetApp or an authorized NetApp service representative in relation to the Hardware and Software, in the absence of a prior written agreement with NetApp;
- (d) A power surge or failure has occurred;
- (e) Customer has failed to provide a suitable environment for the Hardware within the range of tolerances set forth in the applicable NetApp Site Requirements Guide at <http://hww.netapp.com>;
- (f) An issue arises from cleaning, refinishing or cosmetic modification of Hardware, or any electrical or site preparation; and
- (g) Products or components, including without limitation, software or hardware, have been procured from a source not authorized by NetApp, and then combined with Products.

**2.5. Support Services Warranty.** NetApp warrants that for the duration of the applicable Support Services Period, Support Services will be performed in a professional and workmanlike manner consistent with generally accepted industry practices. Customer's sole and exclusive remedy in relation to a breach of this warranty is a re-performance of the Support Services by NetApp.

**2.6. Subcontracting.** NetApp may use subcontractors to provide the Support Services under these Terms.

**2.7. End of Availability and End of Support.** The NetApp Service and Support Product Programs End of Availability Index, which is



located on the NetApp Support Site, details information related to the last date on which Hardware or Software will be available for quoting from NetApp ("End of Availability" or "EOA"), and the last date on which Hardware or Software will be supported by NetApp ("End of Support" or "EOS"). NetApp will not provide Support Services for any Hardware, or components thereof, or Software after the applicable published EOS date. In relation to Hardware running Software which has passed its EOS date, NetApp may require Customer to update to a supported version of Software as a prerequisite to NetApp continuing to provide Hardware Support Services.

**2.8. Replacement of Hardware Components and Return Material Authorization.** In the event the resolution of a support case initiated with the NetApp Technical Support Center ("TSC") is a Hardware failure, Customer will notify NetApp of its intent to return such Hardware within fifteen (15) calendar days of the support case resolution. Hardware replacement is subject to the Return Material Authorization ("RMA") procedure located on the NetApp Support Site at <http://mysupport.netapp.com/NOW/products/rma/>. Failure to return the Hardware components within the fifteen (15) days specified above or their return in a condition rendering them unsupportable under Section 2.3 above shall entitle NetApp to invoice Customer for the cost of the replacement Hardware components supplied, calculated in accordance with the Price List. Customer will ensure that the failed Hardware is free of any legal obligations or restrictions that could prevent its replacement and will return each CRU and FRU individually by separate shipment.

**2.9. Support Included with Original and Extended Hardware Warranty.** During the applicable Hardware warranty period, NetApp will provide Customer with access to 24/7/365 Remote Technical Support, delivery of replacement Hardware components and access to the NetApp Support Site. Customer will also have access to AutoSupport and the NetApp Remote Support Diagnostics Tool, as applicable. In relation to Support Services included with the Hardware warranty, NetApp will use reasonable commercial efforts to deliver replacement Hardware components by the next Business Day. Such delivery is subject to local country limitations, including but not limited to shipment cut-off times, and other factors beyond the reasonable control of NetApp.

**2.10. Next Business Day Schedule.** The cutoff time for next Business Day delivery of FRUs or CRUs and/or arrival of a NetApp Authorized Service Engineer is 3:00 p.m. local Customer time. Remote diagnosis completion and/or CRU/FRU ordering that occurs after 3:00p.m. local Customer time, will be deemed completed on the following Business Day and shipment and/or arrival will be scheduled accordingly. (e.g., if diagnosis occurs after 3:00 p.m. on Monday, CRU/FRU ships Tuesday to arrive on Wednesday).

**2.11. Onsite Support Services.** If Customer has purchased onsite Support Services, it will receive such services as follows: When Customer initiates a technical support case with the TSC, a Technical Support Engineer ("TSE") will commence issue identification and repair as necessary. If the issue cannot be resolved remotely, and where the TSE and Customer jointly agree that onsite Support Services are necessary and appropriate, the TSE will dispatch an Authorized Support Engineer ("ASE") to the Customer site. The ASE will, at the direction of the TSC, work to diagnose and isolate the issue, make necessary changes and restore the normal operation of the systems. The TRO for onsite Support Services will be the same as that specified for replacement Hardware components in the Documentation. Subject to Section 2.13 below, in relation to onsite Software Support Services, NetApp reserves the right to define the most appropriate onsite resources to resolve the case and restore normal operation. In such cases, NetApp will communicate with Customer the estimated time of arrival for the ASE, which may or may not fall within the TRO specified

above.

**2.12. Non-Returnable Disk.** If Customer has purchased the Non-Returnable Disk ("NRD") option, it will not return defective or failed disks forming part of the Hardware. Customer will retain such disks and remain solely responsible for their disposal. Customer agrees that if disks covered by the NRD option are returned to NetApp, NetApp shall have no obligation or liability whatsoever associated with any data remaining on such disks. NetApp will treat such disks like non-NRD disks and convey them into the NetApp supply chain for repair and/or destruction.

**2.13. Software Support Services.** If Customer has purchased Support Services that include a Software Support Plan ("SSP"), it is entitled to Software Support Services during the applicable Support Services Period. SSP consists of both telephone and web-based support and access to all Software Updates made generally available by NetApp. Customer shall be responsible for installing and implementing Software and Software Updates unless it has purchased a Support Services offering that includes installation of software updates by NetApp, as described in Section 2.14 below. NetApp may require Customer to implement specific Software upgrades to resolve current or prospective issues. Customer may be required to purchase additional Hardware at its own expense to make use of Software Updates and or Software upgrades.

**2.14. Installation of Software Updates.** If Customer has purchased such installation services, NetApp will install Software Updates during the provision of Support Services during the Support Services Period. The TSE will determine the method and timing of installation, with Customer's agreement and participation. NetApp may choose to dispatch an ASE to the Customer site to participate in Software Update activities.

**2.15. Software Support Services Prerequisites.** Provision of Software Support Services is conditional upon Customer having: (a) installed and operated the Software in accordance with the applicable Documentation; (b) described with sufficient specificity the nature of the Software issues Customer is experiencing and the circumstances in which they occur; (c) reproduced the Software issue such that it can be confirmed and evaluated by NetApp; (d) made no changes, additions, or modifications to the Software, directly or indirectly; and (e) installed the Software in an infrastructure/environment that adheres to the published NetApp Interoperability Matrix on the NetApp Support Site.

**2.16 AutoSupport.** AutoSupport data is deemed to be NetApp Confidential Information.

### 3. CUSTOMER RESPONSIBILITIES

**3.1. Customer Contacts.** Customer will designate up to three (3) technically qualified employees to serve as Customer's primary points of contact in relation to the receipt of the Support Services.

**3.2. Customer Information.** Immediately on receipt, Customer will register all Hardware and Software on the NetApp Support Site to create Customer's support profile. Customer will keep this profile up-to-date. TROs, if any, can be met only if Customer has provided NetApp with accurate information including delivery and on-site service addresses, names and phone numbers of key Customer contacts and access to Customer's location. If this information is inaccurate or obsolete and/or access to Customer's location is unavailable or denied to the NetApp ASE or other representatives, adherence to any applicable TRO will be measured from the time that correct information is provided by the Customer to NetApp and/or the NetApp ASE is granted access to Customer's location.

**3.3. NetApp Support Site.** During the Support Services Period, Customer will be granted access to the NetApp Support Site. A unique login and password will be assigned to Customer by NetApp, which will





be deemed NetApp Confidential Information.

**3.4. Miscellaneous Permissions.** In the event that NetApp requires access to any computer systems or software owned or licensed by Customer in order to provide the Support Services, Customer will obtain all associated permissions.

**3.5. Work Environment.** Customer will provide NetApp or the NetApp ASE with a safe working environment and make all necessary arrangements as NetApp may determine is reasonably necessary to perform the Support Services.

**3.6. Equipment Relocation.** In the event that Customer wishes to relocate Hardware or Software, Customer will contact the NetApp TSC at least thirty (30) days prior to such relocation. NetApp will notify Customer if Customer's existing Support Services are available at the new location. Customer acknowledges that relocation of the Hardware or Software may result in a decrease of the scope and an increase in the pricing of Support Services. NetApp will communicate this to Customer on a case-by-case basis. If Customer fails to notify NetApp of the relocation of Hardware or Software as required above, NetApp may refuse to provide the Support Services at its sole discretion. In the event of an increase in pricing of Support Services following relocation, Customer will promptly submit a Purchase Order to NetApp and pay the associated NetApp invoice.

**3.7. Reinstatement of Lapsed Support.** In the event that Customer wishes to reinstate Support Services after a lapsed period following expiration or termination of the original Support Services Period, Customer will pay to NetApp an amount equal to the Support Services fees that would have been due for accrued Support Services during such lapsed period, as well as any applicable reinstatement fee and the amount due for the go-forward Support Services Period being purchased. All such amount will be calculated in accordance with the Price List.

**3.8 Data Protection.** Performance of Support Services under these Terms may result in Customer providing NetApp access to personal data. NetApp does not need nor request access to personal data in order to provide Support Services. In the event Customer does provide personal data to NetApp, NetApp will protect all personal data in accordance with its responsibility as a data processor. Customer accepts sole responsibility and liability for the disclosure and protection of such data to NetApp in accordance with applicable data protection laws.



## END USER LICENSE AGREEMENT

**1. Scope.** This end user license agreement ("EULA") is between you ("You" or "Your") and NetApp, Inc. and (as applicable) its subsidiaries and affiliates ("NetApp"). This EULA sets forth the terms under which NetApp licenses the Software and Documentation to You.

In this EULA:

- a) "Documentation" means technical documentation describing the features and functions of the associated Software;
- b) "NetApp Partner" means an authorized NetApp distributor, reseller or other channel partner; and
- c) "Software" means NetApp software in object code format including (as applicable) operating systems, protocols, backup and recovery, disaster recovery, storage efficiency and management software.

In the absence of a more specific written agreement, this EULA applies to Software and Documentation obtained by You directly from NetApp, indirectly from a NetApp Partner, or made available to you by NetApp at no charge. The types, quantities and other usage attributes related to Your Software licenses are specified in other documents associated with the Software, including (as applicable) the Documentation, a NetApp quote or related document (for direct transactions), or the corresponding documents from a NetApp Partner (for indirect transactions).

This EULA does not entitle You to receive Software updates, upgrades, technical support or professional services, which must be purchased or provided separately.

**2. Acceptance.** By clicking the "I ACCEPT" button when downloading or installing the Software, or by copying, accessing or using the Software or Documentation, You agree that this EULA will exclusively govern NetApp's license and Your use of the Software and Documentation unless You have a separate applicable written agreement with NetApp governing the same. If You are accepting this EULA on behalf of another person, company or other legal entity, whether as an employee, contractor, distributor, reseller, partner, agent or otherwise, You represent and warrant that You have full authority to bind them. If You do not agree to the terms of this EULA, do not download, install, copy, access, or use the Software or Documentation, or click the "I ACCEPT" button, and promptly return the Software and Documentation to the party from whom it was obtained.

**3. License Grant.** NetApp grants to You a personal, non-exclusive, non-transferrable, worldwide, limited and revocable license, without the right to sublicense, to i) install and use the Software for Your internal business purposes only, and ii) use the Documentation in support of Your use of the Software.

The Software associated with Your license is either bundled with a specific storage controller identified by a unique serial number ("Controller-based"), or is independent of a storage controller ("Standalone"), and Your license is one of the following license types:

- a) "Life-of-controller": Controller-based licenses granted for the period of time during which Your storage controller is operable;
- b) "Perpetual": Standalone licenses granted in perpetuity;
- c) "Term": Controller-based licenses or Standalone licenses granted for a fixed period of time;
- d) "Capacity": Controller-based licenses or Standalone licenses granted for a specified amount of raw storage capacity, number of hosts or other measure of usage; and
- e) "Subscription": Controller-based licenses or Standalone licenses which may be purchased on a periodic basis.

Certain license types may require the installation and use of NetApp's AutoSupport™ remote support diagnostics system.

Each storage controller deployed in a cluster or a high-availability pair or group must have the same Controller-based license as the other storage controllers in that cluster, high-availability pair or group. Subject to NetApp's separate written agreement, and in the context of non-disruptive operations within a cluster, You may deploy storage controllers with different Controller-based licenses and failover from one storage controller to another for the time required to remedy a failure, provided that all storage controllers in the cluster have the same hardware and software support offerings in effect at all times.





**4. License Restrictions.** You shall not, nor shall You allow any third party to:

- a) reverse-engineer, decompile or disassemble the Software or otherwise reduce it to human-readable format except to the extent required for interoperability purposes under applicable laws or as expressly permitted in open-source licenses;
- b) remove or conceal any product identification, proprietary, intellectual property or other notices in the Software or Documentation;
- c) use the Software or Documentation to perform services for third parties in a service bureau, managed services, commercial hosting services or similar environment;
- d) assign or otherwise transfer, in whole or in part, the Software or Documentation licenses to another party or Controller-based licenses to a different storage controller;
- e) install Controller-based licenses on or use them with third party hardware or any second-hand or grey market NetApp hardware not purchased by You from NetApp or a NetApp Partner;
- f) modify, adapt or create a derivative work of the Software or Documentation; and
- g) publish or provide any Software benchmark or comparison test results.

**5. Intellectual Property Rights.** The Software and Documentation is licensed, not sold, to You. It is protected by intellectual property laws and treaties worldwide, and contains trade secrets, in which NetApp and its licensors reserve and retain all rights not expressly granted to You. No right, title or interest to any trademark, service mark, logo or trade name, of NetApp or its licensors is granted to You.

**6. Direct Warranty.** NetApp warrants that for a period of ninety (90) days from the date of first delivery of the Software to You or a NetApp Partner, whichever is the earlier, or such other minimum periods under applicable laws (the "Software Warranty Period"), that i) the Software will materially conform to the then-current Documentation, and ii) the Software media will be free from defects. NetApp does not warrant that Your use of the Software will be error-free or uninterrupted. If a material defect arises in the Software during the Software Warranty Period and if the defect is reproducible and verifiable, NetApp will, at its sole discretion and expense, repair or replace the defective Software or refund the amounts actually received by NetApp for the Software. The Software warranty will be voided if You or any third parties misuse, neglect, attempt to repair or modify (unless authorized by NetApp), or use the Software beyond the range of the intended use. **TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THIS IS YOUR SOLE AND EXCLUSIVE WARRANTY AND REMEDY. NETAPP SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY, ACCEPTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

**7. Limitation of Liability.** Regardless of the basis of the claim (e.g. contract, tort or statute), the total liability of NetApp and its licensors, under or in connection with this EULA, shall not exceed the amounts actually received by NetApp for the Software or the minimum amounts permitted by applicable laws, if greater. NetApp and its licensors are not liable for:

- a) any indirect, consequential, incidental, exemplary or special damages;
- b) loss or corruption of data;
- c) loss of revenues, profits, goodwill or anticipated savings;
- d) procurement of substitute goods and/or services;
- e) interruption to business; and
- f) Your failure to adhere to applicable regulations pertaining to non-rewriteable and non-erasable US Government regulations.

The limitations and exclusions above shall not apply to liability for death or personal injury caused by negligence, gross negligence, willful misconduct, fraud or any other liability that cannot be excluded under applicable laws.

**8. Audit.** Upon reasonable notice, You grant NetApp and its independent accountants the right to examine Your Software usage to verify compliance with this EULA. If the audit discloses over-usage or any other material non-compliance, You will promptly pay to NetApp or to a NetApp Partner, as designated by NetApp, any additional fees notified to you and the reasonable costs of conducting the audit.

**9. Termination.** This EULA is effective until expiration or termination. You may terminate the EULA at any time on written notice to NetApp. NetApp may terminate the EULA immediately on written notice for material breach of the EULA. Any failure to remit payments in relation to the Software and Documentation when due, whether payable to NetApp or a NetApp Partner, shall constitute a material breach of this EULA. Upon expiration or termination of this EULA, You will promptly return or destroy all copies of the Software and Documentation, including any license enablement keys. Sections 1, 4, 5, 6, 8, 10, 11, 12, 13 and 14 shall survive expiration or termination of this EULA.



**10. Software Copyright Information And Notices.** Software copyright information and other related details are included as part of notices in the Documentation or other documentation published by NetApp (e.g. NOTICES.TXT or NOTICES.PDF).

**11. Export Controls.** You acknowledge that the Software and Documentation supplied by NetApp under this EULA is subject to export controls under the laws and regulations of the United States, the European Union and other countries as applicable, and the Software may include export controlled technologies, including without limitation encryption technology. You agree to comply with such laws and regulations and, in particular, represent and warrant that You:

- a) shall not, unless authorized by U.S. export licenses or other government authorizations, directly or indirectly export or re-export the Software and Documentation to or use the Software and Documentation in countries subject to U.S. embargoes or trade sanctions programs;
- b) are not a party, nor will You export or re-export to a party, identified on any government export exclusion lists, including but not limited to the U.S. Denied Persons, Entity, and Specially Designated Nationals Lists; and
- c) will not use the Software and Documentation for any purposes prohibited by U.S. law, including but without limitation, the development, design, manufacture or production of nuclear, missile, chemical biological weaponry or other weapons of mass destruction.

You agree to provide NetApp end use and end user information upon NetApp's request. You shall obtain all required authorizations, permits, or licenses to export, re-export or import, as required. You agree to obligate, by contract or other similar assurances, the parties to whom You re-export or otherwise transfer the Software to comply with all obligations set forth in this Section 11.

**12. Data Privacy.** You have sole responsibility for the personal data you choose to manage and/or store using the Software and agree to comply with all applicable data privacy laws. NetApp is only responsible for personal data it explicitly requests in order to provide services in support of the Software. In such cases, NetApp agrees to protect personal data from unauthorized access and use, and from accidental loss or destruction in accordance with applicable data privacy laws.

**13. U.S. Federal Government End Users.** This Section 13 applies to You only if You are a U.S. Federal Government end user. The Software and Documentation is "commercial" computer software and documentation and is licensed to You in accordance with the rights articulated in applicable U.S. government acquisition regulations (e.g. FAR, DFARs) pertaining to commercial computer software and documentation. You shall not be subject to applicable audit costs specified in Section 8. Any dispute between You and NetApp will be subject to resolution pursuant to the Contract Disputes Act of 1978. Nothing contained in this EULA is meant to derogate the rights of the U.S. Department of Justice as identified in 28 U.S.C. §516. All other provisions of this EULA remain in effect as written.

**14. General.** This EULA will be construed pursuant to the laws of i) the State of California, United States, excluding its conflicts of law provisions, if You are located in the United States or in a country in which NetApp has no local sales subsidiary, or ii) the country in which You are located if NetApp has a local sales subsidiary in that country. NetApp reserves the right to control all aspects of any lawsuit or claim that arises from Your use of the Software or Documentation. If required by NetApp's agreement with a third party licensor, NetApp's licensor will be a direct and intended third party beneficiary of this EULA and may enforce it directly against You. NetApp does not waive any of its rights under this EULA by failing to or delaying the exercise of its rights or partially exercising its rights at any time. To the extent that any Section of this EULA, or part thereof, is determined to be invalid or unenforceable, the remainder of this EULA shall remain in full force and effect. This EULA may not be changed except by a written amendment executed by an authorized representative of each party. In the event of a dispute between the English and non-English version of the EULA (where translated for local requirements), the English version of this EULA shall govern, to the extent permitted by applicable laws. This EULA represents the entire agreement and understanding between NetApp and You with respect to the Software and Documentation. It supersedes any previous communications, representations or agreements between NetApp and You and prevails over any conflicting or additional terms in any quote, purchase order, acknowledgment, or similar communication between the parties.



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

State of West Virginia  
Request for Quotation  
21 – Info Technology

Proc Folder: 390621

Doc Description: Storage Area Network

Proc Type: Central Purchase Order

Date Issued	Solicitation Closes	Solicitation No	Version
2017-11-08	2017-11-28 13:30:00	CRFQ 0702 TAX1800000010	1

**BID RECEIVING LOCATION**

BID CLERK

DEPARTMENT OF ADMINISTRATION

PURCHASING DIVISION

2019 WASHINGTON ST E

CHARLESTON

WV 25305

US

**VENDOR**

Vendor Name, Address and Telephone Number:

**FOR INFORMATION CONTACT THE BUYER**

Michelle L Childers

(304) 558-2063

michelle.l.childers@wv.gov

Signature X

FEIN #

742724593

DATE

11/21/17

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

**ADDITIONAL INFORMATION:****Request for Quotation**

The West Virginia Purchasing Division is soliciting bids on behalf of the Tax Division to establish a contract for the one-time purchase of hardware, software, licensing, and support for a Storage Area Network (SAN) solution.

INVOICE TO		SHIP TO	
OPERATIONS DIVISION TAX DIVISION OF PO BOX 11748		OPERATIONS DIVISION TAX DIVISION OF REVENUE CENTER 1001 LEE ST E, STE 1	
CHARLESTON	WV25339-1748	CHARLESTON	WV 25301-1725
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Computer data storage management systems	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43212200			

**Extended Description :**

SEE ATTACHED SPECIFICATIONS

INVOICE TO		SHIP TO	
OPERATIONS DIVISION TAX DIVISION OF PO BOX 11748		OPERATIONS DIVISION TAX DIVISION OF REVENUE CENTER 1001 LEE ST E, STE 1	
CHARLESTON	WV25339-1748	CHARLESTON	WV 25301-1725
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Maintenance and Warranty for SAN 3 years	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
81112303			

**Extended Description :**

SEE ATTACHED SPECIFICATIONS

<b>TAX1800000010</b>	<b>Document Phase</b> Final	<b>Document Description</b> Storage Area Network	<b>Page 3</b> <b>of 3</b>
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### **ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions



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

State of West Virginia  
Request for Quotation  
21 - Info Technology

Proc Folder: 390621

Doc Description: Addendum 1 - Storage Area Network

Proc Type: Central Purchase Order

Date Issued	Solicitation Closes	Solicitation No	Version
2017-11-08	2017-11-28 13:30:00	CRFQ 0702 TAX1800000010	2

**BID RECEIVING LOCATION**

BID CLERK

DEPARTMENT OF ADMINISTRATION

PURCHASING DIVISION

2019 WASHINGTON ST E

CHARLESTON

WV

25305

US St.

220

Fourth St.

220

M/10-1220

Cincinnati, OH, 45202

cbt

220

Fourth St.

220

M/10-1220

Cincinnati, OH, 45202

cbt

220

Fourth St.

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M/10-1220

Cincinnati, OH, 45202

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Cincinnati, OH, 45202

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Fourth St.

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M/10-1220

Cincinnati, OH, 45202

**VENDOR**

Vendor Name, Address and Telephone Number:

**FOR INFORMATION CONTACT THE BUYER**

Michelle L Childers

(304) 558-2063

michelle.l.childers@wv.gov

Signature X

FEIN #

DATE

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

**ADDITIONAL INFORMATION:****Addendum**

Addendum 1 issued to correct the attached Solicitation documents attached in wvOASIS.

**End of Addendum**

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**Request for Quotation**

The West Virginia Purchasing Division is soliciting bids on behalf of the Tax Division to establish a contract for the one-time purchase of hardware, software, licensing, and support for a Storage Area Network (SAN) solution.

INVOICE TO		SHIP TO	
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CHARLESTON	WV25339-1748	CHARLESTON	WV 25301-1725
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Computer data storage management systems	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
43212200			

**Extended Description :**

SEE ATTACHED SPECIFICATIONS

INVOICE TO		SHIP TO	
OPERATIONS DIVISION TAX DIVISION OF PO BOX 11748		OPERATIONS DIVISION TAX DIVISION OF REVENUE CENTER 1001 LEE ST E, STE 1	
CHARLESTON	WV25339-1748	CHARLESTON	WV 25301-1725
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
2	Maintenance and Warranty for SAN 3 years	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
81112303			

**Extended Description :**

SEE ATTACHED SPECIFICATIONS



<b>TAX1800000010</b>	<b>Document Phase</b> <b>Final</b>	<b>Document Description</b> Addendum 1 - Storage Area Network	<b>Page 3</b> <b>of 3</b>
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### **ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions



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

State of West Virginia  
Request for Quotation  
21 — Info Technology

Proc Folder: 390621

Doc Description: Storage Area Network

Proc Type: Central Purchase Order

Date Issued	Solicitation Closes	Solicitation No	Version
2017-11-08	2017-11-28 13:30:00	CRFQ 0702 TAX1800000010	1

**BID RECEIVING LOCATION**

BID CLERK

DEPARTMENT OF ADMINISTRATION

PURCHASING DIVISION

2019 WASHINGTON ST E

CHARLESTON

WV

25305

US St.

cbts  
221  
M/S  
Cincinnati, OH, 45202

**VENDOR**

Vendor Name, Address and Telephone Number:

**FOR INFORMATION CONTACT THE BUYER**

Michelle L Childers

(304) 558-2063

michelle.l.childers@wv.gov

Signature X

FEIN #

742724593

DATE

11/20/17

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

**ADDITIONAL INFORMATION:**

## Request for Quotation

The West Virginia Purchasing Division is soliciting bids on behalf of the Tax Division to establish a contract for the one-time purchase of hardware, software, licensing, and support for a Storage Area Network (SAN) solution.

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2	Maintenance and Warranty for SAN 3 years	1.00000	EA		

Comm Code	Manufacturer	Specification	Model #
81112303			

Extended Description :

SEE ATTACHED SPECIFICATIONS

## **INSTRUCTIONS TO VENDORS SUBMITTING BIDS**

**1. REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.

**2. MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.

**3. PREBID MEETING:** The item identified below shall apply to this Solicitation.

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

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

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

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

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

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

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

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

Submitted e-mails should have solicitation number in the subject line.

Question Submission Deadline: November 15, 2017 at 10:00 AM EST

Submit Questions to: Michelle Childers, Senior Buyer  
2019 Washington Street, East  
Charleston, WV 25305  
Fax: (304) 558-4115 (Vendors should not use this fax number for bid submission)  
Email: Michelle.L.Childers@wv.gov

**5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.

**6. BID SUBMISSION:** All bids must be submitted electronically through wvOASIS or signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via wvOASIS, hand delivery, delivery by courier, or facsimile.

The bid delivery address is:  
Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

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

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

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. Submission of a response to an Expression or Interest or Request for Proposal is not permitted in wvOASIS.

**For Request For Proposal ("RFP") Responses Only:** In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus N/A convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: (This only applies to CRFP)

- ☐ Technical  
☐ Cost

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

Bid Opening Date and Time: November 28 , 2017 at 1:30 PM EST

Bid Opening Location: Department of Administration, Purchasing Division  
2019 Washington Street East  
Charleston, WV 25305-0130

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

**9. BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

**10. ALTERNATES:** Any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

**11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

**12. COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

**13. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

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

**15. PREFERENCE:** Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Vendor Preference Certificate form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Vendor Preference Certificate form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.



**16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

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

**18. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in wvOASIS can be accessed 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.

**19. 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."

**20. ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part in accordance with W. Va. Code of State Rules § 148-1-4.5. and § 148-1-6.4.b."

**21. 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.

**22. INTERESTED PARTY DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$100,000, the vendor must submit to the Purchasing Division a disclosure of interested parties to the contract, prior to contract award. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. "Interested parties" means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

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

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

**2.2. "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:** This Contract becomes effective on \_\_\_\_\_ and extends for a period of \_\_\_\_\_ year(s).

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

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

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

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days.

Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional \_\_\_\_\_ successive one year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed \_\_\_\_\_ months in total. Automatic renewal of this Contract is prohibited.

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

☐ **Other:** See attached.

**4. NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

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

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

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

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

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

**6. 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 below must be provided to the Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

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

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

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

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

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

☐

☐

☐

☐

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

**8. INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, 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 mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of this contract. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

☐ **Commercial General Liability Insurance** in at least an amount of:

\_\_\_\_\_

☐ **Automobile Liability Insurance** in at least an amount of: \_\_\_\_\_

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of:

\_\_\_\_\_

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of:

\_\_\_\_\_

☐ **Cyber Liability Insurance** in an amount of: \_\_\_\_\_

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

☐

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

**10. LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

**11. LIQUIDATED DAMAGES:** Vendor shall pay liquidated damages in the amount of

for \_\_\_\_\_.  
This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

**12. ACCEPTANCE:** 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.

**14. PAYMENT:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

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

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

**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 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.

**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 § 148-1-6.1.e.

**20. TIME:** Time is of the essence with regard to 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.

**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. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

**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. BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

**31. 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 <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**32. 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.

**33. 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. 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.

**34. 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.

**35. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**36. 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.

**37. 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.

**38. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5-22-1(i), the contracting public entity shall not award a contract for a construction project to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Accordingly, prior to contract award, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

**39. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

**40. 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.

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

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

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

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

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

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

**43. 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 heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

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

**44. 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.



**45. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$100,000, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award 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. "Interested parties" means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract. The Agency shall submit a copy of the disclosure to the Ethics Commission within 15 days after receiving the supplemental disclosure of interested parties.

**REQUEST FOR QUOTATION**  
**Storage Area Network (SAN) – 2<sup>nd</sup> Floor**

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**SPECIFICATIONS**

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the Tax Division to establish a contract for the one-time purchase of hardware, software, licensing, and support for a Storage Area Network (SAN) solution.
- 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”** means Storage Area Network (SAN) as more fully described by these specifications.
  - 2.2 “Pricing Page”** means the pages, contained in wvOASIS or attached as Exhibit A, upon which Vendor should list its proposed price for the Contract Items.
  - 2.3 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
  - 2.4 “FIPS 140-2”** is a U.S. government computer security standard used to approve cryptographic modules.
  - 2.5 “GB”** means Gigabyte which is a multiple of the unit byte for digital information.
  - 2.6 “Gb/s”** is a unit of data transfer equal to 1,000 megabits per seconds.
  - 2.7 “iSCSI”** is an acronym form internet small computer systems interface, an internet protocol (IP)-based storage networking standard for linking data storage facilities.
  - 2.8 “LDAP”** (Lightweight Directory Access Protocol) is a software protocol for enabling anyone to locate organizations, individuals, and other resources such as files and devices in a network, whether on the public Internet or on a corporate network.
  - 2.9 “RAID”** (Redundant Array of Independent Disks) is a data storage virtualization technology that combines multiple physical disk drive components into a single logical unit for the purposes of data redundancy, performance improvement, or both.
  - 2.10 “SSD”** means solid state drive.

**REQUEST FOR QUOTATION**  
**Storage Area Network (SAN) – 2<sup>nd</sup> Floor**

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**2.11 “Syslog”** is a way for network devices to send event messages to a logging server – usually known as a syslog server. The syslog protocol is supported by a wide range of devices and can be used to log different types of events.

**3. GENERAL REQUIREMENTS:**

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

**3.1.1 Storage Area Network/Storage Array**

**3.1.1.1 Must have File and Block-Level Storage.**

**3.1.1.2 Must be compatible and interoperable with Microsoft Windows Server 2012 R2 and later, VMware ESX Server 6.5 and later, and Microsoft SQL Server 2014 and later.**

**3.1.1.3 Must have FIPS 140-2 certified encryption algorithms for data encryption at rest.**

**3.1.1.4 Must be able to audit security relevant events such as:**

- all unsuccessful login and authorization attempts
- all identification and authentication attempts
- all actions, connections, and requests performed by privileged users and privileged functions
- all changes to logical access control authorities
- all system changes with the potential to compromise the integrity security policy configurations
- the creation, modification, and deletion of objects including files, directories, and user accounts
- the creation, modifications, and deletion of user accounts and group accounts
- the creation, modification, and deletion of user account and group account privileges
- system startup and shutdown functions

**REQUEST FOR QUOTATION**  
**Storage Area Network (SAN) – 2<sup>nd</sup> Floor**

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- 3.1.1.5 Must have a Defective Media Retention option which allows the Agency to retain defective hard disks and SSD/Flash components containing sensitive data.**
- 3.1.1.6 Must have a minimum of two storage processors. Each storage processor must have two separate 10GB iSCSI ports.**
- 3.1.1.7 Must support thin provisioning.**
- 3.1.1.8 Must have RAID support 0,1,5,6, and 10.**
- 3.1.1.9 Must be able to replace individual drives & power supplies while the system is in production without causing downtime or a degrade in performance.**
- 3.1.1.10 Must have a minimum of 30 TB of storage installed. A minimum of 10TB must be flash storage, with the individual drive sizes being no larger than 2TB. If the vendor chooses to use spinning hard drives for the remaining 20TB, those drives must be have minimum 10K in RPM speed, 12Gb/s SAS, and maximum 2TB each.**
- 3.1.1.11 Must be able to support up to 75 hard drives by default or by using expansion shelves or device federation.**
- 3.1.1.12 Must support multi-level account management with individual account authentication.**
- 3.1.1.13 Must support account locking after three unsuccessful login attempts.**
- 3.1.1.14 Must support a user-defined banner before logon.**
- 3.1.1.15 Must support an automatic session expiration timeout of no more than 30 minutes.**
- 3.1.1.16 Must produce audit logs that have timestamps, user ID if available, action requested, success or failure of the action; and source address of the request if available.**

**REQUEST FOR QUOTATION**  
**Storage Area Network (SAN) – 2<sup>nd</sup> Floor**

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**3.1.1.17** Must be able to produce Audit logs that are capable of being exported or directed to external systems for long-term retention and review.

**3.1.1.18** Must support masked (not clear-text) password entry.

**3.1.1.19** Must support integration with an LDAP/Active Directory server for authentication of administrative accounts.

**3.1.1.20** Must support logging to a Syslog server.

**3.1.1.21** Must support Network Time Protocol (NTP) synchronization to an agency provided NTP server.

**3.1.2 Maintenance and Warranty for SAN**

**3.1.2.1** Vendor must provide a three (3) year maintenance service and support warranty for two SANs, 24x7x8 support with the following features.

**3.1.2.1.1** 24-hours a day, 7 days a week access for telephone support for troubleshooting technical and configuration issues, plus onsite support when deemed necessary by the Agency.

**3.1.2.1.2** Replacement parts must be delivered onsite within 8 hours of service call being made. Vendor must install replacement parts unless Agency agrees to perform installation.

**3.1.2.1.3** Rights to new software releases

**3.1.2.1.4** Access to security patches and firmware updates provided directly by each Original Equipment Manufacturer (OEM).

**4. CONTRACT AWARD:**

**4.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price for the Contract Items. The Contract shall be awarded to the

**REQUEST FOR QUOTATION**  
**Storage Area Network (SAN) – 2<sup>nd</sup> Floor**

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Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

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

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

**4.2 Pricing Page:** Vendor should complete the Pricing Page by completing Exhibit A in its entirety. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendors who wish to respond to a Centralized Request for Quotation (CRFQ) online may submit information through the State's wvOASIS Vendor Self Service (VSS). Vendors should download the **Exhibit A Pricing Page** that is attached separately to the CRFQ and published to the VSS. **Vendor must identify Brand and Model equipment being bid and include it with their submitted bid response.**

Any product brochures to support vendor's product should be submitted with vendor's bid response. These brochures and any supporting documentation may be required before award of contract.

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

If unable to respond online, Vendor must submit their Pricing Page with their submitted bid prior to the schedule bid opening date.

**5. PAYMENT:**

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

**REQUEST FOR QUOTATION**  
**Storage Area Network (SAN) – 2<sup>nd</sup> Floor**

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**6. DELIVERY AND RETURN:**

**6.1 Shipment and Delivery:** Vendor shall ship the Contract Items immediately after being awarded this Contract and receiving a purchase order or notice to proceed. Vendor shall deliver the Contract Items within 15 calendar days after receiving a purchase order or notice to proceed. Contract Items must be delivered to Agency at 1001 Lee Street East, Charleston, WV 25301.

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

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

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

**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.

**7 VENDOR DEFAULT:**

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

**REQUEST FOR QUOTATION**  
**Storage Area Network (SAN) – 2<sup>nd</sup> Floor**

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- 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.



**Exhibit A - Pricing Page**  
**Storage Area Networks (SAN)**

Item #	Part Number	Item Description	Brand of Equipment Bid	Unit of Measure	Quantity	Unit Cost	Extended Price
3.1.1		SAN	NetApp	Each	1	\$ 24,890.00 -	\$ 56,150.00 -
3.1.2	CS-02- NOINSTALL-4HR	Hardware Warranty for SAN (3 years)	SupportEdge Premium 4hr Onsite, w/o Install	Each	1	\$ 7,942.00 -	\$ 7,942.00 -
						<b>Total Bid Amount</b>	<b>\$ 64092.00 -</b>

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

(Name and Title)

(Printed Name and Title)

(Address)

(Phone Number) / (Fax Number)

(email address)

**CERTIFICATION AND SIGNATURE:** By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

CBTS  
(Company)

Don Mazza Director of Sales  
(Authorized Signature) (Representative Name, Title)

Don Mazza - Director of Sales  
(Printed Name and Title of Authorized Representative)

11/21/17  
(Date)

513-397-7259  
(Phone Number) (Fax Number)

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.:**

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

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

**Addendum Numbers Received:**

*(Check the box next to each addendum received)*

- ☒ Addendum No. 1
- ☐ Addendum No. 2
- ☐ Addendum No. 3
- ☐ Addendum No. 4
- ☐ Addendum No. 5

- ☐ Addendum No. 6
- ☐ Addendum No. 7
- ☐ Addendum No. 8
- ☐ Addendum No. 9
- ☐ Addendum No. 10

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

Company CBTS

Authorized Signature [Signature]

Date 11/21/17

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

## West Virginia Ethics Commission



### Disclosure of Interested Parties to Contracts

Pursuant to W. Va. Code § 6D-1-2, a state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$100,000 or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

*"Business entity"* means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

*"Interested party" or "Interested parties"* means:

- (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
- (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
- (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

*"State agency"* means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of W. Va. Code § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the contracting state agency prior to contract award and to complete another form within 30 days of contract completion or termination.

*This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: [ethics@wv.gov](mailto:ethics@wv.gov); website: [www.ethics.wv.gov](http://www.ethics.wv.gov).*

West Virginia Ethics Commission  
**Disclosure of Interested Parties to Contracts**

(Required by W. Va. Code § 6D-1-2)

Contracting Business Entity: \_\_\_\_\_ Address: \_\_\_\_\_

Authorized Agent: \_\_\_\_\_ Address: \_\_\_\_\_

Contract Number: \_\_\_\_\_ Contract Description: \_\_\_\_\_

Governmental agency awarding contract: \_\_\_\_\_

☐ Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (*attach additional pages if necessary*):

**1. Subcontractors or other entities performing work or service under the Contract**

☐ Check here if none, otherwise list entity/individual names below.

**2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)**

☐ Check here if none, otherwise list entity/individual names below.

**3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)**

☐ Check here if none, otherwise list entity/individual names below.

Signature: \_\_\_\_\_

Date Signed: 11/21/17

**Notary Verification**

State of OHIO, County of Hamilton:

I, JAMIE PITSTICK, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this 21<sup>st</sup> day of November, 2017.

Notary Public's Signature

**To be completed by State Agency:**

Date Received by State Agency: \_\_\_\_\_

Date submitted to Ethics Commission: \_\_\_\_\_

Governmental agency submitting Disclosure: \_\_\_\_\_



**JAMIE PITSTICK**  
Notary Public, State of Ohio  
My Commission Expires 02-11-2021  
Revised October 7, 2017

# State of West Virginia

## VENDOR PREFERENCE CERTIFICATE

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

1. ☐ Application is made for 2.5% vendor preference for the reason checked:  
☐ Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,  
☐ Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification;  
☐ Bidder is a resident vendor partnership, association, or corporation with at least eighty percent of ownership interest of bidder held by another entity that meets the applicable four year residency requirement; or,  
☐ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,
2. ☐ Application is made for 2.5% vendor preference for the reason checked:  
☐ Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,
3. ☐ Application is made for 2.5% vendor preference for the reason checked:  
☐ Bidder is a nonresident vendor that employs a minimum of one hundred state residents, or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and employs a minimum of one hundred state residents, and for purposes of producing or distributing the commodities or completing the project which is the subject of the bidder's bid and continuously over the entire term of the project, on average at least seventy-five percent of the bidder's employees or the bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid; or,
4. ☐ Application is made for 5% vendor preference for the reason checked:  
☐ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,
5. ☐ Application is made for 3.5% vendor preference who is a veteran for the reason checked:  
☐ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,
6. ☐ Application is made for 3.5% vendor preference who is a veteran for the reason checked:  
☐ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.
7. ☐ Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with *West Virginia Code* §5A-3-59 and *West Virginia Code of State Rules*.  
☐ Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

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

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

Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: C.B.T.S. Signed: [Signature]  
Date: 11/21/17 Title: Director of Sales



STATE OF WEST VIRGINIA  
Purchasing Division

## PURCHASING AFFIDAVIT

**MANDATE:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: CBS

Authorized Signature: [Signature] Date: 6/21/17

State of OHIO

County of Hamilton, to-wit:

Taken, subscribed, and sworn to before me this 21<sup>st</sup> day of November, 2017.

My Commission expires February 11<sup>th</sup>, 2021.



JAMIE PITSTICK  
Notary Public, State of Ohio  
My Commission Expires 02-11-2021

NOTARY PUBLIC

[Signature]

Purchasing Affidavit (Revised 08/01/2015)

## CBTS Quote - 2nd Floor SAN - 34TiB Effective Usable

Quote No  
NTAP-15332110

State of West Virginia  
Taxation Dept.

### Account Manager

Drew Schultz [drew.schultz@cbts.net](mailto:drew.schultz@cbts.net)

### Technical Sales Engineer

Bill Ehrman [bill.ehrman@cbts.net](mailto:bill.ehrman@cbts.net)

Line	Part Number	Description	Cat	Qty	List Price	Ext. List	Unit Price	Ext. Price
1	AFF-A200A-002-SC	AFF-A200A Flash Bundle	Ha	2	\$ -	\$ -	\$ -	\$ -
2	SW-2-A200A-NVE-C	SW,Data at Rest Encryption Enabled,A200,-C	So	2	\$ -	\$ -	\$ -	\$ -
3	AFF-A200A-EXP-103	AFF A200,HA,24X960 GB SSD,Flash Bundle,NVE	Ha	1	\$ 58,950.00	\$ 58,950.00	\$ 17,031.00	\$ 17,031.00
4	DATA-AT-REST-ENCRYPTION	Data at Rest Encryption Capable Operating Sys	So	2	\$ -	\$ -	\$ -	\$ -
5	X-02659-00	Rail Kit,4-Post,Rnd/Sq-Hole,Adj,24-32	Ha	1	\$ 205.00	\$ 205.00	\$ 60.00	\$ 60.00
6	SW-FLASH-BUNDLE-1P-P	ONTAP,Per-0.1TB,FlashBundle,Ult-Perf,1P,-P	So	230	\$ 522.00	\$ 120,060.00	\$ 151.00	\$ 34,730.00
7	SW-2-A200A-TPM-C	SW,Trusted Platform Module Enabled,A200,-C	So	2	\$ -	\$ -	\$ -	\$ -
8	X6589-R6	SFP+Optical 10Gb Shortwave	Ha	8	\$ 570.00	\$ 4,560.00	\$ 165.00	\$ 1,320.00
9	X66250-5	Cable,LC-LC,OM4,5m	Ha	8	\$ 280.00	\$ 2,240.00	\$ 81.00	\$ 648.00
10	X1558A-R6	Power Cable,In-Cabinet,48-IN,C13-C14	Ha	2	\$ -	\$ -	\$ -	\$ -
11	CS-O2-NOINSTALL-4HR	SupportEdge Premium 4hr Onsite, w/o Install	Se	1	\$ 13,744.05	\$ 13,744.05	\$ 7,942.00	\$ 7,942.00
12	CS-NRD2-E	Non Returnable Disk Plus,e	Se	1	\$ 4,085.12	\$ 4,085.12	\$ 2,361.00	\$ 2,361.00
13	SW-2-CL-BASE	SW-2,Base,CL,Node	Ha	1	\$ -	\$ -	\$ -	\$ -

List Price Total \$203,845.00

Discount 69%

Quote Total \$ 64,092.00

### Statement of Confidentiality

The information and pricing in this proposal shall not be disclosed outside of the opportunity this quote is being offered and shall not be duplicated, used or disclosed in whole or in part for any purpose other than to evaluate this proposal. If a contract is awarded to CBTS as a result of or in connection with the submission of this proposal, the client shall have the right to duplicate, based upon the license rights held by CBTS. This restriction does not limit the right of the client to use information contained in the data if it is obtained from another source without restriction.