West Virginia Purchasing Division

2019 Washington Street, East
Charleston, WV 25305
Telephone: 304-558-2306
General Fax: 304-558-6026
Bid Fax: 304-558-3970

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

Welcome, Lu Anne Cottrill   Procurement   Budgeting   Accounts Receivable   Accounts Payable

Solicitation Response(SR)   **Dept:** 0210   **ID:** ESR05182000000006744   **Ver.:** 1   **Function:** New   **Phase:** Final   [▼]   Modified by batch , 05/18/2020

Header 📎 13   [☰ List View]

| General Information | Contact | Default Values | Discount | Document Information |

Procurement Folder: 712460

Procurement Type: Central Master Agreement

Vendor ID: VS0000022032 [↑]

Legal Name: TEQSYS INC

Alias/DBA:

Total Bid: $415,284.00

Response Date: 05/18/2020 📅

Response Time: 13:07

SO Doc Code: CRFQ

SO Dept: 0210

SO Doc ID: ISC2000000024

Published Date: 5/8/20

Close Date: 5/18/20

Close Time: 13:30

Status: Closed

Solicitation Description: Addendum 2-e-Discovery Software as a Service (OT20103)

Total of Header Attachments: 13

Total of All Attachments: 13

Proc Folder : 712460

Solicitation Description : Addendum 2-e-Discovery Software as a Service (OT20103)

Proc Type : Central Master Agreement

Date issued	Solicitation Closes	Solicitation Response	Version
	2020-05-18 13:30:00	SR 0210 ESR05182000000006744	1

VENDOR
VS0000022032 TEQSYS INC

Solicitation Number: CRFQ   0210   ISC2000000024

Total Bid : $415,284.00   **Response Date:**   2020-05-18   **Response Time:**   13:07:25

Comments: We were planning on providing a proposal that includes the first 250 GB's at no cost with our User fee but due to the pricing structure, it does not allow the State of West Virginia to get the combinations of our offers. We believe our offer is very competitive never the less, please note it could have been better if the pricing sheet was not as strict.

FOR INFORMATION CONTACT THE BUYER

Jessica S Chambers

(304) 558-0246
jessica.s.chambers@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	Contract Services: e-Discovery System				$415,284.00

Comm Code	Manufacturer	Specification	Model #	
43231511				

Extended Description :	Please see the attached Exhibit A Pricing Page Please note: Vendor must provide Exhibit A Pricing Page with their submitted bid response. Failure to do so will result in disqualification of your bid.

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

State of West Virginia
Request for Quotation
21 — **Info Technology**

Proc Folder: 712460

Doc Description: e-Discovery Software as a Service (OT20103)

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2020-04-20	2020-05-04 13:30:00	CRFQ 0210 ISC2000000024	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:

TEQSYS, Inc.
4301 W. Wm. Cannon Dr.
Ste. B150-301
Austin, TX 78749
512-940-3199

FOR INFORMATION CONTACT THE BUYER
Jessica S Chambers
(304) 558-0246
jessica.s.chambers@wv.gov

Signature X _____   **FEIN #**   03-0379408   **DATE**   05/15/2020

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

The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Office of Technology to establish a contract for an e-Discovery software as a service. This software will be used for discovery in legal proceedings to process emails and other files. The software will facilitate keyword searching, document review, privilege report creation, data tagging and redaction prior to final report being released per the terms and conditions and specifications as attached.

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV 25305 US	IS&C - CHIEF FINANCIAL OFFICER DEPARTMENT OF ADMINISTRATION BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Contract Services: e-Discovery System				

Comm Code	Manufacturer	Specification	Model #
43231511			

Extended Description :

Please see the attached Exhibit A Pricing Page

Please note: Vendor must provide Exhibit A Pricing Page with their submitted bid response. Failure to do so will result in disqualification of your bid.

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Technical Question Dealine at 9 AM (EDT)	2020-04-28

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

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

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

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:

Submit Questions to:
2019 Washington Street, East
Charleston, WV 25305
Fax: (304) 558-4115 (Vendors should not use this fax number for bid submission)
Email:

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

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

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

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

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

Revised 01/09/2020

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 _____ 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:

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. ALTERNATE MODEL OR BRAND: Unless the box below is checked, any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand 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.

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

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

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

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: West Virginia Code § 6D-1-2 requires that the vendor submit to the Purchasing Division a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least $1 Million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

23. WITH THE BID REQUIREMENTS: In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Director of the Purchasing Division reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under W. Va. CSR § 148-1-4.6. This authority does not apply to instances where state law mandates receipt with the bid.

GENERAL TERMS AND CONDITIONS:

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

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

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

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

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

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

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

[ ] **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

[ ] **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.

Revised 01/09/2020

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 of 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 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

[ ] **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 of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

[ ]

[ ]

[ ]

[ ]

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

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

Vendor must maintain:

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

[ ] **Automobile Liability Insurance** in at least an amount of: _____per occurrence.

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

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

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

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

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

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

[ ]

[ ]

[ ]

[ ]

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

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. [Reserved]

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

[ ] _____ for _____

[ ] Liquidated Damages Contained in the Specifications

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

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

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

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

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia 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 § 148-1-5.2.b.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34. VENDOR 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.

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

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

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

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, 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.

38. 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"), provided that both the Other Government Entity and the Vendor agree. 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. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

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

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

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

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

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

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.
Revised 01/09/2020

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

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

    a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

    b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open 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.

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

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a

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

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

44. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least $1 million, the vendor must submit to the Agency a 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. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

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

ADDITIONAL TERMS AND CONDITIONS (Construction Contracts Only)

1. CONTRACTOR'S LICENSE: West Virginia Code § 21-11-2 requires that all persons desiring to perform contracting work in this state be licensed. The West Virginia Contractors Licensing Board is empowered to issue the contractor's license. Applications for a contractor's license may be made by contacting the West Virginia Division of Labor. West Virginia Code § 21-11-11 requires any prospective Vendor to include the contractor's license number on its bid. If an apparent low bidder fails to submit a license number in accordance with this section, the Purchasing Division will promptly request by telephone and electronic mail that the low bidder and the second low bidder provide the license number within one business day of the request. Failure of the bidder to provide the license number within one business day of receiving the request shall result in disqualification of the bid. Vendors should include a contractor's license number in the space provided below.

Contractor's Name: _____

Contractor's License No.: WV-_____

The apparent successful Vendor must furnish a copy of its contractor's license prior to the issuance of a contract award document.

2. DRUG-FREE WORKPLACE AFFIDAVIT: W. Va. Code § 21-1D-5 provides that any solicitation for a public improvement contract requires each Vendor that submits a bid for the work to submit an affidavit that the Vendor has a written plan for a drug-free workplace policy. If the affidavit is not submitted with the bid submission, the Purchasing Division shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the affidavit within one business day of the request. Failure to submit the affidavit within one business day of receiving the request shall result in disqualification of the bid. To comply with this law, Vendor should complete the enclosed drug-free workplace affidavit and submit the same with its bid. Failure to submit the signed and notarized drugfree workplace affidavit or a similar affidavit that fully complies with the requirements of the applicable code, within one business day of being requested to do so shall result in disqualification of Vendor's bid. Pursuant to W. Va. Code 21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is $100,000 or less or temporary or emergency repairs.

2.1. DRUG-FREE WORKPLACE POLICY: Pursuant to W. Va. Code § 21-1D-4, Vendor and its subcontractors must implement and maintain a written drug-free workplace policy that complies with said article. The awarding public authority shall cancel this contract if: (1) Vendor fails to implement and maintain a written drug-free workplace policy described in the preceding paragraph, (2) Vendor fails to provide information regarding implementation of its drug-free workplace policy at the request of the public authority; or (3) Vendor provides to the public authority false information regarding the contractor's drug-free workplace policy.

Pursuant to W. Va. Code 21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is $100,000 or less or temporary or emergency repairs.

3. DRUG FREE WORKPLACE REPORT: Pursuant to W. Va. Code § 21-1D-7b, no less than once per year, or upon completion of the project, every contractor shall provide a certified report to the public authority which let the contract. For contracts over $25,000, the public authority shall be the West Virginia Purchasing Division. For contracts of $25,000 or less, the public authority shall be the agency issuing the contract. The report shall include:

(1) Information to show that the education and training service to the requirements of West Virginia Code § 21-1D-5 was provided;

(2) The name of the laboratory certified by the United States Department of Health and Human Services or its successor that performs the drug tests;

(3) The average number of employees in connection with the construction on the public improvement;

(4) Drug test results for the following categories including the number of positive tests and the number of negative tests: (A) Pre-employment and new hires; (B) Reasonable suspicion; (C) Post-accident; and (D) Random.

Vendor should utilize the attached Certified Drug Free Workplace Report Coversheet when submitting the report required hereunder. Pursuant to W. Va. Code 21-1D-2(b) and (k), this provision does not apply to public improvement contracts the value of which is $100,000 or less or temporary or emergency repairs.

4. AIA DOCUMENTS: All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the attached AIA documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein.

4A. PROHIBITION AGAINST GENERAL CONDITIONS: Notwithstanding anything contained in the AIA Documents or the Supplementary Conditions, the State of West Virginia will not pay for general conditions, or winter conditions, or any other condition representing a delay in the contracts. The Vendor is expected to mitigate delay costs to the greatest extent possible and any costs associated with Delays must be specifically and concretely identified. The state will not consider an average daily rate multiplied by the number of days extended to be an acceptable charge.

5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS: In accordance with § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July 1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

6. LOCAL LABOR MARKET HIRING REQUIREMENT: Pursuant to West Virginia Code §21-1C-1 et seq., Employers shall hire at least seventy-five percent of employees for public improvement construction projects from the local labor market, to be rounded off, with at least two employees from outside the local labor market permissible for each employer per project.

Any employer unable to employ the minimum number of employees from the local labor market shall inform the nearest office of Workforce West Virginia of the number of qualified employees needed and provide a job description of the positions to be filled.

If, within three business days following the placing of a job order, Workforce West Virginia is unable to refer any qualified job applicants to the employer or refers less qualified job applicants than the number requested, then Workforce West Virginia shall issue a waiver to the employer stating the unavailability of applicant and shall permit the employer to fill any positions covered by the waiver from outside the local labor market. The waiver shall be in writing and shall be issued within the prescribed three days. A waiver certificate shall be sent to both the employer for its permanent project records and to the public authority.

Any employer who violates this requirement is subject to a civil penalty of $250 per each employee less than the required threshold of seventy-five percent per day of violation after receipt of a notice of violation.

Any employer that continues to violate any provision of this article more than fourteen calendar days after receipt of a notice of violation is subject to a civil penalty of $500 per each employee less than the required threshold of seventy-five percent per day of violation.

The following terms used in this section have the meaning shown below.

(1) The term "construction project" means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract in an amount equal to or greater than $500,000. The term "construction project" does not include temporary or emergency repairs;

(2) The term "employee" means any person hired or permitted to perform hourly work for wages by a person, firm or corporation in the construction industry; The term "employee" does not include:(i) Bona fide employees of a public authority or individuals engaged in making temporary or emergency repairs;(ii) Bona fide independent contractors; or(iii) Salaried supervisory personnel necessary to assure efficient execution of the employee's work;

(3) The term "employer" means any person, firm or corporation employing one or more employees on any public improvement and includes all contractors and subcontractors;

(4) The term "local labor market" means every county in West Virginia and any county outside of West Virginia if any portion of that county is within fifty miles of the border of West Virginia;

(5) The term "public improvement" includes the construction of all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures that may be let to contract by a public authority, excluding improvements funded, in whole or in part, by federal funds.

7. DAVIS-BACON AND RELATED ACT WAGE RATES:

☐   The work performed under this contract is federally funded in whole, or in part. Pursuant

to _____, Vendors are required to pay applicable Davis-Bacon

wage rates.

☐   The work performed under this contract is not subject to Davis-Bacon wage rates.

8. SUBCONTRACTOR LIST SUBMISSION: In accordance with W. Va. Code § 5-22-1, the apparent low bidder on a contract valued at more than $250,000.00 for the construction, alteration, decoration, painting or improvement of a new or existing building or structure shall submit a list of all subcontractors who will perform more than $25,000.00 of work on the project including labor and materials. (This section does not apply to any other construction projects, such as highway, mine reclamation, water or sewer projects.) The subcontractor list shall be provided to the Purchasing Division within one business day of the opening of bids for review. If the apparent low bidder fails to submit the subcontractor list, the Purchasing Division shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid.

If no subcontractors who will perform more than $25,000.00 of work are to be used to complete the project, the apparent low bidder must make this clear on the subcontractor list, in the bid itself, or in response to the Purchasing Division's request for the subcontractor list.

     a. Required Information. The subcontractor list must contain the following information:

         i. Bidder's name

         ii. Name of each subcontractor performing more than $25,000 of work on the project.

         iii. The license number of each subcontractor, as required by W. Va. Code § 21-11-1 et. seq.

         iv. If applicable, a notation that no subcontractor will be used to perform more than $25,000.00 of work. (This item iv. is not required if the vendor makes this clear in the bid itself or in documentation following the request for the subcontractor list.)

     b. Subcontractor List Submission Form: The subcontractor list may be submitted in any form, including the attached form, as long as the required information noted above is included. If any information is missing from the bidder's subcontractor list submission, it may be obtained from other documents such as bids, emails, letters, etc. that accompany the subcontractor list submission.

c. Substitution of Subcontractor. Written approval must be obtained from the State Spending Unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

i. The subcontractor listed in the original bid has filed for bankruptcy;

ii. The subcontractor in the original bid has been debarred or suspended; or

iii. The contractor certifies in writing that the subcontractor listed in the original bid fails, is unable, or refuses to perform his subcontract.

<u>Subcontractor List Submission (Construction Contracts Only)</u>

Bidder's Name: _____

☐   Check this box if no subcontractors will perform more than $25,000.00 of work to complete the project.

Subcontractor Name	License Number if Required by W. Va. Code § 21-11-1 et. seq.

Attach additional pages if necessary

ADDITIONAL TERMS AND CONDITIONS
(Architectural and Engineering Contracts Only)

1. PLAN AND DRAWING DISTRIBUTION: All plans and drawings must be completed and available for distribution at least five business days prior to a scheduled pre-bid meeting for the construction or other work related to the plans and drawings.

2. PROJECT ADDENDA REQUIREMENTS: The Architect/Engineer and/or Agency shall be required to abide by the following schedule in issuing construction project addenda. The Architect/Engineer shall prepare any addendum materials for which it is responsible, and a list of all vendors that have obtained drawings and specifications for the project. The Architect/Engineer shall then send a copy of the addendum materials and the list of vendors to the State Agency for which the contract is issued to allow the Agency to make any necessary modifications. The addendum and list shall then be forwarded to the Purchasing Division buyer by the Agency. The Purchasing Division buyer shall send the addendum to all interested vendors and, if necessary, extend the bid opening date. Any addendum should be received by the Purchasing Division at least fourteen (14) days prior to the bid opening date.

3. PRE-BID MEETING RESPONSIBILITIES: The Architect/Engineer shall be available to attend any pre-bid meeting for the construction or other work resulting from the plans, drawings, or specifications prepared by the Architect/Engineer.

4. AIA DOCUMENTS: All construction contracts that will be completed in conjunction with architectural services procured under Chapter 5G of the West Virginia Code will be governed by the attached AIA documents, as amended by the Supplementary Conditions for the State of West Virginia, in addition to the terms and conditions contained herein. The terms and conditions of this document shall prevail over anything contained in the AIA Documents or the Supplementary Conditions.

5. GREEN BUILDINGS MINIMUM ENERGY STANDARDS: In accordance with West Virginia Code § 22-29-4, all new building construction projects of public agencies that have not entered the schematic design phase prior to July 1, 2012, or any building construction project receiving state grant funds and appropriations, including public schools, that have not entered the schematic design phase prior to July1, 2012, shall be designed and constructed complying with the ICC International Energy Conservation Code, adopted by the State Fire Commission, and the ANSI/ASHRAE/IESNA Standard 90.1-2007: Provided, That if any construction project has a commitment of federal funds to pay for a portion of such project, this provision shall only apply to the extent such standards are consistent with the federal standards.

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.

__TEQSYS, Inc._____ _K. R_____
(Name, Title)

__Keri Ramirez, VP of Sales_____
(Printed Name and Title)

___4301 W. William Cannon Dr., Ste. B150-301, Austin, TX 78749___
(Address)

___512-940-3199 Phone; 512-445-7440 Fax_____
(Phone Number) / (Fax Number)

____keri.ramirez@teqsys.com_____
(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.

_____
(Company)

_____
(Authorized Signature) (Representative Name, Title)

_____
(Printed Name and Title of Authorized Representative)

_____
(Date)

_____
(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)

[X] Addendum No. 1   [ ] Addendum No. 6
[X] Addendum No. 2   [ ] Addendum No. 7
[ ] Addendum No. 3   [ ] Addendum No. 8
[ ] Addendum No. 4   [ ] Addendum No. 9
[ ] Addendum No. 5   [ ] 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.

TEQSYS, Inc.
_____
Company

_____
Authorized Signature

05/15/2020
_____
Date

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

Revised 01/09/2020

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Office of Technology to establish a contract for an e-Discovery software as a service. This software will be used for discovery in legal proceedings to process emails and other files. The software will facilitate keyword searching, document review, privilege report creation, data tagging and redaction prior to final report being released.

   WVOT provides highly reliable, protected, and cost-effective technology services to approximately 25,000 computers and 20,000 network users. Services are delivered by approximately 200 full-time and temporary employees and supplemented by specialized contract services and staff on an as-needed basis. There are approximately 210 entities total within the executive branch where services are provided. Funding for the Office of Technology is derived from a fee for services model.

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 "Business Hours" means Monday - Friday 8:00 AM to 5:00 PM EST excluding weekends and Federal and State holidays, which are as follows:
   - **2.1.1** New Year's Day (January 1)
   - **2.1.2** Martin Luther King Day (Third Monday in January)
   - **2.1.3** President's Day (Third Monday in February)
   - **2.1.4** Memorial Day (Last Monday in May)
   - **2.1.5** West Virginia Day (June 20)
   - **2.1.6** Independence Day (July 4)
   - **2.1.7** Labor Day (First Monday in September)
   - **2.1.8** Columbus Day (Second Monday in October)
   - **2.1.9** Veterans Day (November 11)
   - **2.1.10** Thanksgiving (Fourth Thursday in November)
   - **2.1.11** Day After Thanksgiving (Fourth Friday in November)
   - **2.1.12** Christmas Day (December 25)

   2.2 "Contract Services" means e-Discovery system as more fully described in these specifications.

   2.3 "Pricing Page" means the pages, contained wvOASIS or attached hereto as Exhibit A, upon which Vendor should list its proposed price for the Contract Services.

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

3. **QUALIFICATIONS:** Vendor, or Vendor's staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications:

3.1. The Vendor must be compliant with Internal Revenue Service (IRS) 1075, Section 9.3.1.12 – Remote Access requirements.

3.1.1. IRS 1075, Section 9.3.1.12 states that "*FTI cannot be accessed remotely by agency employees, agents, representatives, or contractors located offshore - outside of the United States territories, embassies, or military installations. Further, FTI may not be received, processed, stored, transmitted, or disposed of by IT systems located offshore.*"

4. MANDATORY REQUIREMENTS:

4.1 Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below.

4.1.1 General Requirements– e-Discovery System

4.1.1.1 The Vendor must provide an e-Discovery System that is cloud-based (Software as a Service Model).

4.1.1.2 The system must contain the following capabilities within a single platform that does not require integration with other software: self-service data loading, self-service data processing, client administration, self-service, productions, review, and analytics capabilities.

4.1.1.3 The Vendor must provide an e-Discovery System with an unlimited user seats for a minimum of 12 months from date of award.

4.1.1.4 The system must allow client administrators to have the ability to set-up new users or workspaces and assign roles and permissions to new users.

4.1.1.5 The system must allow a user to have multiple roles and toggle between roles. For example, a client administrator can toggle between user roles to validate user permissions and provide user support.

4.1.1.6 The system must not require additional licenses and/or software from third parties.

4.1.1.7 The system must allow the customer/client administrators the ability to remove/delete documents and create archives from the platform.

4.1.1.8 The system must be accessible to an unlimited number of users and allow access to at least 50 concurrent cases each having at least one million documents without degradation to speed.

4.1.1.9 The system must be a configurable platform that allows the administrators to configure applications like request tracking and FOIA requests.

4.1.1.10 The system must be built on scalable architecture with a storage capacity of at least two petabytes of data.

4.1.1.11 The Vendor must provide an e-Discovery System that features the following:

4.1.1.11.1 A system that has two-factor authentication access.

4.1.1.11.2 A system that allows the Agency to have 100% data input automation.

4.1.1.11.3 A system that provides 256-bit encryption to the data when at rest and in transit.

4.1.1.11.4 A system that scans files for viruses.

4.1.1.11.5 A system that allows for load file import and export.

4.1.2 Data Loading & Processing- e-Discovery System

4.1.2.1 The system must allow the Agency to have 100% data input automation.

4.1.2.2 The system must allow the user to load raw data such as PSTs, zip files, and other ESI for processing.

4.1.2.3 The system must allow the client administrator to move data between data stores and conduct early case assessment, including running search terms, and listing and counting file types reports, prior to making the data available to reviewers.

4.1.2.4 The system must allow the customer to create, save, and upload templates for data processing.

4.1.2.5 The system must have pre-built utilities to support processing for various files including imaging, loading, and text files.

4.1.2.6 The system must support uploading up to 10 GB of data directly from web-browser via "drag and drop".

4.1.2.7 The system must allow loading and processing of a data set that has at least 1 terabyte of documents, data, or ESI, into the review tool.

4.1.2.8 The system must support data reduction and culling (De-NIST; custodial and global Deduplication; filtering by Custodian, file type, date; keyword searching) during processing.

4.1.2.9 The system must include built-in ESI processing capabilities (extraction of text and metadata, imaging, numbering, OCR, load file creation).

4.1.2.10 The system must keep e-mails and families together and locate orphaned documents during processing.

4.1.2.11 The system must support extraction and processing of files within container files such as zip and rar, and support the processing of files in nested containers or folders.

4.1.2.12 The system must have the ability to ingest, process, and view multiple file types.

4.1.2.13 The system must allow for load file import and export.

4.1.2.14 The system must allow the user the ability to create templates for processing, production, import, export.

4.1.2.15 The system must be able to securely transfer ESI to the review tool.

4.1.3 Review – e-Discovery System

4.1.3.1 The system must allow users to review and analyze ESI productions.

4.1.3.2 The system must allow users to identify and remove duplicate documents and data.

4.1.3.3 The system must allow users to redact and highlight portions of the document.

4.1.3.4 The system must allow users to search, tag, index, and code information and provide advance search features including but not limited to keyword, Boolean, stemming, wildcard, fuzzy, proximity and other search types.

4.1.3.5 The system must process searches, display documents, and allow users to perform document review with minimal loading times.

4.1.3.6 The system must include a file viewer that easily and quickly opens files without needing to install additional applications. Supported files must include: [.docx, .xlsx, .pdf, .jpg, .jpeg, .mov, avi, .rtf, .txt., pub, .pptx]

4.1.3.7 The system must support searching on tags/codes and metadata.

4.1.3.8 The system must allow the user the option to assign and self-assign batches for review.

4.1.3.9 The system must provide search engines that support both Elasticsearch and dtSearch indexing and searching options within a single matter.

4.1.3.10 The system must allow the user to create workspaces, folders, etc., for customizable document organization.

4.1.3.11 The system must provide full administrator rights to the customer, including the ability to assign roles/permissions, create review assignments and/ or review batches for reviewers.

4.1.3.12 The system must allow for the customization of coding panels.

4.1.4 Advanced Analytics – eDiscovery System

4.1.4.1 The system must include the following content & context analysis capabilities: topic clustering, email threading, near-duplicate analysis, entities recognition.

4.1.4.2 The system must provide predictive coding, advanced artificial intelligence (AI) and Technology Assisted Review (TAR) technologies including TAR 1.0 and TAR 3.0.

4.1.4.3 The system must provide Active Learning (story builder with continuous active learning analytics).

4.1.5 Security – eDiscovery System

4.1.5.1 The system must provide secure authorized access and have multi-factor authentication for each user to prevent unauthorized access.

4.1.5.2 The systems must provide automatic session termination if no activity with a prescribed period of time.

4.1.5.3 The system must allow a client administrator to restrict security rights at the individual, group or role level.

4.1.5.4 The system must provide a security level that allows system administrators to add new users to the system and edit existing user permissions.

4.1.5.5 The vendor must provide regular maintenance including new releases and updates.

4.1.5.6 The system must provide at least 256-bit encryption to the data when at rest and in transit.

4.1.6 Production – eDiscovery System

4.1.6.1 The system must provide production of the ESI in a variety of formats including as searchable PDF, native or images and text with a load file.

4.1.6.2 The system must have a wizard-driven production process.

4.1.6.3 The system must have self-service production capabilities to allow the user to prepare and export from start to finish/download.

4.1.6.4 The system must allow the user to view all productions for a single file in the review platform.

4.1.7 Professional Services and Training – eDiscovery

4.1.7.1 The vendor must provide Agency individualized live training for up twenty agency users per session.

4.1.7.1.1 The vendor must record live trainings and provide recorded training to the client at no additional cost.

4.1.7.2 The vendor must provide reviewer training and client administrator/organization administrator training.

4.1.7.3 The vendor must record live trainings and provide recorded training to the client at no additional cost.

4.1.7.4 The system must provide access to a knowledge base or help center, technical documentation, and online support resources.

4.1.7.5 The vendor must provide support services for the initial setup and configuration.

4.1.7.6 The vendor must provide support services for the duration of the contract for ongoing maintenance.

4.1.7.7 The vendor must offer client services support including project management and technical support services.

4.1.7.8 **Project Management – eDiscovery**

    4.1.7.8.1 Vendor must have the ability to participate in ad-hoc meetings to address an issue or concern.

    4.1.7.8.2 Vendor must have the ability to provide consulting services for any activity client will undertake with a 3rd party vendor (e.g., data collection).

    4.1.7.8.3 Vendor must have the ability to define, create, and deliver custom reports for client.

    4.1.7.8.4 Vendor must have the ability to work with client on custom requests, custom reports, etc.

4.1.7.9 **Technical Support – eDiscovery**

    4.1.7.9.1 Vendor must have the ability to provide User Administration

    4.1.7.9.2 Vendor must have the ability to provide Early Case Assessment, Review, or Production Support

    4.1.7.9.3 Vendor must have the ability to provide System Configuration

    4.1.7.9.4 Vendor must have the ability to provide Search Creations

    4.1.7.9.5 Vendor must have the ability to provide Batch Creations

    4.1.7.9.6 Vendor must have the ability to provide View Creations

4.1.7.9.7   Vendor must have the ability to provide request technical assistance/leverage support services for tasks agency has the ability to perform.

4.1.8   Support - eDiscovery

4.1.8.1 Support by telephone, online, in-app, and email 24 hours-a-day, 7 days-a-week, 365 days-a-year for troubleshooting technical issues

4.1.8.2 A response time of a minimum of 1 day to request for technical support.

4.1.8.3 Access to knowledgebase, technical documentation, and online support resources.

4.1.9   Billing - eDiscovery

4.1.9.1 Vendor will round up to the nearest next whole gigabyte (GB) for billing and auditing purposes. (Example 1.2GB will be billed at 2.0 GB)

4.1.9.2 Vendor will invoice monthly and will bill at the maximum gigabyte (GB) capacity used by the state.

4.1.9.3 Vendor's proposed solution must provide billing capabilities designed to simplify the procedures of a chargeback model, as well as provide a holistic view of service. The state desires the billing detail to include but not be limited to billing by agency, consumption usage by each agency.

4.1.10 Software as a Service Addendum

4.1.10.1 Vendor must sign the attached Software as a Service Addendum prior to award.

4.1.11 Optional Renewals

4.1.11.1   Vendor will include in their bid the cost of optional Annual renewals for years 2, 3, and 4. These optional Annual renewals will be initiated on Agency request authorized under the authority of the Purchasing Division.

5. **CONTRACT AWARD:**

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

    Contract will be evaluated on all lines but only awarded on first year.

    Renewal options for years 2, 3, and 4 will be initiated by the Agency, agreed to by the Vendor and processed by the West Virginia Purchasing Division as Change Orders for subsequent years.

    5.2 Pricing Page: Vendor should complete the attached Exhibit A-Pricing Page. The unit price will be multiplied with the quantity to provide the extended cost. **The Vendor should respond by entering the total overall cost calculated at the bottom of the Exhibit-A Pricing Page in the wvOASIS pricing section.**

    The 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.

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

    Vendor should 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 contract is issued.

    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 contract is issued.

    Vendor should type or electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: [insert buyer's contact info.]

6. **PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.

7. **PAYMENT:** Agency shall pay a flat fee, as shown on the Pricing Pages, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

8. **TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.

9. **FACILITIES ACCESS:** Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:

    9.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.

    9.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.

    9.3. Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.

    9.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.

    9.5. Vendor shall inform all staff of Agency's security protocol and procedures.

10. **VENDOR DEFAULT:**

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

        10.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.

        10.1.2. Failure to comply with other specifications and requirements contained herein.

        10.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

10.1.4. Failure to remedy deficient performance upon request.

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

10.2.1. Immediate cancellation of the Contract.

10.2.2. Immediate cancellation of one or more release orders issued under this Contract.

10.2.3. Any other remedies available in law or equity.

11. MISCELLANEOUS:

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

Contract Manager:	Keri Ramirez
Telephone Number:	512-940-3199
Fax Number:	512-445-7440
Email Address:	keri.ramirez@teqsys.com

Software as a Service Addendum

1. Definitions:

<u>Acceptable alternative data center location</u> means a country that is identified as providing equivalent or stronger data protection than the United States, in terms of both regulation and enforcement. DLA Piper's Privacy Heatmap shall be utilized for this analysis and may be found at https://www.dlapiperdataprotection.com/index.html?t=world-map&c=US&c2=IN.

<u>Authorized Persons</u> means the service provider's employees, contractors, subcontractors or other agents who have responsibility in protecting or have access to the public jurisdiction's personal data and non-public data to enable the service provider to perform the services required.

<u>Data Breach</u> means the unauthorized access and acquisition of unencrypted and unredacted personal data that compromises the security or confidentiality of a public jurisdiction's personal information and that causes the service provider or public jurisdiction to reasonably believe that the data breach has caused or will cause identity theft or other fraud.

<u>Individually Identifiable Health Information</u> means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

<u>Non-Public Data</u> means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the public jurisdiction because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

<u>Personal Data</u> means data that includes information relating to a person that identifies the person by first name or first initial, and last name, and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, state identification card); financial account information, including account number, credit or debit card numbers; or protected health information (PHI).

<u>Protected Health Information (PHI)</u> means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.

<u>Public Jurisdiction</u> means any government or government agency that uses these terms and conditions. The term is a placeholder for the government or government agency.

<u>Public Jurisdiction Data</u> means all data created or in any way originating with the public jurisdiction, and all data that is the output of computer processing or other electronic manipulation of any data that was created by or in any way originated with the public jurisdiction, whether such data or output is stored on the public jurisdiction's hardware, the service provider's hardware or exists in any system owned, maintained or otherwise controlled by the public jurisdiction or by the service provider.

<u>Public Jurisdiction Identified Contact</u> means the person or persons designated in writing by the public jurisdiction to receive security incident or breach notification.

<u>Restricted data</u> means personal data and non-public data.

<u>Security Incident</u> means the actual unauthorized access to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a public jurisdiction's unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

<u>Service Provider</u> means the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.

<u>Software-as-a-Service (SaaS)</u> means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

2. Data Ownership: The public jurisdiction will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access public jurisdiction user accounts or public jurisdiction data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at the public jurisdiction's written request.

3. Data Protection and Privacy: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of public jurisdiction information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of public jurisdiction information and comply with the following conditions:
   a) The service provider shall implement and maintain appropriate administrative, technical and physical security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. In Appendix A,

the public jurisdiction shall indicate whether restricted information will be processed by the service provider. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind. The service provider shall ensure that all such measures, including the manner in which personal data and non-public data are collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Addendum and shall survive termination of the underlying contract.

b) The service provider represents and warrants that its collection, access, use, storage, disposal and disclosure of personal data and non-public data do and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations, policies and directives.

c) The service provider shall support third-party multi-factor authentication integration with the public jurisdiction third-party identity provider to safeguard personal data and non-public data.

d) If, in the course of its engagement by the public jurisdiction, the service provider has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, the service provider shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the service provider's sole cost and expense. All data obtained by the service provider in the performance of this contract shall become and remain the property of the public jurisdiction.

e) All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data.

f)   Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit, in accordance with recognized industry practice. The public jurisdiction shall identify data it deems as non-public data to the service provider.

g) At no time shall any data or process – that either belong to or are intended for the use of a public jurisdiction or its officers, agents or employees — be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the public jurisdiction.

h) The service provider shall not use or disclose any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

i)   Data Location. For non-public data and personal data, the service provider shall provide its data center services to the public jurisdiction and its end users solely from data centers in the U.S. Storage of public jurisdiction data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to *store* public jurisdiction data on portable devices, including personal computers, except for devices that are used and kept only at its

U.S. data centers. With agreement from the public jurisdiction, this term may be met by the service provider providing its services from an acceptable alternative data center location, which agreement shall be stated in Appendix A. The Service Provider may also request permission to utilize an acceptable alternative data center location during a procurement's question and answer period by submitting a question to that effect. The service provider shall permit its personnel and contractors to access public jurisdiction data remotely only as required to provide technical support.

4. Security Incident or Data Breach Notification: The service provider shall inform the public jurisdiction of any confirmed security incident or data breach.

a) Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as defined by law or contained in the contract. Discussing security incidents with the public jurisdiction shall be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes defined by law or contained in the contract.

b) Security Incident Reporting Requirements: The service provider shall report a confirmed Security Incident as soon as practicable, but no later than twenty-four (24) hours after the service provider becomes aware of it, to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at https://apps.wv.gov/ot/ir/Default.aspx, and (3) the public jurisdiction point of contact for general contract oversight/administration. The following information shall be shared with the public jurisdiction: (1) incident phase (detection and analysis; containment, eradication and recovery; or post-incident activity), (2) projected business impact, and, (3) attack source information.

c) Breach Reporting Requirements: Upon the discovery of a data breach or unauthorized access to non-public data, the service provider shall immediately report to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at https://apps.wv.gov/ot/ir/Default.aspx, and the public jurisdiction point of contact for general contract oversight/administration.

5. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of the service provider.

a) Immediately after being awarded a contract, the service provider shall provide the public jurisdiction with the name and contact information for an employee of service provider who shall serve as the public jurisdiction's primary security contact and shall be available to assist the public jurisdiction twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a data breach. The service provider may provide this information in Appendix A.

b) Immediately following the service provider's notification to the public jurisdiction of a data breach, the parties shall coordinate cooperate with each other to investigate the data breach. The service provider agrees to fully cooperate with the public jurisdiction in the public jurisdiction's handling of the matter, including, without limitation, at the public jurisdiction's request, making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law and regulation.

c) Within 72 hours of the discovery, the service provider shall notify the parties listed in 4(c) above, to the extent known: (1) date of discovery; (2) list of data elements and the number of individual records; (3) description of the unauthorized persons known or reasonably believed to have improperly used or disclosed the personal data; (4) description of where the personal data is believed to have been improperly transmitted, sent, or utilized; and, (5) description of the probable causes of the improper use or disclosure.

d) The service provider shall (1) cooperate with the public jurisdiction as reasonably requested by the public jurisdiction to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and prevent any further data breach at the service provider's expense in accordance with applicable privacy rights, laws and regulations and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

e) If a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state or federal law; (3) a credit monitoring service (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach (or other similar publication if the named publication has not issued an updated average per record per cost in the last 5 years at the time of the data breach); and (5) complete all corrective actions as reasonably determined by service provider based on root cause. The service provider agrees that it shall not inform any third party of any data breach without first obtaining the public jurisdiction's prior written consent, other than to inform a complainant that the matter has been forwarded to the public jurisdiction's legal counsel and/or engage a third party with appropriate expertise and confidentiality protections for any reason connected to the data breach. Except with respect to where the service provider has an independent legal obligation to report a data breach, the service provider agrees that the public jurisdiction shall have the sole right to determine: (1) whether notice of the data breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others, as required by law or regulation, or otherwise in the public jurisdiction's discretion; and (2) the contents of such notice, whether any

type of remediation may be offered to affected persons, and the nature and extent of any such remediation. The service provider retains the right to report activity to law enforcement.

6. Notification of Legal Requests: The service provider shall contact the public jurisdiction upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the public jurisdiction's data under this contract, or which in any way might reasonably require access to the data of the public jurisdiction. The service provider shall not respond to subpoenas, service of process and other legal requests related to the public jurisdiction without first notifying the public jurisdiction, unless prohibited by law from providing such notice.

7. Termination and Suspension of Service:
   a) In the event of a termination of the contract, the service provider shall implement an orderly return of public jurisdiction data within the time period and format specified in the contract (or in the absence of a specified time and format, a mutually agreeable time and format) and after the data has been successfully returned, securely and permanently dispose of public jurisdiction data.
   b) During any period of service suspension, the service provider shall not take any action to intentionally erase any public jurisdiction data.
   c) In the event the contract does not specify a time or format for return of the public jurisdiction's data and an agreement has not been reached, in the event of termination of any services or agreement in entirety, the service provider shall not take any action to intentionally erase any public jurisdiction data for a period of:
      - 10 days after the effective date of termination, if the termination is in accordance with the contract period
      - 30 days after the effective date of termination, if the termination is for convenience
      - 60 days after the effective date of termination, if the termination is for cause

   After such period, the service provider shall have no obligation to maintain or provide any public jurisdiction data and shall thereafter, unless legally prohibited, delete all public jurisdiction data in its systems or otherwise in its possession or under its control.
   d) The public jurisdiction shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the Contract.
   e) The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by the public jurisdiction. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the public jurisdiction.

8. Background Checks: The service provider shall conduct criminal background checks in compliance with W.Va. Code §15-2D-3 and not utilize any staff to fulfill the obligations

of the contract, including subcontractors, who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The service provider shall promote and maintain an awareness of the importance of securing the public jurisdiction's information among the service provider's employees and agents.

9. Oversight of Authorized Persons: During the term of each authorized person's employment or engagement by service provider, service provider shall at all times cause such persons to abide strictly by service provider's obligations under this Agreement and service provider's standard policies and procedures. The service provider further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of personal data by any of service provider's officers, partners, principals, employees, agents or contractors.

10. Access to Security Logs and Reports: The service provider shall provide reports to the public jurisdiction in CSV format agreed to by both the service provider and the public jurisdiction. Reports shall include user access (successful and failed attempts), user access IP address, user access history and security logs for all public jurisdiction files and accounts related to this contract.

11. Data Protection Self-Assessment: The service provider shall perform a Cloud Security Alliance STAR Self-Assessment by completing and submitting the "Consensus Assessments Initiative Questionnaire" to the Public Jurisdiction Identified Contact. The service provider shall submit its self-assessment to the public jurisdiction prior to contract award and, upon request, annually thereafter, on the anniversary of the date of contract execution. Any deficiencies identified in the assessment will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

12. Data Center Audit: The service provider shall perform an audit of its data center(s) at least annually at its expense and provide a redacted version of the audit report upon request. The service provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit. Any deficiencies identified in the report or approved equivalent will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

13. Change Control and Advance Notice: The service provider shall give 30 days, advance notice (to the public jurisdiction of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics.

14. Security:
   a) At a minimum, the service provider's safeguards for the protection of data shall include: (1) securing business facilities, data centers, paper files, servers, back-up

systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (2) implementing network, device application, database and platform security; 3) securing information transmission, storage and disposal; (4) implementing authentication and access controls within media, applications, operating systems and equipment; (5) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (6) providing appropriate privacy and information security training to service provider's employees.

b) The service provider shall execute well-defined recurring action steps that identify and monitor vulnerabilities and provide remediation or corrective measures. Where the service provider's technology or the public jurisdiction's required dependence on a third-party application to interface with the technology creates a critical or high risk, the service provider shall remediate the vulnerability as soon as possible. The service provider must ensure that applications used to interface with the service provider's technology remain operationally compatible with software updates.

c) Upon the public jurisdiction's written request, the service provider shall provide a high-level network diagram with respect to connectivity to the public jurisdiction's network that illustrates the service provider's information technology network infrastructure.

15. Non-disclosure and Separation of Duties: The service provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of public jurisdiction data to that which is absolutely necessary to perform job duties.

16. Import and Export of Data: The public jurisdiction shall have the ability to securely import, export or dispose of data in standard format in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the public jurisdiction to import or export data to/from other service providers identified in the contract (or in the absence of an identified format, a mutually agreeable format).

17. Responsibilities: The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the cloud services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the service provider.

18. Subcontractor Compliance: The service provider shall ensure that any of its subcontractors to whom it provides any of the personal data or non-public data it receives hereunder, or to whom it provides any personal data or non-public data which the service provider creates or receives on behalf of the public jurisdiction, agree to the restrictions, terms and conditions which apply to the service provider hereunder.

19. Right to Remove Individuals: The public jurisdiction shall have the right at any time to require that the service provider remove from interaction with public jurisdiction any

service provider representative who the public jurisdiction believes is detrimental to its working relationship with the service provider. The public jurisdiction shall provide the service provider with notice of its determination, and the reasons it requests the removal. If the public jurisdiction signifies that a potential security violation exists with respect to the request, the service provider shall immediately remove such individual. The service provider shall not assign the person to any aspect of the contract without the public jurisdiction's consent.

20. Business Continuity and Disaster Recovery: The service provider shall provide a business continuity and disaster recovery plan executive summary upon request. Lack of a plan will entitle the public jurisdiction to terminate this contract for cause.

21. Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

22. Web Services: The service provider shall use web services exclusively to interface with the public jurisdiction's data in near real time when possible.

23. Encryption of Data at Rest: The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data.

24. Subscription Terms: Service provider grants to a public jurisdiction a license to:
   a. Access and use the service for its business purposes;
   b. For SaaS, use underlying software as embodied or used in the service; and
   c. View, copy, upload, download (where applicable), and use service provider's documentation.

25. Equitable Relief: Service provider acknowledges that any breach of its covenants or obligations set forth in Addendum may cause the public jurisdiction irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the public jurisdiction is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the public jurisdiction may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Addendum to the contrary.

AGREED:

Name of Agency:_____   Name of Vendor:_____

Signature:_____   Signature: _____

Title:_____   Title:_____

Date:_____   Date:_____

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. Required information not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Service Provider/Vendor: _____

Name of Agency:_____

Agency/public jurisdiction's required information:

1. Will restricted information be processed by the service provider?
    Yes ☐
    No ☐

2. If yes to #1, does the restricted information include personal data?
    Yes ☐
    No ☐

3. If yes to #1, does the restricted information include non-public data?
    Yes ☐
    No ☐

4. If yes to #1, may the service provider store public jurisdiction data in a data center in an acceptable alternative data center location, which is a country that is not the U.S.?
    Yes ☐
    No ☐

5. Provide name and email address for the Department privacy officer:

    Name: _____

    Email address: _____

Vendor/Service Provider's required information:

6. Provide name and contact information for vendor's employee who shall serve as the public jurisdiction's primary security contact:

    Name: _____

    Email address: _____

    Phone Number: _____ _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract 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.

ALL CONTRACTS: 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 exceed 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: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, 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:
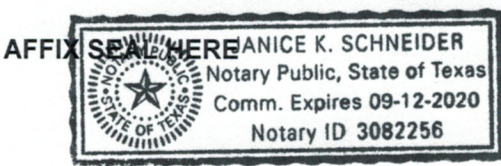
Vendor's Name: _TEQSYS, INC.   LAURA CRUISE_

Authorized Signature: _Laura Cruise_   Date: _4/30/20_

State of _Texas_

County of _Lee_, to-wit:

Taken, subscribed, and sworn to before me this _30th_ day of _April_, 20_20_.

My Commission expires _September, 12_, 20_20_.

NOTARY PUBLIC _Janice K Schneider_

Purchasing Affidavit (Revised 01/19/2018)

Proc Folder: 712460	
Doc Description: Addendum 1-e-Discovery Software as a Service (OT20103)	
Proc Type: Central Master Agreement	

Date Issued	Solicitation Closes	Solicitation No	Version
2020-05-01	2020-05-18 13:30:00	CRFQ 0210 ISC2000000024	2

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:

TEQSYS, Inc.
4301 W. Wm. Cannon Dr.
Ste. B150-301
Austin, TX 78749
512-940-3199

FOR INFORMATION CONTACT THE BUYER

Jessica S Chambers
(304) 558-0246
jessica.s.chambers@wv.gov

Signature X _(signed)_   FEIN #   03-0379408   DATE   05/05/2020

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

Addendum

Addendum No.01 is being issued to extend the bid opening date and time two weeks to give the agency time to address all technical questions received.

No other changes.

****

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV 25305 US	IS&C - CHIEF FINANCIAL OFFICER DEPARTMENT OF ADMINISTRATION BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Contract Services: e-Discovery System	0.00000			

Comm Code	Manufacturer	Specification	Model #
43231511			

Extended Description :

Please see the attached Exhibit A Pricing Page

Please note: Vendor must provide Exhibit A Pricing Page with their submitted bid response. Failure to do so will result in disqualification of your bid.

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Technical Question Dealine at 9 AM (EDT)	2020-04-28

SOLICITATION NUMBER: CRFQ ISC2000000024
Addendum Number: No.01

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

Applicable Addendum Category:

[✓]   Modify bid opening date and time

[   ]   Modify specifications of product or service being sought

[   ]   Attachment of vendor questions and responses

[   ]   Attachment of pre-bid sign-in sheet

[   ]   Correction of error

[   ]   Other

Description of Modification to Solicitation:

Addendum issued to publish and distribute the attached documentation to the vendor community.

1. The purpose of this addendum is to extend bid opening date two weeks to give the agency time to address all technical questions received.

No additional changes.

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

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.

2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

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)

[X]   Addendum No. 1   [   ]   Addendum No. 6

[   ]   Addendum No. 2   [   ]   Addendum No. 7

[   ]   Addendum No. 3   [   ]   Addendum No. 8

[   ]   Addendum No. 4   [   ]   Addendum No. 9

[   ]   Addendum No. 5   [   ]   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.

_____TEQSYS, Inc._____
Company

_____
Authorized Signature

_____05/05/2020_____
Date

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

	Purchasing Divison 2019 Washington Street East Post Office Box 50130 Charleston, WV 25305-0130	**State of West Virginia** **Request for Quotation** **21** — **Info Technology**

Proc Folder: 712460

Doc Description: Addendum 2-e-Discovery Software as a Service (OT20103)

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2020-05-01	2020-05-18 13:30:00	CRFQ 0210 ISC2000000024	3

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:

TEQSYS, Inc.
4301 W. Wm. Cannon Dr.
Ste. B150-301
Austin, TX 78749
512-940-3199

FOR INFORMATION CONTACT THE BUYER

Jessica S Chambers
(304) 558-0246
jessica.s.chambers@wv.gov

Signature X _(signature)_   **FEIN #**   03-0379408   **DATE**   05/15/2020

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

FORM ID : WV-PRC-CRFQ-001

ADDITIONAL INFORMATION:

Addendum

Addendum No.02 is being issued to address all technical questions received.

No other changes.

****

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON　　　　　　WV 25305 US	IS&C - CHIEF FINANCIAL OFFICER DEPARTMENT OF ADMINISTRATION BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON　　　　　　WV　25305 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Contract Services: e-Discovery System	0.00000			

Comm Code	Manufacturer	Specification	Model #
43231511			

Extended Description :

Please see the attached Exhibit A Pricing Page

Please note: Vendor must provide Exhibit A Pricing Page with their submitted bid response. Failure to do so will result in disqualification of your bid.

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Technical Question Dealine at 9 AM (EDT)	2020-04-28

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

SOLICITATION NUMBER:
Addendum Number:

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

Applicable Addendum Category:

[   ]   Modify bid opening date and time

[   ]   Modify specifications of product or service being sought

[   ]   Attachment of vendor questions and responses

[   ]   Attachment of pre-bid sign-in sheet

[   ]   Correction of error

[   ]   Other

Description of Modification to Solicitation:

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

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.

2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

ATTACHMENT A

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.

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[X] Addendum No. 1   [   ] Addendum No. 6

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[   ] Addendum No. 3   [   ] Addendum No. 8

[   ] Addendum No. 4   [   ] Addendum No. 9

[   ] Addendum No. 5   [   ] 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.

TEQSYS, Inc.
_____
Company

_____
Authorized Signature

05/15/2020
_____
Date

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

Technical Questions

CRFQ ISC2000000024

1. Which Cloud Service? Current Size of your Cloud?

   A. WVOT does not currently have an e-Discovery SaaS.

2. Are you looking for COTS, Custom, hybrid?

   A. Any of the above would be acceptable.

3. What database are they using?

   A. WVOT does not currently have an e-Discovery SaaS.

4. How large is your current database?

   A. WVOT does not currently have an e-Discovery SaaS.

5. What software are do you currently using?

   A. WVOT does not currently have an e-Discovery SaaS.

6. What platform are you currently using?

   A. WVOT does not currently have an e-Discovery SaaS.

7. In the WV Oasis System, under no. 1, "Response to Lines", Is the "Contract Amount" equal to one year as described in Exhibit A Pricing Page, or to all 4 years?

   A. The contract amount input into WV OASIS is equal to all four(4) years and the value should match the "Total Cost" on Exhbit A Pricing Page.

8. 4.1.1.9 - Please clarify/expand on this requirement.

   A. The system must track workflow, case process and case progress.

9. 4.1.3.9 - Please clarify if the system must support Elasticsearch AND dtSearch, or one or the other.

   A. The proposed system must support Elasticsearch AND dtSearch.

10. 4.1.4.1 - Please clarify if the system must include all of the analysis capabilities or some of the capabilities listed.

A. The vendors system must include all the following content: context analysis capabilities: topic clustering, email threading, near-duplicate analysis, entities recognition.

11. Item 4.1.1.9 requires a "Configurable platform that allows admins to configure applications like request tracking and FOIA requests" – What types of applications would the West Virginia Office of Technology like to include with this platform? Also, if our software provides these capabilities where would you want us to provide pricing for this?

    A. The system must track workflow, case process and case progress.

12. Items 4.1.1.11.2 and 4.1.2.1 require a "system that allows the Agency to have 100% data input automation." – Can you elaborate on this request? What does data input automation mean to the West Virginia Office of Technology?

    A. The Agency wants to be able to input state-owned data without the need for a 3rd party ingesting. (Example: WVOT will not be sending hard drives off to the vendor to upload into their system)

13. Item 4.1.2.6 requires that users be able to upload up to 10 GB in a web browser via Drag and Drop. Our research indicates that several browsers have a limitation of 2 to 4 GB to upload data. This is a browser limitation. Is this requirement flexible to the point of the browser limitation?

    A. Specification 4.1.2.6 has been modified to the following "The system must support uploading 10 GB minimum file at time by the agency."

14. Item 4.1.3.9 requires a connection to both Elasticsearch and dtsearch indexes. Can you elaborate on the purpose for this?

    A. The proposed system must support Elasticsearch AND dtSearch.

15. 4.1.1.3 – unlimited seats, - Would WVOT consider a named user license structure with a large active license cap (such as 100, 250, 500, or 1000) where the WVOT would have complete control over provisioning, securing, activating, and deactivating the accounts?

    A. No, WVOT requires unlimited seats.

16. 4.1.7.8.1 and .2 – vendor to participate in ad hoc meetings/provide consulting services – can you provide an example of how you envision this?

    A. Virtual Meeting (Example: Microsoft Teams, Zoom, GoToMeeting, etc.)

17. Regarding 4.1.9 & Pricing page contract Item#2– this is focused on Gigabyte pricing – Will WVOT accept the starting storage point to be a TB annually? If so, where is the proper place to provide alternative or add-on pricing?

    A. No, this not allowed. Please bid as the pricing page states.

18. Will there be a portion in this RFP that can provide a company presentation?

    A. No.

19. Does WVOT want the ability to apply date and keyword filters before collecting data, particularly from large repositories such as Microsoft 365? Also, applying AI pre or post-filtering?

    A. No, this will be accomplished by the agency pre-ingestion. No, that's not a mandatory requirement.

20. Would you like to be able to have authorized users collect from multiple data sources such as Microsoft 365, File Servers, Laptops/Desktops, and Externally collected data if it was in the same application as your requirements?

    A. The agency would like this function but it's but it's not a mandatory requirement of this RFQ.

21. How much data do you anticipate hosting in the eDiscovery Software as a Service tool in the first year of the contract? If unknown do you have previous year's information to share form?

    A. This is unknown, the Pricing Page contain a list of the Contract Items and estimated purchase volume.The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied. No, the state does not have that information to share.

22. Would WVOT consider a platform that uses single-instance storage, where only one copy of the document is saved, allowing for the re-use of critical review labels/tags and redactions but still allowing for matter-specific labels/tags to be applied and not carried over to multiple cases?

    A. Yes, but this not a mandatory requirement of the RFQ.

23. Would WVOT like the ability with the same tool to place Custodians on Legal Hold via a notification? Plus can automate the process of In-Place Preserving within Microsoft 365 for example.

    B. Yes, but this not a mandatory requirement of the RFQ.

24. Would WVOT see a benefit that is intended to provide agency-based privacy-centric views for the users by an agency? For example, user of agency A could only view the records that are

specific to their agency. Administrators can create Matter teams at each agency level and associate the appropriate teams to the Matters. Logged in users with 'View my matters' and 'view my agency records' would be able to view only the matters that got associated with their teams, thereby restricting the access based on the agency. This would allow WVOT to provide Admin type abilities per agency, if desired.

C.   Yes, but this not a mandatory requirement of the RFQ.

25. Is there a pre bid meeting?

No

26. What does this mean? 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.

We are unable to answer this question due to the fact it is not clear where this information was cut and pasted from and what it applies to.

27. Length of contract is unspecified in rfp
     Please download the PDF file labeled Bid Documents via wvOasis for contract terms.

28. What if any additional documents are required?

   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 100% of the contract. The performance bond must be received by the
   Purchasing Division prior to Contract award.
   Revised 01/09/2020
   [ ] 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 of the General Terms and Conditions entitled Licensing, the apparent successful Vendor

shall furnish proof of the following licenses, certifications, and/or permits upon request and in a

form acceptable to the State. The request may be prior to or after contract award at the State's

sole discretion.

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

ANSWER: These documents listed are only required if the box is marked, which they are not.

29. Are there any addenda?

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. 6
[ ] Addendum No. 2 [ ] Addendum No. 7
[ ] Addendum No. 3 [ ] Addendum No. 8
[ ] Addendum No. 4 [ ] Addendum No. 9
[ ] Addendum No. 5 [ ] Addendum No. 10

Answer: Addendum Acknowledgement form is only required if an addendum is issued.

30. What does this mean?

4.1.2.4 The system must allow the customer to create, save, and upload templates for data processing.
4.1.2.14 The system must allow the user the ability to create templates for processing, production, import, export.

A. Templates could be created for OT supported agencies to help steer workflow.

31. 7)Where is Exhibit A pricing page?
5.2 Pricing Page: Vendor should complete the attached Exhibit A-Pricing Page. The unit price will be multiplied with the quantity to provide the extended cost. The Vendor should respond by entering the total overall cost calculated at the bottom of the Exhibit-A Pricing Page in the wvOASIS pricing section.

Vendor should type or electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: [insert buyer's contact info.]

Please see the file labeled OT20103- Pricing Page_Locked.xlsx in wvOasis, under attachments. That is the referenced Exhibit A Pricing Page.

32. where is Appendix A?

Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of the service provider.
a) Immediately after being awarded a contract, the service provider shall provide the public jurisdiction with the name and contact information for an employee of service provider who shall serve as the public jurisdiction's primary security contact and shall be available to assist the public jurisdiction twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a data breach. The service provider may provide this information in Appendix A.
Version 11-1—19

A. Please see revised Appendix A (attached).

33. Can you confirm if this e-discovery bid is open to Canadian vendors?

    A. IRS 1075 would require any federal tax data to be stored in the United States. The vendor can be a Canadian company, however, their data center must be in the United States.

34. What are the sources of data that will be imported into the eDiscovery application?

    A. Any electronic stored information owned by the State of West Virginia.

35. Is this RFP for just an eDiscovery solution or will be data need to be migrated as well?

    A. The state will not be migrating data.

36. 4.1.7.8.3 indicates the following requirement "Vendor must have the ability to define, create, and deliver custom reports for client"Can you provide additional details in regards to what kind of customization you may need?

    A. This information would generated at the time of request from the OT Customer and the unique case. This cannot be provided at this time.

37. Will we be able to see the questions/answers of other parties that are bidding?

    A. Yes however they are not identified.

38. Is this RFQ a formal request for a Proposal? Is this RFQ binding or will the final request be a formal RFP?

    A. This is a Request for Quotation and the vendor with apparent low bid meeting all specifications will be a contract award.

39. Is there a technical response/ Narrative that is needed in response to this RFQ? We see the Purpose and scope as well as qualifications but wondered if you would like responses evidencing our capabilities

    A. No.

40. How many users are you assuming will need access to the database(s)?

    A. Unlimited

41. What is the total number of active email users (individuals with active mailbox)

    A. This not relevant or a requirement, however approximately 25,000.

42. Are there any content types beyond email that need to be archived? If so, please provide content types and the number of users for each.

A. Any electronic content type owned the state. This cannot be provided.

43. What is the retention policy for each of the content types?

    A. Determined by the agency requesting the case, this is not a state-wide defined policy.

44. What is the current email system? If Microsoft, is it exchange or O365?

    A. Microsoft Office 365

45. Will there be a need to export/import data from the existing archive? If yes, Is the data compressed/uncompressed and how much data is expected?

    A. No, this will be a brand new system.

46. On the Mandatory requirements section, are responses required? Or will a simple Yes or No suffice?
    A. No, however if you don't meet a requirement your proposal be disqualified.

Software as a Service Addendum

1. Definitions:

<u>Acceptable alternative data center location</u> means a country that is identified as providing equivalent or stronger data protection than the United States, in terms of both regulation and enforcement. DLA Piper's Privacy Heatmap shall be utilized for this analysis and may be found at https://www.dlapiperdataprotection.com/index.html?t=world-map&c=US&c2=IN.

<u>Authorized Persons</u> means the service provider's employees, contractors, subcontractors or other agents who have responsibility in protecting or have access to the public jurisdiction's personal data and non-public data to enable the service provider to perform the services required.

<u>Data Breach</u> means the unauthorized access and acquisition of unencrypted and unredacted personal data that compromises the security or confidentiality of a public jurisdiction's personal information and that causes the service provider or public jurisdiction to reasonably believe that the data breach has caused or will cause identity theft or other fraud.

<u>Individually Identifiable Health Information</u> means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

<u>Non-Public Data</u> means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the public jurisdiction because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

<u>Personal Data</u> means data that includes information relating to a person that identifies the person by first name or first initial, and last name, and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, state identification card); financial account information, including account number, credit or debit card numbers; or protected health information (PHI).

<u>Protected Health Information (PHI)</u> means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.

<u>Public Jurisdiction</u> means any government or government agency that uses these terms and conditions. The term is a placeholder for the government or government agency.

<u>Public Jurisdiction Data</u> means all data created or in any way originating with the public jurisdiction, and all data that is the output of computer processing or other electronic manipulation of any data that was created by or in any way originated with the public jurisdiction, whether such data or output is stored on the public jurisdiction's hardware, the service provider's hardware or exists in any system owned, maintained or otherwise controlled by the public jurisdiction or by the service provider.

<u>Public Jurisdiction Identified Contact</u> means the person or persons designated in writing by the public jurisdiction to receive security incident or breach notification.

<u>Restricted data</u> means personal data and non-public data.

<u>Security Incident</u> means the actual unauthorized access to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a public jurisdiction's unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

<u>Service Provider</u> means the contractor and its employees, subcontractors, agents and affiliates who are providing the services agreed to under the contract.

<u>Software-as-a-Service (SaaS)</u> means the capability provided to the consumer to use the provider's applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

2. Data Ownership: The public jurisdiction will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access public jurisdiction user accounts or public jurisdiction data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract or (4) at the public jurisdiction's written request.

3. Data Protection and Privacy: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of public jurisdiction information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of public jurisdiction information and comply with the following conditions:
   a) The service provider shall implement and maintain appropriate administrative, technical and physical security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. In Appendix A,

the public jurisdiction shall indicate whether restricted information will be processed by the service provider. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind. The service provider shall ensure that all such measures, including the manner in which personal data and non-public data are collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Addendum and shall survive termination of the underlying contract.

b) The service provider represents and warrants that its collection, access, use, storage, disposal and disclosure of personal data and non-public data do and will comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations, policies and directives.

c) The service provider shall support third-party multi-factor authentication integration with the public jurisdiction third-party identity provider to safeguard personal data and non-public data.

d) If, in the course of its engagement by the public jurisdiction, the service provider has access to or will collect, access, use, store, process, dispose of or disclose credit, debit or other payment cardholder information, the service provider shall at all times remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the service provider's sole cost and expense. All data obtained by the service provider in the performance of this contract shall become and remain the property of the public jurisdiction.

e) All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data.

f) Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit, in accordance with recognized industry practice. The public jurisdiction shall identify data it deems as non-public data to the service provider.

g) At no time shall any data or process – that either belong to or are intended for the use of a public jurisdiction or its officers, agents or employees — be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the public jurisdiction.

h) The service provider shall not use or disclose any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

i) Data Location. For non-public data and personal data, the service provider shall provide its data center services to the public jurisdiction and its end users solely from data centers in the U.S. Storage of public jurisdiction data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to *store* public jurisdiction data on portable devices, including personal computers, except for devices that are used and kept only at its

U.S. data centers. With agreement from the public jurisdiction, this term may be met by the service provider providing its services from an acceptable alternative data center location, which agreement shall be stated in Appendix A. The Service Provider may also request permission to utilize an acceptable alternative data center location during a procurement's question and answer period by submitting a question to that effect. The service provider shall permit its personnel and contractors to access public jurisdiction data remotely only as required to provide technical support.

4. Security Incident or Data Breach Notification: The service provider shall inform the public jurisdiction of any confirmed security incident or data breach.

a) Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as defined by law or contained in the contract. Discussing security incidents with the public jurisdiction shall be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes defined by law or contained in the contract.

b) Security Incident Reporting Requirements: The service provider shall report a confirmed Security Incident as soon as practicable, but no later than twenty-four (24) hours after the service provider becomes aware of it, to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at https://apps.wv.gov/ot/ir/Default.aspx, and (3) the public jurisdiction point of contact for general contract oversight/administration. The following information shall be shared with the public jurisdiction: (1) incident phase (detection and analysis; containment, eradication and recovery; or post-incident activity), (2) projected business impact, and, (3) attack source information.

c) Breach Reporting Requirements: Upon the discovery of a data breach or unauthorized access to non-public data, the service provider shall immediately report to: (1) the department privacy officer, by email, with a read receipt, identified in Appendix A; and, (2) unless otherwise directed by the public jurisdiction in the underlying contract, the WVOT Online Computer Security and Privacy Incident Reporting System at https://apps.wv.gov/ot/ir/Default.aspx, and the public jurisdiction point of contact for general contract oversight/administration.

5. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of the service provider.

a) Immediately after being awarded a contract, the service provider shall provide the public jurisdiction with the name and contact information for an employee of service provider who shall serve as the public jurisdiction's primary security contact and shall be available to assist the public jurisdiction twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a data breach. The service provider may provide this information in Appendix A.

b) Immediately following the service provider's notification to the public jurisdiction of a data breach, the parties shall coordinate cooperate with each other to investigate the data breach. The service provider agrees to fully cooperate with the public jurisdiction in the public jurisdiction's handling of the matter, including, without limitation, at the public jurisdiction's request, making available all relevant records, logs, files, data reporting and other materials required to comply with applicable law and regulation.

c) Within 72 hours of the discovery, the service provider shall notify the parties listed in 4(c) above, to the extent known: (1) date of discovery; (2) list of data elements and the number of individual records; (3) description of the unauthorized persons known or reasonably believed to have improperly used or disclosed the personal data; (4) description of where the personal data is believed to have been improperly transmitted, sent, or utilized; and, (5) description of the probable causes of the improper use or disclosure.

d) The service provider shall (1) cooperate with the public jurisdiction as reasonably requested by the public jurisdiction to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and prevent any further data breach at the service provider's expense in accordance with applicable privacy rights, laws and regulations and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

e) If a data breach is a direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state or federal law; (3) a credit monitoring service (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for data breaches in the United States in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach (or other similar publication if the named publication has not issued an updated average per record per cost in the last 5 years at the time of the data breach); and (5) complete all corrective actions as reasonably determined by service provider based on root cause. The service provider agrees that it shall not inform any third party of any data breach without first obtaining the public jurisdiction's prior written consent, other than to inform a complainant that the matter has been forwarded to the public jurisdiction's legal counsel and/or engage a third party with appropriate expertise and confidentiality protections for any reason connected to the data breach. Except with respect to where the service provider has an independent legal obligation to report a data breach, the service provider agrees that the public jurisdiction shall have the sole right to determine: (1) whether notice of the data breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others, as required by law or regulation, or otherwise in the public jurisdiction's discretion; and (2) the contents of such notice, whether any

type of remediation may be offered to affected persons, and the nature and extent of any such remediation. The service provider retains the right to report activity to law enforcement.

6. Notification of Legal Requests: The service provider shall contact the public jurisdiction upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the public jurisdiction's data under this contract, or which in any way might reasonably require access to the data of the public jurisdiction. The service provider shall not respond to subpoenas, service of process and other legal requests related to the public jurisdiction without first notifying the public jurisdiction, unless prohibited by law from providing such notice.

7. Termination and Suspension of Service:
a) In the event of a termination of the contract, the service provider shall implement an orderly return of public jurisdiction data within the time period and format specified in the contract (or in the absence of a specified time and format, a mutually agreeable time and format) and after the data has been successfully returned, securely and permanently dispose of public jurisdiction data.
b) During any period of service suspension, the service provider shall not take any action to intentionally erase any public jurisdiction data.
c) In the event the contract does not specify a time or format for return of the public jurisdiction's data and an agreement has not been reached, in the event of termination of any services or agreement in entirety, the service provider shall not take any action to intentionally erase any public jurisdiction data for a period of:
  - 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - 30 days after the effective date of termination, if the termination is for convenience
  - 60 days after the effective date of termination, if the termination is for cause

  After such period, the service provider shall have no obligation to maintain or provide any public jurisdiction data and shall thereafter, unless legally prohibited, delete all public jurisdiction data in its systems or otherwise in its possession or under its control.
d) The public jurisdiction shall be entitled to any post-termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of the Contract.
e) The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by the public jurisdiction. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the public jurisdiction.

8. Background Checks: The service provider shall conduct criminal background checks in compliance with W.Va. Code §15-2D-3 and not utilize any staff to fulfill the obligations

of the contract, including subcontractors, who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The service provider shall promote and maintain an awareness of the importance of securing the public jurisdiction's information among the service provider's employees and agents.

9. Oversight of Authorized Persons: During the term of each authorized person's employment or engagement by service provider, service provider shall at all times cause such persons to abide strictly by service provider's obligations under this Agreement and service provider's standard policies and procedures. The service provider further agrees that it shall maintain a disciplinary process to address any unauthorized access, use or disclosure of personal data by any of service provider's officers, partners, principals, employees, agents or contractors.

10. Access to Security Logs and Reports: The service provider shall provide reports to the public jurisdiction in CSV format agreed to by both the service provider and the public jurisdiction. Reports shall include user access (successful and failed attempts), user access IP address, user access history and security logs for all public jurisdiction files and accounts related to this contract.

11. Data Protection Self-Assessment: The service provider shall perform a Cloud Security Alliance STAR Self-Assessment by completing and submitting the "Consensus Assessments Initiative Questionnaire" to the Public Jurisdiction Identified Contact. The service provider shall submit its self-assessment to the public jurisdiction prior to contract award and, upon request, annually thereafter, on the anniversary of the date of contract execution. Any deficiencies identified in the assessment will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

12. Data Center Audit: The service provider shall perform an audit of its data center(s) at least annually at its expense and provide a redacted version of the audit report upon request. The service provider may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit. Any deficiencies identified in the report or approved equivalent will entitle the public jurisdiction to disqualify the bid or terminate the contract for cause.

13. Change Control and Advance Notice: The service provider shall give 30 days, advance notice (to the public jurisdiction of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics.

14. Security:
    a) At a minimum, the service provider's safeguards for the protection of data shall include: (1) securing business facilities, data centers, paper files, servers, back-up

systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (2) implementing network, device application, database and platform security; 3) securing information transmission, storage and disposal; (4) implementing authentication and access controls within media, applications, operating systems and equipment; (5) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (6) providing appropriate privacy and information security training to service provider's employees.

b) The service provider shall execute well-defined recurring action steps that identify and monitor vulnerabilities and provide remediation or corrective measures. Where the service provider's technology or the public jurisdiction's required dependence on a third-party application to interface with the technology creates a critical or high risk, the service provider shall remediate the vulnerability as soon as possible. The service provider must ensure that applications used to interface with the service provider's technology remain operationally compatible with software updates.

c) Upon the public jurisdiction's written request, the service provider shall provide a high-level network diagram with respect to connectivity to the public jurisdiction's network that illustrates the service provider's information technology network infrastructure.

15. Non-disclosure and Separation of Duties: The service provider shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of public jurisdiction data to that which is absolutely necessary to perform job duties.

16. Import and Export of Data: The public jurisdiction shall have the ability to securely import, export or dispose of data in standard format in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the public jurisdiction to import or export data to/from other service providers identified in the contract (or in the absence of an identified format, a mutually agreeable format).

17. Responsibilities: The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the cloud services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the service provider.

18. Subcontractor Compliance: The service provider shall ensure that any of its subcontractors to whom it provides any of the personal data or non-public data it receives hereunder, or to whom it provides any personal data or non-public data which the service provider creates or receives on behalf of the public jurisdiction, agree to the restrictions, terms and conditions which apply to the service provider hereunder.

19. Right to Remove Individuals: The public jurisdiction shall have the right at any time to require that the service provider remove from interaction with public jurisdiction any

service provider representative who the public jurisdiction believes is detrimental to its working relationship with the service provider. The public jurisdiction shall provide the service provider with notice of its determination, and the reasons it requests the removal. If the public jurisdiction signifies that a potential security violation exists with respect to the request, the service provider shall immediately remove such individual. The service provider shall not assign the person to any aspect of the contract without the public jurisdiction's consent.

20. Business Continuity and Disaster Recovery: The service provider shall provide a business continuity and disaster recovery plan executive summary upon request. Lack of a plan will entitle the public jurisdiction to terminate this contract for cause.

21. Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

22. Web Services: The service provider shall use web services exclusively to interface with the public jurisdiction's data in near real time when possible.

23. Encryption of Data at Rest: The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data.

24. Subscription Terms: Service provider grants to a public jurisdiction a license to:
   a. Access and use the service for its business purposes;
   b. For SaaS, use underlying software as embodied or used in the service; and
   c. View, copy, upload, download (where applicable), and use service provider's documentation.

25. Equitable Relief: Service provider acknowledges that any breach of its covenants or obligations set forth in Addendum may cause the public jurisdiction irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the public jurisdiction is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which the public jurisdiction may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in this Addendum to the contrary.

AGREED:

Name of Agency:_____   Name of Vendor:_____

Signature:_____   Signature:_____

Title:_____   Title:_____

Date:_____   Date:_____

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. Required information not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Service Provider/Vendor: _____

Name of Agency: West Virginia Office of Technology _____

Agency/public jurisdiction's required information:

1. Will restricted information be processed by the service provider?
   Yes [X]
   No [ ]

2. If yes to #1, does the restricted information include personal data?
   Yes [x]
   No [ ]

3. If yes to #1, does the restricted information include non-public data?
   Yes [X]
   No [ ]

4. If yes to #1, may the service provider store public jurisdiction data in a data center in an acceptable alternative data center location, which is a country that is not the U.S.?
   Yes [ ]
   No [X]

5. Provide name and email address for the Department privacy officer:
   Name: Misty Peal _____
   Email address: misty.peal@wv.gov _____

Vendor/Service Provider's required information:

6. Provide name and contact information for vendor's employee who shall serve as the public jurisdiction's primary security contact:
   Name: _____
   Email address: _____
   Phone Number: _____ _____

EXHIBIT A – Pricing Page
eDiscovery SaaS - OT20103

Section	Description	Unit of Measure	Estimated Quantity	Unit Cost	Extended Cost
4.1.1,1	**Contract Item #1:** Unlimited Concurrent user license for e-discovery SaaS	LS	1.00	80000.00	$ 80,000.00
4.1.1, 4.1.9	**Contract Item #2:** One (1) Gigabyte Data e-Discovery SaaS usage Monthly Charge(data must rounded to the nearest whole gigabyte for billing/ auditing purposes see section 4.1.9)	EA	100.00	9.96	$ 996.00
4.1.7	**Contract Item #3:** Live individualized Agency virtual training session for up to 25 users per session (See specifications section 4.1.7 for further details)	EA	1.00	950.00	$ 950.00
4.1.7.4	**Contract Item #4:** e-Discovery SaaS access to an online knowledge base or help center.	LS	1.00	0.00	$ -
4.1.7.5	**Contract Item #5:** Initial Setup and configuration of eDiscovery SaaS	LS	1.00	0.00	$ -
4.1.7.8	**Contract Item #6:** e-Discovery SaaS Project Management	HR	100.00	175.00	$ 17,500.00
4.1.7.9	**Contract Item #7:** e-Discovery SaaS Technical Support	HR	100.00	0.00	$ -
4.1.7.6	**Contract Item #8:** Maintenance and Support Year 1	LS	1.00	0.00	$ -
4.1.1,1	**Optional Renewal Year 2: Contract Item #1:** Unlimited Concurrent user license for e-discovery SaaS	LS	1.00	80000.00	$ 80,000.00
4.1.1, 4.1.9	**Optional Renewal Year 2: Contract Item #2:** One (1) Gigabyte Data e-Discovery SaaS usage Monthly Charge(data must rounded to the nearest whole gigabyte for billing/ auditing purposes see section 4.1.9)	EA	100.00	9.96	$ 996.00
4.1.7	**Optional Renewal Year 2:Contract Item #3**: Live individualized Agency virtual training session for up to 25 users per session (See specifications section 4.1.7 for further details)	EA	1.00	950.00	$ 950.00
4.1.7.4	**Optional Renewal Year 2: #4:** e-Discovery SaaS access to an online knowledge base or help center.	LS	1.00	0.00	$ -
4.1.7.5	**Optional Renewal Year 2: Contract Item #5:** Initial Setup and configuration of eDiscovery SaaS	LS	1.00	0.00	$ -
4.1.7.8	**Optional Renewal Year 2: Contract Item #6:** e-Discovery SaaS Project Management	HR	100.00	175.00	$ 17,500.00
4.1.7.9	**Optional Renewal Year 2: Contract Item #7:** e-Discovery SaaS Technical Support	HR	100.00	175.00	$ 17,500.00
4.1.7.6	**Optional Renewal Year 2: Contract Item #8:** Maintenance and Support Year 1	LS	1.00	0.00	$ -
4.1.1,1	**Optional Renewal Year 3: Contract Item #1:** Unlimited Concurrent user license for e-discovery SaaS	LS	1.00	80000.00	$ 80,000.00
4.1.1, 4.1.9	**Optional Renewal Year 3: Contract Item #2:** One (1) Gigabyte Data e-Discovery SaaS usage Monthly Charge(data must rounded to the nearest whole gigabyte for billing/ auditing purposes see section 4.1.9)	EA	100.00	9.96	$ 996.00
4.1.7	**Optional Renewal Year 3:Contract Item #3**: Live individualized Agency virtual training session for up to 25 users per session (See specifications section 4.1.7 for further details)	EA	1.00	950.00	$ 950.00
4.1.7.4	**Optional Renewal Year 3: #4:** e-Discovery SaaS access to an online knowledge base or help center.	LS	1.00	0.00	$ -
4.1.7.5	**Optional Renewal Year 3: Contract Item #5:** Initial Setup and configuration of eDiscovery SaaS	LS	1.00	0.00	$ -
4.1.7.8	**Optional Renewal Year 3: Contract Item #6:** e-Discovery SaaS Project Management	HR	100.00	175.00	$ 17,500.00
4.1.7.9	**Optional Renewal Year 3: Contract Item #7:** e-Discovery SaaS Technical Support	HR	100.00	0.00	$ -
4.1.7.6	**Optional Renewal Year 3: Contract Item #8:** Maintenance and Support Year 1	LS	1.00	0.00	$ -
4.1.1,1	**Optional Renewal Year 4: Contract Item #1:** Unlimited Concurrent user license for e-discovery SaaS	LS	1.00	80000.00	$ 80,000.00
4.1.1, 4.1.9	**Optional Renewal Year 4: Contract Item #2:** One (1) Gigabyte Data e-Discovery SaaS usage Monthly Charge(data must rounded to the nearest whole gigabyte for billing/ auditing purposes see section 4.1.9)	EA	100.00	9.96	$ 996.00
4.1.7	**Optional Renewal Year 4:Contract Item #3**: Live individualized Agency virtual training session for up to 25 users per session (See specifications section 4.1.7 for further details)	EA	1.00	950.00	$ 950.00
4.1.7.4	**Optional Renewal Year 4: #4:** e-Discovery SaaS access to an online knowledge base or help center.	LS	1.00	0.00	$ -
4.1.7.5	**Optional Renewal Year 3: Contract Item #5:** Initial Setup and configuration of eDiscovery SaaS	LS	1.00	0.00	$ -
4.1.7.8	**Optional Renewal Year 4: Contract Item #6:** e-Discovery SaaS Project Management	HR	100.00	175.00	$ 17,500.00
4.1.7.9	**Optional Renewal Year 4: Contract Item #7:** e-Discovery SaaS Technical Support	HR	100.00	0.00	$ -
4.1.7.6	**Optional Renewal Year 4: Contract Item #8:** Maintenance and Support Year 1	LS	1.00	0.00	$ -
	Total Cost			$	415,284.00

Contract will be evaluated on all lines but only awarded on first year. Renewal options for years 2, 3, and 4 will be

Vendor Signature: Date:

EXHIBIT A – Pricing Page
eDiscovery SaaS - OT20103

Section	Description	Unit of Measure	Estimated Quantity	Unit Cost	Extended Cost
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4.1.1, 4.1.9	**Contract Item #2:** One (1) Gigabyte Data e-Discovery SaaS usage Monthly Charge(data must rounded to the nearest whole gigabyte for billing/ auditing purposes see section 4.1.9)	EA	100.00	9.96	$ 996.00
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4.1.7.6	**Contract Item #8:** Maintenance and Support Year 1	LS	1.00	0.00	$.
4.1.1,1	**Optional Renewal Year 2: Contract Item #1:** Unlimited Concurrent user license for e-discovery SaaS	LS	1.00	80000.00	$ 80,000.00
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4.1.7.5	**Optional Renewal Year 2: Contract Item #5:** Initial Setup and configuration of eDiscovery SaaS	LS	1.00	0.00	$.
4.1.7.8	**Optional Renewal Year 2: Contract Item #6:** e-Discovery SaaS Project Management	HR	100.00	175.00	$ 17,500.00
4.1.7.9	**Optional Renewal Year 2: Contract Item #7:** e-Discovery SaaS Technical Support	HR	100.00	175.00	$ 17,500.00
4.1.7.6	**Optional Renewal Year 2: Contract Item #8:** Maintenance and Support Year 1	LS	1.00	0.00	$.
4.1.1,1	**Optional Renewal Year 3: Contract Item #1:** Unlimited Concurrent user license for e-discovery SaaS	LS	1.00	80000.00	$ 80,000.00
4.1.1, 4.1.9	**Optional Renewal Year 3: Contract Item #2:** One (1) Gigabyte Data e-Discovery SaaS usage Monthly Charge(data must rounded to the nearest whole gigabyte for billing/ auditing purposes see section 4.1.9)	EA	100.00	9.96	$ 996.00
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4.1.7.9	**Optional Renewal Year 3: Contract Item #7:** e-Discovery SaaS Technical Support	HR	100.00	0.00	$.
4.1.7.6	**Optional Renewal Year 3: Contract Item #8:** Maintenance and Support Year 1	LS	1.00	0.00	$.
4.1.1,1	**Optional Renewal Year 4: Contract Item #1:** Unlimited Concurrent user license for e-discovery SaaS	LS	1.00	80000.00	$ 80,000.00
4.1.1, 4.1.9	**Optional Renewal Year 4: Contract Item #2:** One (1) Gigabyte Data e-Discovery SaaS usage Monthly Charge(data must rounded to the nearest whole gigabyte for billing/ auditing purposes see section 4.1.9)	EA	100.00	9.96	$ 996.00
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4.1.7.9	**Optional Renewal Year 4: Contract Item #7:** e-Discovery SaaS Technical Support	HR	100.00	0.00	$.
4.1.7.6	**Optional Renewal Year 4: Contract Item #8:** Maintenance and Support Year 1	LS	1.00	0.00	$.
	Total Cost			$	415,284.00

Contract will be evaluated on all lines but only awarded on first year, Renewal options for years 2, 3, and 4 will be

Vendor Signature: _Ramirez_ 5/18/2020   Date:

Proc Folder: 712460

Doc Description: e-Discovery Software as a Service (OT20103)

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2020-04-20	2020-05-04 13:30:00	CRFQ 0210 ISC2000000024	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:
TEQSYS, Inc.
4301 W. Wm. Cannon Dr.
Ste. B150-301
Austin, TX 78749
512-940-3199

FOR INFORMATION CONTACT THE BUYER

Jessica S Chambers
(304) 558-0246
jessica.s.chambers@wv.gov

Signature X _[signature]_   **FEIN #** 03-0379408   **DATE** 05/15/2020

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

The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Office of Technology to establish a contract for an e-Discovery software as a service. This software will be used for discovery in legal proceedings to process emails and other files. The software will facilitate keyword searching, document review, privilege report creation, data tagging and redaction prior to final report being released per the terms and conditions and specifications as attached.

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV 25305 US	IS&C - CHIEF FINANCIAL OFFICER DEPARTMENT OF ADMINISTRATION BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Contract Services: e-Discovery System				

Comm Code	Manufacturer	Specification	Model #
43231511			

Extended Description :

Please see the attached Exhibit A Pricing Page

Please note: Vendor must provide Exhibit A Pricing Page with their submitted bid response. Failure to do so will result in disqualification of your bid.

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Technical Question Dealine at 9 AM (EDT)	2020-04-28

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

	Purchasing Divison 2019 Washington Street East Post Office Box 50130 Charleston, WV 25305-0130	**State of West Virginia** **Request for Quotation** **21** — **Info Technology**

Proc Folder: 712460

Doc Description: Addendum 1-e-Discovery Software as a Service (OT20103)

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2020-05-01	2020-05-18 13:30:00	CRFQ 0210 ISC2000000024	2

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:

TEQSYS, Inc.
4301 W. Wm. Cannon Dr.
Ste. B150-301
Austin, TX 78749
512-940-3199

FOR INFORMATION CONTACT THE BUYER

Jessica S Chambers
(304) 558-0246
jessica.s.chambers@wv.gov

Signature X _____   **FEIN #** 03-0379408   **DATE** 05/15/2020

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

           FORM ID : WV-PRC-CRFQ-001

ADDITIONAL INFORMATION:

Addendum

Addendum No.01 is being issued to extend the bid opening date and time two weeks to give the agency time to address all technical questions received.

No other changes.

****

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV 25305 US	IS&C - CHIEF FINANCIAL OFFICER DEPARTMENT OF ADMINISTRATION BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Contract Services: e-Discovery System				

Comm Code	Manufacturer	Specification	Model #
43231511			

Extended Description :

Please see the attached Exhibit A Pricing Page

Please note: Vendor must provide Exhibit A Pricing Page with their submitted bid response. Failure to do so will result in disqualification of your bid.

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Technical Question Dealine at 9 AM (EDT)	2020-04-28

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

	Purchasing Divison 2019 Washington Street East Post Office Box 50130 Charleston, WV 25305-0130	**State of West Virginia Request for Quotation** **21** — **Info Technology**

Proc Folder: 712460

Doc Description: Addendum 2-e-Discovery Software as a Service (OT20103)

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2020-05-08	2020-05-18 13:30:00	CRFQ 0210 ISC2000000024	3

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:

TEQSYS, Inc.
4301 W. Wm. Cannon Dr.
Ste. B150-301
Austin, TX 78749
512-940-3199

FOR INFORMATION CONTACT THE BUYER

Jessica S Chambers
(304) 558-0246
jessica.s.chambers@wv.gov

Signature X _(signature)_   **FEIN #**   03-0379408   **DATE**   05/15/2020

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

ADDITIONAL INFORMATION:

Addendum

Addendum No.02 is being issued to address all technical questions received.

No other changes.

****

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV 25305 US	IS&C - CHIEF FINANCIAL OFFICER DEPARTMENT OF ADMINISTRATION BLDG 5, 10TH FLOOR 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Contract Services: e-Discovery System				

Comm Code	Manufacturer	Specification	Model #
43231511			

Extended Description :

Please see the attached Exhibit A Pricing Page

Please note: Vendor must provide Exhibit A Pricing Page with their submitted bid response. Failure to do so will result in disqualification of your bid.

SCHEDULE OF EVENTS

Line	Event	Event Date
1	Technical Question Dealine at 9 AM (EDT)	2020-04-28

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

Response to

State of West Virginia

eDiscovery Software as a Service

(CRFQ: ISC2000000024)

PRESENTED BY:

TEQSYS, Inc.

4301 W. William Cannon Dr., Ste B150-301

Austin, Texas 78749

certified
WBENC
WOMEN'S BUSINESS ENTERPRISE

May 15, 2020

Technical response:

General Requirements– e-Discovery System	
4.1.1.1 The Vendor must provide an e-Discovery System that is cloud-based (Software as a Service Model).	Yes. The Exterro Platform proposed is hosted in the Amazon Web Services (AWS) Cloud.
4.1.1.2 The system must contain the following capabilities within a single platform that does not require integration with other software: self service data loading, self-service data processing, client administration, self-service, productions, review, and analytics capabilities.	Yes. The Exterro Platform proposed is designed to allow customers to have one single platform that can perform all the functions in the same User Interface. This reduces the number of points where data must be moved or copied and
4.1.1.3 The Vendor must provide an e-Discovery System with an unlimited user seats for a minimum of 12 months from date of award.	The Exterro Platform allows the organizations to activate and deactivate users as needed.
4.1.1.4 The system must allow client administrators to have the ability to setup new users or workspaces and assign roles and permissions to new users.	Yes. The Exterro Platform proposed allows authorized users to set up additional users and permissions. Any user with appropriate permissions can create new matters/workspaces
4.1.1.5 The system must allow a user to have multiple roles and toggle between roles. For example, a client administrator can toggle between user roles to validate user permissions and provide user support.	The Exterro Platform does not have a simple toggle between roles, but there are several ways to accomplish this validation and provide user support.
4.1.1.6 The system must not require additional licenses and/or software from third parties.	Yes. The Exterro Platform is self-contained and everything necessary is included in the license. A web browser is required to access the tool.
4.1.1.7 The system must allow the customer/client administrators the ability to remove/delete documents and create archives from the platform.	Yes. The proposed Exterro Platform allows authorized users to remove or delete documents and archive documents as necessary.
4.1.1.8 The system must be accessible to an unlimited number of users and allow access to at least 50 concurrent cases each having at least one million documents without degradation to speed.	Yes. The proposed Exterro Platform is scalable to support large cases and simultaneous users.
4.1.1.9 The system must be a configurable platform that allows the administrators to configure applications like request tracking and FOIA requests.	The Exterro Platform includes modules for request tracking and FOIA requests.
4.1.1.10 The system must be built on scalable architecture with a storage capacity of at least two petabytes of data.	Yes. The proposed Exterro platform is scalable.
4.1.1.11 The Vendor must provide an e-Discovery System that features the following:	
4.1.1.11.1 A system that has two-factor authentication access.	Yes. The Exterro tool can use SAML 2.0 to configure Single Sign On (SSO). If a customer's SAML tool can manage two-

	factor authentication, the Exterro tool will support that.
4.1.1.11.2 A system that allows the Agency to have 100% data input automation.	The Exterro tool allows individuals to automate a variety of inputs into the system and each collection or ingestion can be managed entirely by the Agency.
4.1.1.11.3 A system that provides 256-bit encryption to the data when at rest and in transit.	Yes. The Exterro platform uses AES 256 Encryption at rest and TLS to encrypt data in transit.
4.1.1.11.4 A system that scans files for viruses.	The Exterro platform uses virus scans at appropriate points in the process but does not necessarily scan all collected data for viruses as the time of collection.
4.1.1.11.5 A system that allows for load file import and export.	Yes. The Exterro tool provides for load file import and export.
4.1.2 Data Loading & Processing- e-Discovery System	
4.1.2.1 The system must allow the Agency to have 100% data input automation.	The Exterro tool allows individuals to automate a variety of inputs into the system and each collection or ingestion can be managed entirely by the Agency.
4.1.2.2 The system must allow the user to load raw data such as PSTs, zip files, and other ESI for processing.	Yes. The Exterro E-Discovery Data Management (EDDM) module allows for direct collection or loading/ingesting raw data.
4.1.2.3 The system must allow the client administrator to move data between data stores and conduct early case assessment, including running search terms, and listing and counting file types reports, prior to making the data available to reviewers.	Yes. The Exterro E-Discovery Data Management (EDDM) module allows authorized users to move data between workspaces and perform all the functions of early case assessment either after collection (as is traditional) or before collection (by getting the metadata and text content of the files and indexing them for analysis.)
4.1.2.4 The system must allow the customer to create, save, and upload templates for data processing.	Yes. The Exterro E-Discovery Data Management (EDDM) module allows authorized users to easily ensure consistent processing choices.
4.1.2.5 The system must have pre-built utilities to support processing for various files including imaging, loading, and text files.	Yes. The Exterro E-Discovery Data Management (EDDM) module will process image files, load files, text files, and a large variety of other file types.
4.1.2.6 The system must support uploading up to 10 GB of data directly from web-browser via "drag and drop".	The Exterro platform allows authorized users to upload files of any size via the web browser for smaller files or directly via SFTP for larger files. This process can be managed directly by the Agency.

4.1.2.7 The system must allow loading and processing of a data set that has at least 1 terabyte of documents, data, or ESI, into the review tool.	Yes. The Exterro platform allows loads of this size.
4.1.2.8 The system must support data reduction and culling (De-NIST; custodial and global Deduplication; filtering by Custodian, file type, date; keyword searching) during processing.	Yes. The Exterro platform includes all these methods of filtering and culling by default.
4.1.2.9 The system must include built-in ESI processing capabilities (extraction of text and metadata, imaging, numbering, OCR, load file creation).	Yes. The Exterro platform includes extraction of text and metadata and numbering by default. OCR can be done at the time of collection or once the data has been collected/processed depending on the requirements of the case. Because the Exterro platform is linked and the review tool uses a Prism viewer to view to the files, neither images nor load files are necessary at the time of processing for data that will be reviewed within the Exterro platform. For data that needs to be moved outside the platform, both imaging and load file creation are easily performed.
4.1.2.10 The system must keep e-mails and families together and locate orphaned documents during processing.	Yes. Emails and families are retained by default. The email thread tool will easily identify orphans.
4.1.2.11 The system must support extraction and processing of files within container files such as zip and rar, and support the processing of files in nested containers or folders.	Yes. The Exterro tool will process container and nested container files and multiple folders.
4.1.2.12 The system must have the ability to ingest, process, and view multiple file types.	Yes. The Exterro platform can ingest, process, and view over 90 different file types.
4.1.2.13 The system must allow for load file import and export.	Yes. The Exterro platform can import and export load files.
4.1.2.14 The system must allow the user the ability to create templates for processing, production, import, export.	Yes. The Exterro platform allows for the use of templates.
4.1.2.15 The system must be able to securely transfer ESI to the review tool.	Yes. The Exterro platform automatically loads and indexes data into the Exterro review tool so that users do not need to manually perform any transfers.
4.1.3 Review – e-Discovery System	
4.1.3.1 The system must allow users to review and analyze ESI productions.	Yes. The Exterro platform allows for the review and analysis of ESI productions.
4.1.3.2 The system must allow users to identify and remove duplicate documents and data.	Yes. The Exterro platform automatically stores only a single copy of all

	documents, reducing storage space and enabling the reuse of work product.
4.1.3.3 The system must allow users to redact and highlight portions of the document.	Yes. Both automatic and manual redactions and manual highlights are built in to the Exterro platform.
4.1.3.4 The system must allow users to search, tag, index, and code information and provide advance search features including but not limited to keyword, Boolean, stemming, wildcard, fuzzy, proximity and other search types.	Yes. Searching, Tagging, and Coding can easily be performed by users of the Exterro system. Indexing is done automatically by the Exterro platform. Keyword searching, stemming, wildcards, proximity, fuzzy searches, nested proximity, and other searches are easily performed within the platform.
4.1.3.5 The system must process searches, display documents, and allow users to perform document review with minimal loading times.	Yes. The Exterro platform is designed to make review fast and easy.
4.1.3.6 The system must include a file viewer that easily and quickly opens files without needing to install additional applications. Supported files must include: [.docx, .xlsx, .pdf, .jpg, .jpeg, .mov, avi, .rtf, .txt., pub, .pptx]	Yes. The Exterro platform allows for the quick and easy view of files in either native or HTML format
4.1.3.7 The system must support searching on tags/codes and metadata.	Yes. Metadata, labels, and other information can all be searched using the Exterro tool.
4.1.3.8 The system must allow the user the option to assign and self-assign batches for review.	Yes. Authorized users can assign batches to individuals or groups, including themselves.
4.1.3.9 The system must provide search engines that support both Elasticsearch and dtSearch indexing and searching options within a single matter.	The Exterro Platform has both powerful and easy to use searching capabilities.
4.1.3.10 The system must allow the user to create workspaces, folders, etc., for customizable document organization.	Yes. The Exterro platform allows authorized users to easily organize documents.
4.1.3.11 The system must provide full administrator rights to the customer, including the ability to assign roles/permissions, create review assignments and/ or review batches for reviewers.	Yes. The Exterro platform is fully administrable by the customers.
4.1.3.12 The system must allow for the customization of coding panels.	Yes. Customized coding panels are available by default.
4.1.4 Advanced Analytics – eDiscovery System	
4.1.4.1 The system must include the following content & context analysis capabilities: topic clustering, email threading, near-duplicate analysis, entities recognition.	The Exterro platform provides concept clustering, email threading and near-duplicate analysis. Entities recognition is on the Exterro roadmap.
4.1.4.2 The system must provide predictive coding, advanced artificial intelligence (AI) and Technology	Yes. The Exterro platform's review module includes advanced AI and TAR.

Assisted Review (TAR) technologies including TAR 1.0 and TAR 3.0.	
4.1.4.3 The system must provide Active Learning (story builder with continuous active learning analytics).	Yes. The Exterro AI includes continuous active learning.
4.1.5 Security – eDiscovery System	
4.1.5.1 The system must provide secure authorized access and have multifactor authentication for each user to prevent unauthorized access.	Yes. With Single Sign On (SSO) enabled, multifactor authentication is possible. All users have their own login and authentication information.
4.1.5.2 The systems must provide automatic session termination if no activity with a prescribed period of time.	Yes. Session termination timing is configurable within the Exterro platform.
4.1.5.3 The system must allow a client administrator to restrict security rights at the individual, group or role level.	Yes. This security is built into the Exterro platform.
4.1.5.4 The system must provide a security level that allows system administrators to add new users to the system and edit existing user permissions.	Yes. Authorized users can add and edit users in the Exterro platform.
4.1.5.5 The vendor must provide regular maintenance including new releases and updates.	Yes. The Exterro platform is updated regularly – quarterly for major releases, monthly for minor releases, and more frequently for hotfixes and patches.
4.1.5.6 The system must provide at least 256-bit encryption to the data when at rest and in transit.	Yes. The Exterro platform uses encryption at rest and in transit.
4.1.6 Production – eDiscovery System	
4.1.6.1 The system must provide production of the ESI in a variety of formats including as searchable PDF, native or images and text with a load file.	Yes. The Exterro production tool can produce documents in Native, PDF, or TIFF format and can include text files.
4.1.6.2 The system must have a wizard-driven production process.	Yes. All features in the Exterro platform use wizards to drive the tool.
4.1.6.3 The system must have self-service production capabilities to allow the user to prepare and export from start to finish/download.	Yes. Any authorized user can manage the entire production process in the Exterro tool.
4.1.6.4 The system must allow the user to view all productions for a single file in the review platform.	Yes. The Exterro platform allows productions to be visible in the review platform.
4.1.7 Professional Services and Training – eDiscovery	
4.1.7.1 The vendor must provide Agency individualized live training for up twenty agency users per session.	Yes. Exterro offers classroom training.
4.1.7.1.1 The vendor must record live trainings and provide recorded training to the client at no additional cost.	Yes. Exterro is happy to record the live training sessions and provide them to clients.
4.1.7.2 The vendor must provide reviewer training and client administrator/organization administrator training.	Yes. Training is configurable to include both reviewer training, administration training, or other sessions as appropriate.

4.1.7.3 The vendor must record live trainings and provide recorded training to the client at no additional cost.	Yes. Exterro is happy to record the live training sessions and provide them to clients.
4.1.7.4 The system must provide access to a knowledge base or help center, technical documentation, and online support resources.	Yes. Exterro's manuals are all on-line. Context sensitive help is provided and support can be reached online.
4.1.7.5 The vendor must provide support services for the initial setup and configuration.	Yes. Setup and configuration is included in our implementation cost.
4.1.7.6 The vendor must provide support services for the duration of the contract for ongoing maintenance.	Yes. Exterro provides support for the entire duration of the contract.
4.1.7.7 The vendor must offer client services support including project management and technical support services.	Exterro provides Project Management during implementation and Technical Support for the lifetime of the subscription.
4.1.7.8 Project Management – eDiscovery	
4.1.7.8.1 Vendor must have the ability to participate in ad-hoc meetings to address an issue or concern.	Should an issue or concern arise during implementation, Exterro's Project Manager will participate in meetings to resolve the issue. After implementation, technical support can assist with issues.
4.1.7.8.2 Vendor must have the ability to provide consulting services for any activity client will undertake with a 3rd party vendor (e.g., data collection).	Exterro's system is designed so that third parties can use it with client permission.
4.1.7.8.3 Vendor must have the ability to define, create, and deliver custom reports for client.	Exterro's reporting is easily configurable and clients can define, create, run, and schedule reports on their own.
4.1.7.8.4 Vendor must have the ability to work with client on custom requests, custom reports, etc.	Exterro's technical support team will be happy to answer any questions about configuration and can assist in finding further support as needed.
4.1.7.9 Technical Support – eDiscovery	
4.1.7.9.1 Vendor must have the ability to provide User Administration	Exterro enables our clients to provide their own User Administration quickly and easily.
4.1.7.9.2 Vendor must have the ability to provide Early Case Assessment, Review, or Production Support	Exterro enables our clients to perform all these activities with easy to use and powerful wizards to guide authorized users through the process.
4.1.7.9.3 Vendor must have the ability to provide System Configuration	Exterro enables our clients to perform their own configuration.
4.1.7.9.4 Vendor must have the ability to provide Search Creations	Exterro enables our clients to perform their own searches.
4.1.7.9.5 Vendor must have the ability to provide Batch Creations	Exterro enables our clients to create and manage batches with ease.
4.1.7.9.6 Vendor must have the ability to provide View Creations	Exterro enables our clients to configure their views easily.

4.1.7.9.7 Vendor must have the ability to provide request technical assistance/leverage support services for tasks agency has the ability to perform.	Exterro provides technical support for these issues.
4.1.8 Support - eDiscovery	
4.1.8.1 Support by telephone, online, in-app, and email 24 hours-a-day, 7 days-a-week, 365 days-a-year for troubleshooting technical issues	Exterro provides 24/7support.
4.1.8.2 A response time of a minimum of 1 day to request for technical support.	Depending on the severity of the issue, Exterro may respond within one day, but most responses are between 30 minutes and a few hours.
4.1.8.3 Access to knowledgebase, technical documentation, and online support resources.	Yes. Exterro ensures that all clients have access to these resources.
4.1.9 Billing - eDiscovery	
4.1.9.1 Vendor will round up to the nearest next whole gigabyte (GB) for billing and auditing purposes. (Example 1.2GB will be billed at 2.0 GB)	Exterro will round down to the nearest whole gigabyte for any data less then 0.6GB's and up for any greater then 0.6 GB
4.1.9.2 Vendor will invoice monthly and will bill at the maximum gigabyte (GB) capacity used by the state.	Exterro's will comply with this request.
4.1.9.3 Vendor's proposed solution must provide billing capabilities designed to simplify the procedures of a chargeback model, as well as provide a holistic view of service. The state desires the billing detail to include but not be limited to billing by agency, consumption usage by each agency.	Exterro will meet special billing requirements based on billing.
4.1.10 Software as a Service Addendum	
4.1.10.1 Vendor must sign the attached Software as a Service Addendum prior to award.	If we are made a finalist, Exterro's attorneys will review the addendum.
4.1.11 Optional Renewals	Acknowledge
4.1.11.1 Vendor will include in their bid the cost of optional Annual renewals for years 2, 3, and 4. These optional Annual renewals will be initiated on Agency request authorized under the authority of the Purchasing Division.	Acknowledge

About TEQSYS:

TEQSYS, Inc., in conjunction with Exterro, is pleased to provide the attached response to the State of West Virginia's CRFQ: ISC2000000024 for eDiscovery Software as a Service. TEQSYS, Inc. is a Women's Business Enterprise (WBE) certifed by the Women's Business Enterprise National Council (WBENC.)

TEQSYS is a Texas-based corporation, founded in 2002 by individuals committed to and experienced in the IT sales and services market. Our mission at TEQSYS is to provide business solutions utilizing the most robust and powerful information technology available. TEQSYS specializes in Information Governance solutions, including archiving, e-Discovery, and data management.

About Exterro:

Exterro was founded with the simple vision that applying the concepts of process optimization and data science to how companies manage digital information and respond to litigation would drive more successful outcomes at a lower cost. We remain committed to this vision today as we deliver a fully integrated platform that enables our clients to address their regulatory, compliance and litigation risks more effectively and at lower costs. With software solutions that span the full e-discovery lifecycle and support privacy and information governance initiatives, Exterro helps some of the world's largest organizations work smarter and more efficiently.

Exterro is unique in the market as we treat Public Records Request /E-Discovery as a business process that can be managed, measured, and ultimately optimized. We help you address the entire e-discovery process, from Information Governance and Identification through to production in an organically built platform that unifies all stakeholders – both internal and external. As the recognized leading innovator, we are pioneering the use of artificial intelligence across the entire e-discovery process, enabling you to take advantage of the latest technology during your early case assessment activities and in identifying custodians and potentially responsive data stored in Microsoft Office 365 prior to collection, for instance.

The Exterro Platform enables clients to establish consistent, repeatable business processes for managing complex caseloads. As the only truly enterprise-scale legal process management software suite, the platform minimizes risk and supports information governance controls. Available in your organization's choice of environments, on-premise or hosted in the Cloud, the Platform delivers 360° visibility into all phases of e-discovery in a single platform while also supporting critical Privacy, Information Governance, Security and IT activities. The robust, unified software suite integrates with existing technology investments for faster, more efficient execution of critical litigation tasks to drive down e-discovery costs.

THE EXTERRO PLATFORM
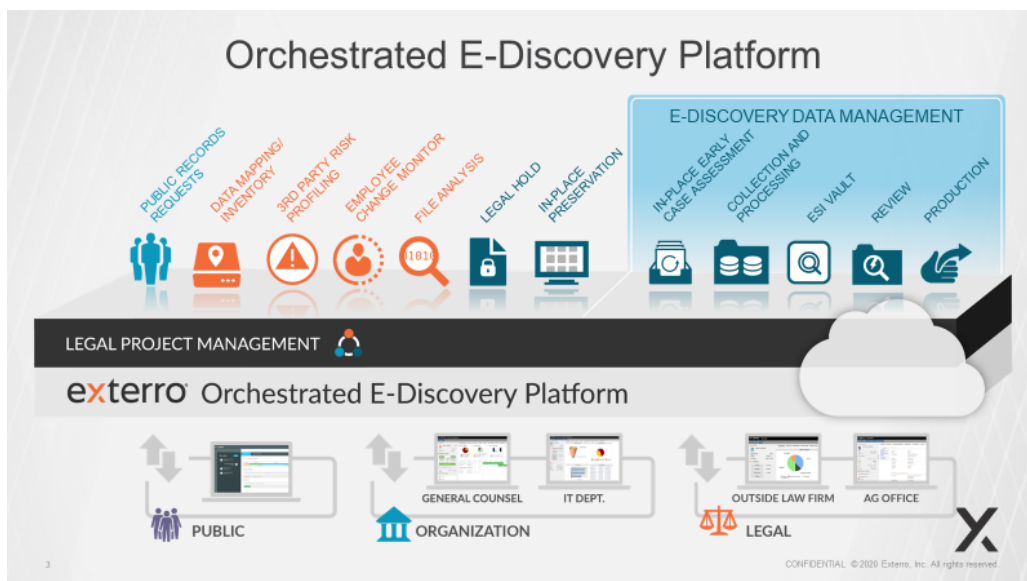
MASTER SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT

This Master Subscription and Professional Services Agreement ("Agreement"), effective as of _____ ("Effective Date"), by and between Exterro, Inc., an Oregon company whose principal address is 4145 SW Watson Avenue, Suite 400, Beaverton, Oregon, 97005 ("Exterro") and _____, a _____ corporation whose principal address is _____ ("Customer") (each a "Party" and collectively, the "Parties").

Whereas Exterro provides Subscription Services and related Professional Services and Customer desires to subscribe to the Services, and this business relationship and the allocation of responsibilities regarding such Services are set forth in this Agreement. Therefore, the Parties agree as follows:

1. **PROVISION OF THE SERVICES**
   1.1. Subscription Service. "Subscription Service" or "Service" means Exterro's software applications (including any third party software which is part thereof) as described in and ordered by Customer (the "Software"), and related services, which are made available by Exterro as a Software as a Service (SaaS) online via web access designated by Exterro. Exterro will make the following available to Customer, subject to the terms and conditions of this Agreement and related ordering documents signed by the Parties (each an "Order Form"), including without limitation, (a) use of the Subscription Services; (b) professional services and training services ("Professional Services"); and (c) any additional services. An Order Form shall specify the term of authorized use of the Subscription Service ("Subscription Term"), the fees and other charges for the Subscription Service, any special payment terms, the scope of use, and the numbers, types and identifiers of Authorized Users, applications, servers, devices, capacity and locations at or through which the Customer is permitted to use the Subscription Service. Each Order Form is hereby incorporated into and made a part of this Agreement for that order.
   1.2. Professional Services. Exterro shall perform Professional Services in the form, type and manner provided in one or more statements of work ("SOW") that refer to this Agreement, and which, upon execution, are incorporated into the Agreement.
   1.3. Customer Obligations. Customer is responsible for directing, participating and cooperating with Exterro during the implementation of the Subscription Services. Customer may enable access of the Service for use only by Authorized Users solely for the internal business purposes of Customer and its Affiliates in accordance with the Documentation and not for the benefit of any third parties. Customer shall protect the names and passwords of the Authorized Users to the Subscription Service. Customer is responsible for all Authorized User use of the Subscription Service and compliance with this Agreement. Customer shall: (a) have sole responsibility for the accuracy, quality, and legality of all Customer Data; and (b) prevent unauthorized access to, or use of, the Subscription Service, and notify Exterro promptly of any such unauthorized access or use. Customer shall not attempt to gain access to the Subscription Services or its related systems or networks in a manner not set forth in the Documentation. Customer is responsible for using the Subscription Service within the permitted scope and only in accordance with the numbers, types and identifiers of Authorized Users, applications, servers, devices, capacity and locations at or which Customer is permitted to use as set forth in the Order Form. Customer shall designate a minimum number of named contacts as listed in the applicable Order Form to request and receive support services from Exterro. Named Support Contacts must be trained on the Exterro products for which they initiate support requests.
   1.4. Acceptance of the Services.
      1.4.1. Acceptance of the Software. Customer is entitled to perform verification testing on delivered Software (the "base product") to confirm receiving the product(s) as set forth in the Agreement and to confirm that the base products function as set forth in Exterro's product documentation. Said testing shall be completed within ten (10) days after Exterro makes the base product(s) available to Customer (the "Acceptance Period"). If Customer reasonably determines that the base product made available to them differs from the Agreement, or that the product(s) fails to operate in accordance with the

documentation, Customer shall notify Exterro and Exterro shall correct the error. Unless Customer notifies Exterro, in writing, that the Software failed the verification testing, within thirty (30) days after Exterro makes the Software available to the Customer, the base product(s) will be deemed to be accepted. Exterro will not begin configuration services or other Professional Services until such time as the Software has been accepted.

    1.4.2. <u>Acceptance of Professional Services</u>. Customer may engage Exterro to provide Professional Services to configure the Software. Customer is entitled to perform Acceptance Testing of the configured Software including any and all deliverables described in a Statement of Work ("SOW") or the Order Form. The term "Acceptance Testing" means testing performed by or on behalf of Customer to determine whether the relevant configured Software complies with any specifications and requirements set forth in the Professional Services SOW/Order Form. If Customer reasonably determines that such configured Software complies with the foregoing or otherwise decides in its reasonable discretion to accept the configured Software, Customer will notify Exterro in writing (email is acceptable) of its acceptance of the Professional Services. Customer will notify Exterro on or before any acceptance date set forth in the applicable SOW/Order Form ("Configured Software Acceptance Date"). If Exterro has not received written notice within ten (10) business days of the Configured Software Acceptance Date, the Professional Services will be deemed to have been accepted.

    1.4.3. <u>Failure of Acceptance Testing of Professional Services</u>. If Customer notifies Exterro that the configured Software fails to pass Acceptance Testing, Exterro will correct all material deficiencies in the Software or Professional Services, not later than thirty (30) calendar days after receipt of Customer' notice of such failure. Within thirty (30) calendar days after such corrections have been made, Customer will retest the relevant Services. If the Services still fail Acceptance Testing, Customer may, in its discretion: (i) grant Exterro additional time to correct the outstanding deficiencies; or (ii) terminate the associated SOW/Order Form. In the event of termination under this <u>Section 1.4.3</u> Exterro will refund promptly any Professional Service Fees paid to Exterro for the associated terminated SOW/Order Form.

2. FEES AND PAYMENT

2.1. <u>Fees</u>.

    2.1.1. <u>Subscription Service</u>. Fees for the Subscription Service will be invoiced in accordance with the applicable Order Form.

    2.1.2. <u>Professional Services</u>. Customer shall pay Exterro Professional Services fees at the rates and in accordance with the applicable SOW. Customer shall reimburse Exterro for all reasonable and necessary travel and living expenses incurred by Exterro in the performance of the Professional Services under this Agreement.

2.2. <u>Payment Terms</u>. Except as expressly set forth in the applicable Order Form or Statement of Work ("SOW") (a) Subscription Service fees are invoiced annually in advance; (b) Professional Services fees are invoiced as set forth in the Order Form (including reasonable travel expenses) monthly in arrears; and (c) Customer shall pay each invoice in full within thirty (30) days after the date of invoice, in U.S. dollars. Except as otherwise stated in an Order Form, all fees are based on Service rights acquired and not actual usage. If Customer specifies in an Order Form that it is issuing a purchase order for such Order Form, then Exterro shall reference the applicable Customer purchase order number on its invoices (solely for administrative convenience) so long as Customer provides the purchase order number to Exterro at least five (5) business days prior to the date of the applicable Exterro invoice.

2.3. <u>Overdue Payments.</u> Late payments shall accrue interest at a rate of one and one-half percent (1.5%) per month or the legal maximum interest rate, whichever is lower. If Customer is delinquent in payment of amounts for the services owed hereunder, Exterro may give notice to Customer of such delinquency and, in such case, Customer will have thirty (30) days from the date of Exterro's written notice to cure the

delinquency. If Customer fails to cure the delinquency, Exterro may, in addition to its other rights and remedies provided hereunder or at law, terminate or suspend the affected Service.

2.4. <u>Non-cancelable & non-refundable</u>. Except as specifically set forth to the contrary under Section 1.4.3 "Failure of Acceptance Testing of Professional Services", Section 6.1 "Warranties", Section 7.1 "Indemnification – Exterro Obligation", Section 9.4 "Effect of Termination" and under Section 3 "Availability Service Level" of the Subscription Service Guide Agreement (Appendix 1), all payment obligations under any and all Order Forms are non-cancelable and all payments are non-refundable. The license rights for the number of Authorized Users set forth on any respective Order Form cannot be decreased during the Term.

2.5. <u>Audit</u>. Exterro shall have the right, at Exterro's expense, to periodically confirm Customer's compliance with the Subscription Services usage terms of any Order Form. Customer shall provide any reasonable assistance to Exterro in conducting an audit. If Customer's use of the Subscription Services exceeds the usage permitted by the Order Form, Customer shall (a) disable the unpermitted use; or (b) purchase additional rights to bring the actual use into compliance with permitted rights; and (c) compensate Exterro for the reasonable cost of the audit. If Customer fails to correct the unpermitted use, Exterro may, in addition to other rights and remedies provided hereunder or at law, and after providing thirty (30) days of written notice of the noncompliance, terminate or suspend the affected Service.

2.6. <u>Taxes</u>. All payments required by this Agreement are exclusive of federal, state, local and foreign taxes, duties, tariffs, levies and similar assessments. Customer agrees to bear and be responsible for the payment of all taxes, duties, tariffs, levies, fees and charges of any kind, including sales, use, excise or value added taxes, and all other similar charges (collectively, "Taxes") which are imposed on transactions under this Agreement by or under the authority of any government body, excluding Taxes based solely on Exterro's net income. Customer shall make all payments required without deduction of any Taxes, except as required by law, in which case the amount payable shall be increased as necessary so that after making any required deductions and withholdings, Exterro receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. If Customer is a tax-exempt entity or claims exemption from any Taxes under this Agreement, Customer shall provide a certificate of exemption upon execution of this Agreement and, after receipt of valid evidence of exemption, Exterro shall not charge Customer any Taxes from which it is exempt.

3. **PROPRIETARY RIGHTS**

3.1. <u>Ownership and Reservation of Rights to Exterro Intellectual Property.</u> Exterro and its licensors own all right, title, and interest in and to the Subscription Services, Documentation, and other Exterro Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, Exterro reserves all rights, title and interest in and to the Subscription Service, and Documentation, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein. Exterro shall have a royalty-free, worldwide, non-exclusive, transferable sub-licensable, irrevocable, perpetual right to make, use, sell, offer for sale, import, or otherwise incorporate into the Subscription Service, Software, Documentation, any suggestions, enhancements, recommendations, or other feedback provided by Customer relating to the Subscription Service, Software, Documentation.

3.1.1. <u>Professional Services.</u> All right, title and interest to all recommendations, ideas, techniques, know-how, designs, programs, development tools, processes, integrations, enhancements and other technical information developed by Exterro in the course of performing Professional Services, or co-developed by the Parties hereunder, including all trade secrets, copyrights and other Intellectual Property Rights pertaining thereto (together the "Exterro Intellectual Property") vests in Exterro. Nothing contained in this Agreement shall be construed as transferring any such rights to Customer or any third party except as expressly set forth herein.

3.1.2. Subject to 3.1.1 above, Exterro grants to Customer a nontransferable and non-assignable term license to access and to use the Exterro Intellectual Property that Exterro incorporates into a Deliverable provided to Customer hereunder, without further license fees. Customer may only use the Deliverables in

connection with its authorized use of the Exterro Subscription Service, as such is defined pursuant to this Agreement between the Parties and only during the term set forth therein.

3.2. <u>License Grant.</u> Exterro hereby grants Customer a non-exclusive, non-transferable, license to access, configure and use the purchased Subscription Service and Documentation, solely for the internal business purposes of Customer and its Affiliates and solely during the Term, subject to the terms and conditions of this Agreement within scope of use defined in the relevant Order Form.

3.3. <u>License Restrictions</u>. Customer shall not, nor permit others to: (i) license, sub-license, sell, re-sell, lease, transfer, distribute or time share the Subscription Service, Software, or Documentation; (ii) create derivative works based on or otherwise modify the Subscription Service, Software, or documentation; (iii) disassemble, reverse engineer or decompile the Subscription Service or Software; (iv) access the Subscription Service, Software, or Documentation in order to develop a competing product or service; (v) use the Subscription Service to provide a service for others; (vi) use the Exterro Software Platform to operate more or different type of applications than permitted under the applicable Order Form; vii) remove or modify a copyright or other proprietary rights notice on or in the Subscription Service, Software or Documentation; (viii) disable, hack or otherwise interfere with any security, digital signing, digital rights management, verification or authentication mechanisms implemented in or by the Subscription Service.

3.4. <u>Customer Data</u>. As between Customer and Exterro, Customer owns its Customer Data. All Customer Confidential Information, and all Personal Identifiable Information ("PII") supplied by, or PII input by Customer or its authorized agents shall be, and remain, the property of Customer.

3.5. <u>Right to Use Customer Data</u>. For the Term of this Agreement, Customer hereby grants Exterro a non-exclusive, non-transferable, worldwide right to use the electronic data specifically pertaining to Customer and/or its Authorized Users that is processed using the Subscription Service (collectively, "Customer Data") strictly for the limited purpose of providing the Subscription Service to Customer.

3.6. <u>Aggregated Data</u>. Exterro owns the aggregated and statistical data derived from the operation of the Subscription Service, including without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (the "Aggregated Data"). Nothing herein shall be construed as prohibiting Exterro from utilizing the Aggregated Data for purposes of operating Exterro's business, provided that Exterro's use of the Aggregated Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by any individual into the Subscription Service. In no event does the Aggregated Data include any personally identifiable information.

4. **CONFIDENTIALITY**

4.1. <u>Confidential Information</u>. "Confidential Information" means all information disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure, including without limitation: each Party's respective business plans and processes; financial and employee data; proprietary technology and product information and designs; the Subscription Service and Software; Customer Data. The terms of this Agreement, Order Form(s) and pricing are Confidential Information of Exterro. Confidential information excludes information that: (i) is or becomes generally known to be public; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation to the Disclosing Party; (iii) is received from a third party without any obligation of confidentiality to a third party or breach of any obligation of confidentiality to the Disclosing Party; (iv) or was independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information.

4.2. <u>Protection.</u> The Receiving Party shall: (i) at all times protect the confidentiality of the Disclosing Party's Confidential Information with the same degree of care that it uses to protect its own confidential information, and in no event using less than reasonable care; and (ii) not use Confidential Information of the Disclosing Party except to the extent necessary to exercise its rights or fulfill its obligations under this Agreement. To

the extent necessary under this Agreement, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the Receiving Party's employees or contractors who are bound by written obligations of confidentiality and non-use and non-disclosure restrictions at least as protective as those set forth herein. In the event of a court order or government regulation compelling disclosure of any Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice thereof, and shall reasonably cooperate with the Disclosing Party to seek confidential or other protective treatment. If a Party discloses or uses (or threatens to disclose or use) any Confidential Information of the other Party in breach of confidentiality protections hereunder, the other Party shall have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts, it being acknowledged by the Parties that any other available remedies are inadequate. Each Party's obligations set forth in this Section 4 shall remain in effect during the term and three (3) years after termination of this Agreement. The Receiving Party shall promptly return to the Disclosing Party or destroy (with certification of such destruction provided by the Receiving Party upon request of the Disclosing Party) all Confidential Information of the Disclosing Party in its possession or control upon request from the Disclosing Party.

5. **CUSTOMER DATA**

   5.1. <u>Protection</u>. During the Term of this Agreement, Exterro shall maintain a formal security program materially in accordance with industry standards that is designed to: (i) ensure the security and integrity of Customer Data; (ii) protect against threats or hazards to the security or integrity of Customer Data; and (iii) prevent unauthorized access to Customer Data.

   5.2. <u>Unauthorized Disclosure</u>. If either Party believes that there has been a disclosure of Customer Data to anyone other than an Authorized User or Exterro, such Party must promptly notify the other Party. Additionally, each Party will reasonably assist the other Party in remediating or mitigating any potential damage, including any notification which should be sent to individuals impacted or potentially impacted, or the provision of credit reporting services to such individuals. Each Party shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by it.

6. **WARRANTIES & DISCLAIMERS**

   6.1. <u>Warranties</u>.

      6.1.1. Each Party warrants that it has the authority to enter into this Agreement and, in connection with its performance of this Agreement, shall comply with all laws applicable to it related to data privacy, international communications and the transmission of technical or personal data.

      6.1.2. Exterro warrants that during the Subscription Term the Subscription Service will operate without a Defect (as defined in the Subscription Service Guide attached hereto as Appendix 1 and incorporated into this Agreement by reference), that causes a material failure of Customer's production instances of the Subscription Service to perform in accordance with product documentation. Customer's exclusive remedy for breach of this warranty is for Exterro to correct or work around the Defect upon request, subject to and in accordance with the procedures and limitations for receiving Support, as defined in the Subscription Service Guide. If the Defect persists in causing a material failure in Customer's production instances of the Subscription Service to conform to product specifications, without correction or work-around forty-five (45) days after written notice to Exterro of a warranty claim under this Section 6.1, then Customer may terminate the affected Subscription Service and Exterro shall refund to Customer any prepaid subscription fees covering the remainder of the Subscription Term of the affected Subscription Service after the date of termination. This Section 6.1.2 sets forth Customer's exclusive rights and remedies (and Exterro's sole liability) in connection with any Defect or other failure of the Subscription Service to perform in accordance with the product specifications or any other manner. Notwithstanding any other provision in this Agreement, Exterro shall have no obligation to support and shall have no liability or obligation due to unavailability, malfunction or degradation of performance in the Subscription Service that is due to modifications of the Exterro Applications by any person other than Exterro or a person acting at Exterro's direction.

6.1.3. <u>Professional Services</u>. Exterro warrants that it shall perform all Professional Services obligations defined in a SOW in a professional and workmanlike manner. As Customer's exclusive remedy and Exterro's sole liability for breach of this warranty, Exterro shall (a) correct the non-conforming Professional Service or Deliverable at no additional charge to Customer or (b) in the event Exterro is unable to correct such deficiencies after good-faith efforts, refund Customer prorated amounts paid for the defective Professional Service or Deliverable. To receive the warranty remedy, Customer must promptly report deficiencies in writing to Exterro, but no later than thirty (30) days after the first date the deficiency is identified by Customer.

6.2. <u>DISCLAIMER OF WARRANTIES</u>. EXCEPT FOR THE WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXTERRO DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WARRANTIES ARISING UNDER STATUTE, WARRANTIES OF MERCHANTABILITY, ACCURACY, TITLE, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXTERRO SPECIFICALLY DOES NOT WARRANT THAT THE SERVICES, DELIVERABLES, OR SOFTWARE WILL MEET THE REQUIREMENTS OF CUSTOMER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. CUSTOMER ACKNOWLEDGES THAT IN ENTERING THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN OR INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

7. **INDEMNIFICATION**

7.1. <u>Exterro Obligation</u>. Subject to the exclusions set forth below, Exterro shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand (*"Claim"*) alleging that Customer's use of the Subscription Service in accordance with this Agreement infringes any valid patent, copyright, or trademark of a third party that is issued or registered in the United States, Canada, Australia, the European Union or Switzerland; and (ii) pay any court-ordered award of damages or settlement amount, and reasonable attorney fees, to the extent caused by such Claim. If any portion of the Subscription Service becomes the subject of a Claim, Exterro may: (a) contest the Claim; (b) obtain permission from the claimant for Customer's continued use of the Subscription Service; (c) replace or modify the Subscription Service to avoid infringement, if such replacement or modification has substantially the same capabilities as the Subscription Service; or, if the foregoing (a), (b), and (c) are not available on commercially reasonable terms in Exterro's judgment, then (d) terminate Customer's use of the affected Subscription Service upon forty-five (45) days' written notice and pay to Customer a refund of any prepaid subscription fees covering the remaining portion of the applicable Subscription Term for the affected Subscription Service after the date of termination. Notwithstanding the above, Exterro shall have no indemnification obligation or liability for any Claim arising in whole or in part from: (i) any use of the Subscription Service which exceeds the authorized use permitted under this Agreement; (ii) Customer Data; (iii) use of the Subscription Service by Customer in violation of applicable law; (iv) use of the affected Subscription Service after termination in accordance with clause (d) of this Section 7.1; (v) modifications to the Subscription Service by any person other than Exterro or a person acting at Exterro's direction; or (vii use of the Subscription Service in combination with any hardware, software, application or service made or provided other than by Exterro.

7.2. <u>Process</u>. All of the foregoing indemnity obligations are conditioned on the Customer notifying the Exterro promptly in writing of any actual or threatened Claim, the Customer giving Exterro sole control of the defense thereof and any related settlement negotiations, and the Customer cooperating and, at Exterro's request and expense, assisting in such defense. SECTION 7 STATES EACH PARTY'S ENTIRE LIABILITY AND THE OTHER PARTY'S EXCLUSIVE REMEDY FOR THIRD PARTY INFRINGEMENT CLAIMS AND ACTIONS.

8. **LIMITATION OF LIABILITY AND DAMAGES**

8.1. <u>LIMITATIONS OF LIABILITY</u>. TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, WHETHER BASED ON CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL BE LIMITED

TO THE AMOUNTS PAID BY CUSTOMER FOR THE SERVICE GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS LIMIT.

8.2. EXCLUSION OF DAMAGES. TO THE EXTENT PERMITTED BY LAW, NEITHER EXTERRO NOR CUSTOMER SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOST PROFITS (WHETHER DIRECT OR INDIRECT) OR LOSS OF USE OR DATA, COSTS OF SUBSTITUTE GOODS, OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION OR GOODWILL), OR INDIRECT DAMAGES OF ANY TYPE HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SUBSCRIPTION SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SUBSCRIPTION SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE.

9. TERM AND TERMINATION

9.1. Term. The term of this Agreement commences on the Effective Date and continues until the stated term in all Order Forms has expired or has otherwise been terminated in accordance with the terms set forth in this Section 9. Following the initial term defined in the Order Form, an Order shall automatically renew for successive one year terms (each, a "Renewal Term") until such time as Customer provides Exterro with written notice of termination; provided, however, that: (a) such notice be given no fewer than thirty (30) calendar days prior to the last day of the then current term; and, (b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term. "Term" shall collectively mean and include the Agreement terms represented by the initial term and the Renewal Term.

9.2. Termination for Cause. Each Party may terminate this Agreement in its entirety upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement or an assignment for the benefit of creditors. Either Party may terminate a Subscription Service or Professional Services effective immediately upon written notice if the other Party materially breaches a material obligation under this Agreement or the applicable Order Form for the affected service and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching Party. Professional Services are separately ordered from the Subscription Service, and are not required for the Subscription Service. A breach by a Party of its obligations with respect to Professional Services shall not by itself constitute a breach by that Party of its obligations with respect to the Subscription Service even if the services are enumerated in the same Order Form.

9.3. Professional Services Termination. Except as set forth in a SOW, Exterro may terminate any Statement of Work by giving Customer fifteen (15) days prior written notice in the event: (i) Customer repeatedly fails to perform its obligations under this Agreement or a Statement of Work resulting in the inability of Exterro to meet its obligations and time frame commitments, or (ii) it is determined that the information provided by Customer, or lack thereof, to Exterro during the discovery stage is materially inaccurate.

9.4. Effect of Termination. Upon expiration or other termination of the Subscription Service for any reason, Customer shall stop using, and Exterro shall stop providing, the terminated Subscription Service. (a) If the Subscription Service is terminated by Customer due to Exterro's breach, then Exterro shall refund to Customer, within thirty (30) days after the effective date of termination, all prepaid fees for the remaining portion of the Subscription Term for the terminated Subscription Service after the effective date of termination. (b) If Professional Service is terminated by Customer due to Exterro's breach, then Exterro shall refund to Customer, within thirty (30) days after the effective date of termination, any prepaid amounts for unperformed Professional Service under the applicable SOW or a Service Description. (c) If the Subscription Service is terminated by Exterro due to Customer's breach, then Customer shall pay to Exterro, within thirty (30) days after the effective date of termination, fees for the terminated Subscription Service that would have been payable for the remainder of the Subscription Term after the effective date of termination. (d) Upon expiration

or other termination of the Subscription Service for any reason, Customer shall be eligible to request the return of Customer Data in accordance with Section 9.5 (Return of Customer Data).

9.5. <u>Return of Customer Data</u>. Following the end of the Subscription Term, where Customer has not renewed, Customer shall have forty-five (45) days to request a copy of the Customer Data from Exterro; and, if requested, Exterro shall use commercially reasonable efforts to provide a copy of that data within fifteen (15) days in a mutually agreed upon, commercially standard format at no cost to Customer unless Exterro determines in its reasonable discretion that the data output is not routine, in which case the Parties shall mutually agree on a statement of work for professional services. After such forty-five (45) day period, Exterro shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the Subscription Service.

9.6. <u>Survival</u>. Upon termination of this Agreement for any reason, Customer shall pay all amounts owed hereunder. Sections 3.1 and 3.4, (Proprietary Rights); Section 3.3 (License Restrictions); and Section 4 (Confidentiality); Section 7 (Indemnification); Section 8 (Limitation of Liability and Damages); and Section 10 (General Provisions) of this Agreement, together with any other provision required for their construction or enforcement, shall survive termination of this Agreement for any reason.

10. **GENERAL PROVISIONS**

10.1. <u>Assignment</u>. Neither Party may assign its rights or obligations, whether by operation of law or otherwise, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, upon notice and without the other Party's consent: (i) in connection with a merger, reorganization or sale of all or substantially all of the assets or equity of such Party, assign this Agreement in its entirety to such Party's successor; and (ii) assign this Agreement in its entirety to any company, partnership or other legal entity which from time to time directly or indirectly Controls, is Controlled by or is under the common Control with such Party, where "Control" means the legal power to direct or cause the direction of the general management of the company, partnership or other legal entity. Any attempted or purported assignment in violation of this Section 10.1 will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

10.2. <u>Notice</u>. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email, except that email shall not be sufficient for notices of termination or regarding a Claim. Notices shall be sent to the Parties as set forth on the signature page of this Agreement or as otherwise agreed to by the Parties in writing.

10.3. <u>Insurance</u>. During the Term, Exterro shall maintain, at its own expense, the following insurance: (a) statutory workers' compensation insurance and employer's liability insurance as required by applicable law; (b) a commercial general liability policy with aggregate limits of no less than $2,000,000; (c) an umbrella insurance policy with limits of no less than $4,000,000. Such policies shall be with insurance companies with at least an A.M. Best Rating of A-VII authorized to do business in the jurisdictions where the Exterro Professional Services are to be performed. Customer shall be named as an additional insured on the Commercial General Liability policy with respect to provision of services provided under this Agreement.

10.4. <u>Export Compliance</u>. Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Subscription Service. Without limiting the generality of the foregoing, Customer shall not make the Subscription Service available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo; (ii) is listed on any U.S. government list of prohibited or restricted Parties; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

10.5. <u>Force Majeure</u>. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this

Agreement, when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including without limitation: strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), trespassing, sabotage, theft or other criminal acts, failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters or extreme adverse weather conditions (each a "Force Majeure Event"). The Party suffering a Force Majeure Event shall use reasonable efforts to mitigate against the effects of such Force Majeure Event.

10.6. <u>U.S. Government Rights (if applicable)</u>. All Exterro software is commercial computer software and all services are commercial items. "Commercial computer software" has the meaning set forth in Federal Acquisition Regulation ("FAR") 2.101 for civilian agency purchases and the Department of Defense ("DOD") FAR Supplement ("DFARS") 252.227-7014(a)(1) for defense agency purchases. If the software is licensed or the services are acquired by or on behalf of a civilian agency, Exterro provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as required in FAR 12.212 (Computer Software) and FAR 12.211 (Technical Data) and their successors. If the software is licensed or the services are acquired by or on behalf of any agency within the DOD, Exterro provides the commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in DFARS 227.7202-3 and its successors. Only if this is a DOD prime contract or DOD subcontract, the Government acquires additional rights in technical data as set forth in DFARS 252.227-7015. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS or other clause or provision that addresses Government rights in computer software or technical data.

10.7. <u>Amendment</u>. Any modification of this Agreement, an Order Form, the Subscription Service Guide, a SOW or a Service Description must be in writing and signed by authorized representatives of both Parties.

10.8. <u>Relationship of the Parties</u>. The Parties are independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship. Neither Party shall have any right or authority to assume or create any obligation of any kind expressed or implied in the name of or on behalf of the other Party. Exterro may at any time subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.

10.9. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon and the federal laws of the United States of America. Customer hereby consents and submits to the jurisdiction and forum of the state and federal courts in the State of Oregon in all questions and controversies arising out of this Agreement. In no event shall this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods.

10.10. <u>Reference Account</u>. Customer agrees that Exterro may include identification of Customer as a customer on Exterro's website, provided that the identification Customer is no more prominent that the identification Exterro's other customers and otherwise consistent with Exterro's practice of identifying its customers on Exterro's website as of the Effective Date. With Customer's prior written consent, Exterro may refer to Customer in other Exterro's other promotional materials. At Customer's sole option, Customer may serve as a reference site and speak with two (2) prospective customers at mutually agreeable times in each twelve (12) month period during the Service Term and/or be featured in a case study (in a form and format approved in advance and in writing by Customer) which may be published in an online or offline periodical, newspaper, journal, or other publication, and posted on Exterro's website with case studies featuring other Exterro customers.

10.11. <u>Miscellaneous</u>. This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the Parties with respect to the subject matter hereof. In the event of a conflict, the provisions of an Order Form shall take precedence over provisions of the body of this

Agreement and over any other Exhibit or Attachment. This Agreement supersedes all other prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. This Agreement may be executed electronically, by facsimile and in counterparts, which taken together shall form one binding legal instrument.

11. **DEFINITIONS**
   11.1. "Authorized User" means Customer's employee, contractor, consultant, or outsourcing service provider who is provided registered access to the Services in order to perform work for or on behalf of Customer.
   11.2. "Customer Data" means the electronic data or information submitted by Customer to the Subscription Service.
   11.3. "Deliverables" means the training, specifications, configurations, implementation, data conversions, workflow, performance capabilities, and any other activity or document to be completed during the course of Professional Services for delivery to Customer.
   11.4. "Documentation" means Exterro's electronic and hardcopy user guide for the Subscription Service, which may be updated by Exterro from time to time.
   11.5. "Intellectual Property Rights" means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.
   11.6. "Malicious Code" means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.
   11.7. "Order Form" means the separate ordering documents under which Customer subscribes to the Exterro Subscription Service and Professional Services pursuant to this Agreement that have been fully executed by the Parties.
   11.8. "Personally Identifiable Information" means any and all individually identifying information related to former, current or prospective employees, consultants, contingent workers, independent contractors, or retirees of Customer that is accessed, disclosed, provided, obtained, created, generated, scanned, entered, collected or processed in connection with the Subscription Service or Professional Services.
   11.9. "Production" means the Customer's use of or Exterro's written verification of the availability of the Subscription Service to Customer for use in its business processes.

IN WITNESS WHEREOF, the Parties authorized signatories have duly executed this Agreement as of the Effective Date.

Customer   **Exterro, Inc.**

Signature: Signature:
Name: Name:
Title: Title:
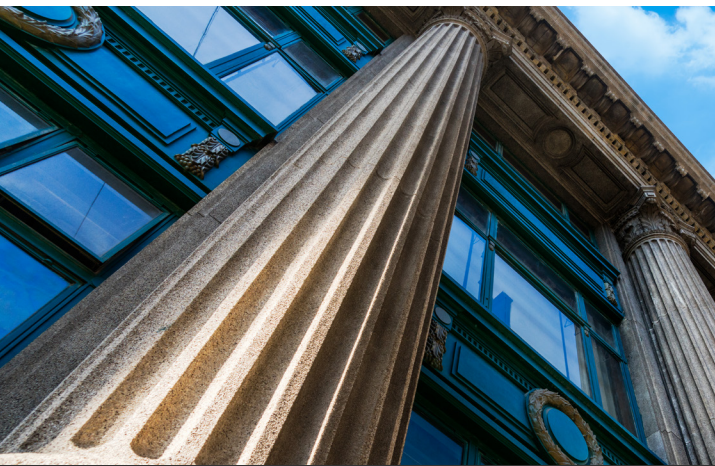Date: Date:

GSA

U.S. GENERAL SERVICES ADMINISTRATION (GSA) PROFILE

INDUSTRY: Federal Government

WORLD HEADQUARTERS: Washington D.C.

REVENUE: N/A

EMPLOYEES: 11,137

Exterro Helps "Reduce the Burden" on Staff in Managing E-Discovery and FOIA Activities

In conducting GSA's privacy impact assessment regarding the use of Exterro, their e-discovery software solution, GSA found that "Exterro reduces the burden on the Office of General Counsel (OGC) staff in the collection, review and preparation of documents and materials as required by the Courts during the discovery phase of litigation." Beyond litigation, Exterro "reduces the burden of the staff in the Freedom of Information Act (FOIA) Request Service Center during the collection, review and preparation of documents and materials in response to FOIA requests."

Benefits of using Exterro's E-Discovery Software:

- "Greatly reduces the volume of paper document collection"

- "Decreases the need/or use of paper records"

- "Eliminates the need for potentially less secure digital tools that have previously been used in the capture, review and production of materials during litigation and in response to FOIA requests."

ABOUT GSA

"GSA provides centralized procurement for the federal government, offering billions of dollars worth of products, services, and facilities that federal agencies need to serve the public."

Established by President Truman in 1949, the GSA was created to consolidate a number of agencies including but not limited to the National Archives Establishment, the Federal Works Agency and its Public Buildings Administration into one federal agency tasked with administering supplies and providing workplaces for federal employees.

"Exterro recognizes that federal government agencies must overcome common challenges of limited manpower, insufficient time and increasing data volumes. With Exterro's software, agencies like the GSA are empowered to optimize processes and respond quickly to FOIA and other e-discovery requests."

–Peter Morse
Director of US Federal Sales,
Exterro

exterro + GSA

Two Primary Use Cases

#1 E-Discovery

"Exterro is an end-to-end discovery solution that provides a user-friendly, searchable, and secure e-discovery document management system to facilitate effective data collection, data analysis, data sharing, electronic discovery, litigation support, project collaboration and document review for OGC."

"Exterro is used to collect, search and analyze information related to Agency litigation. The system also allows for identification of personnel for litigation purposes and for the issuance of relevant litigation holds."

#2 FOIA Requests

"This system reduces the burden of the staff in the FOIA Request Service Center during the collection, review and preparation of documents and materials in response to FOIA requests."

"The FOIA office will be using the system to further search, collect, and organize FOIA relevant documents."

All quotes were taken from GSA's Privacy Impact Assessment conducted on April 25, 2018. To read the complete report click here.

EXTERRO IS FEDRAMP IN PROCESS

Exterro is the only complete end-to end e-discovery software provider to be currently designated FedRAMP In Progress for Agency Authorization. This approval comes in addition to Exterro's achievement of SOC® 2 Type 2 certification by the American Institute of Certified Public Accountants (AICPA). "Protecting our clients' data is of the utmost importance to us and government agencies and other entities can now be even more confident in our consistent application of security best practices," said Shashi Angadi, Chief Technology Officer at Exterro.

IDC MarketScape: Worldwide eDiscovery SaaS Review Software 2019 Vendor Assessment

Ryan O'Leary
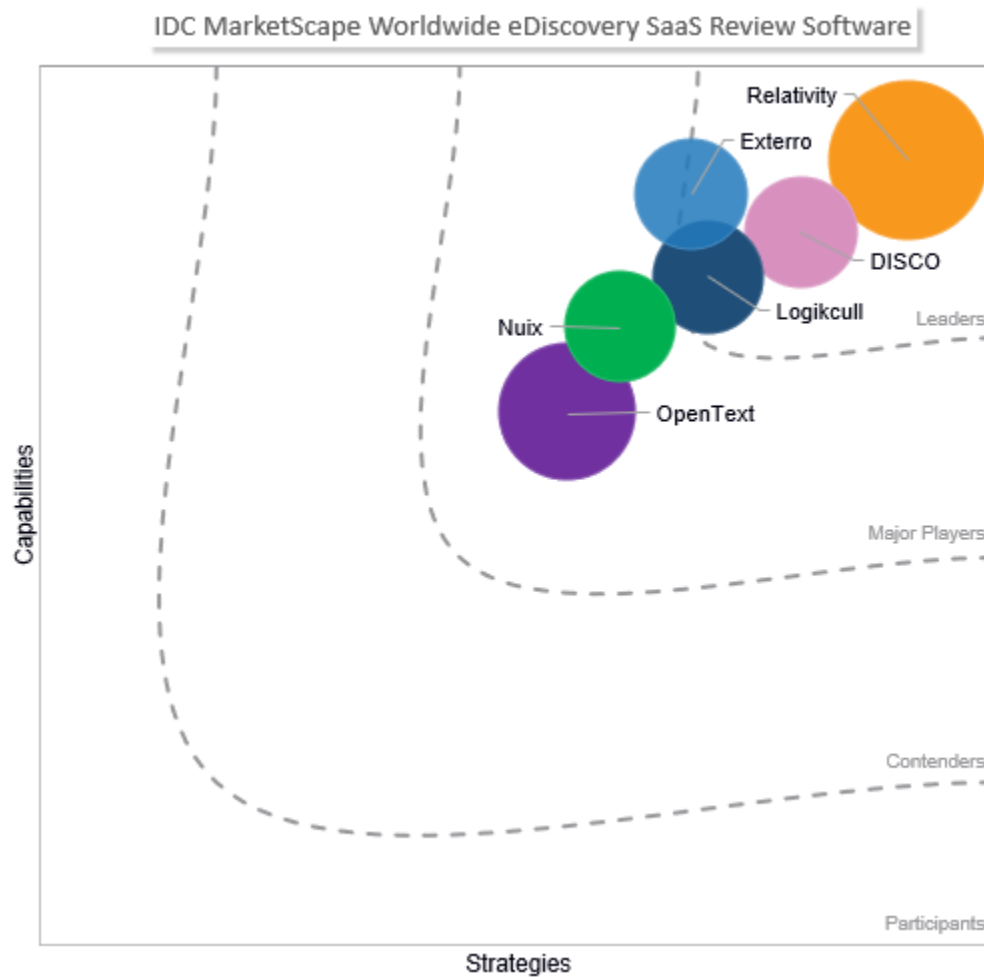
THIS IDC MARKETSCAPE EXCERPT FEATURES EXTERRO

IDC MARKETSCAPE FIGURE

FIGURE 1

IDC MarketScape Worldwide eDiscovery SaaS Review Software Vendor Assessment

Source: IDC, 2019

Please see the Appendix for detailed methodology, market definition, and scoring criteria.

IN THIS EXCERPT

The content for this excerpt was taken directly IDC MarketScape: Worldwide eDiscovery SaaS Review Software 2019 Vendor Assessment (Doc # US44752919). All or parts of the following sections are included in this excerpt: IDC Opinion, IDC MarketScape Vendor Inclusion Criteria, Essential Guidance, Vendor Summary Profile, Appendix and Learn More. Also included is Figure 1.

IDC OPINION

The cloud computing revolution has finally reached the legal tech world. eDiscovery vendors must optimize their products to compete in this new cloud world. According to IDC's 2018 *Archiving and eDiscovery Survey,* 45.7% of ediscovery software is now deployed via software as a service (SaaS). IDC expects that percentage to continue to rise for the foreseeable future. Custodial data is now stored in the cloud, thus review software should be cloud-based as well. This IDC MarketScape covers major vendors participating in the worldwide ediscovery software market. This vendor evaluation is based on a comprehensive criterion expected to be most conducive to success in providing ediscovery review software via SaaS in both the short term and the long term. The evaluation criteria emphasize capabilities and strategies such as predictable pricing, cybersecurity, and ability to scale. IDC expects critical success factors for ediscovery vendors to be:

- Cloud-to-cloud data ingestion connectors that enable customers to ingest cloud-native data with the click of a button
- Cybersecurity that must be a point of emphasis considering the heavy fines and reputational damage associated with data breaches
- Transparent and even fixed pricing as consumer tolerance of hidden fees and exploding review costs wane
- Strong analytics and machine learning functions that analyze conversations as ediscovery moves away from document-centric views
- Embraces alternative use cases outside of traditional ediscovery workflows
- Vendor that must be able to scale quickly with no latency issues as ediscovery reviews often require periods of heavy use to meet deadlines

IDC MARKETSCAPE VENDOR INCLUSION CRITERIA

The vendor inclusion list for this IDC MarketScape is intended to include the most prominent ediscovery review software providers in the market. To be included in this IDC MarketScape, vendors had to meet two criteria:

- Vendor actively licenses/sells an ediscovery review software delivered via public cloud commonly referred to as SaaS.
- Vendor's revenue exceeded $25 million for FY18.

ADVICE FOR TECHNOLOGY BUYERS

This study analyzed and rated vendors across a broad range of capability- and strategy-focused criteria. When considering the move to SaaS ediscovery review software, it is important to make sure that the company infrastructure that will be accessing and integrating with the SaaS application is also state of the art. A cloud-first digital transformation strategy can easily be hamstrung by old infrastructure. Buyers should also consider a solution that actively fosters integrations and a partner community. Open APIs allow SaaS ediscovery solutions to quickly and effectively provide greater functionality and cloud-to-cloud connections for data sources. Software vendors that support partner communities will enable their end users to be able to supplement with niche features that might not be economically feasible for the vendor to develop.

While the ediscovery market is nearing full maturity, many of the vendors still have their own flavor/personality. When evaluating and making a buying decision, it is important to mesh the vendor's culture with your own. Not every buyer needs a heavy-duty business application when a lightweight application will do everything you need.

Buyers should consider the reputation and security expertise of the vendor or provider that they choose. As early as the onboarding process, it becomes crucial to understand how proficiently the vendor guides the customer through the sales to the onboarding process and then throughout the customer life cycle. Buyers should evaluate reputation, longevity, and expertise that providers have in the space and then also evaluate how much support buyers will want from providers' team of experts once the solution is implemented. Further, the SLA is a critical piece of a successful relationship. Buyers should pay careful attention to the terms of the SLA and especially customer support available after normal business hours. eDiscovery reviews are often fire drills and seem to always require after-hours work, so choosing a 24 x 7 x 365 provider is essential.

VENDOR SUMMARY PROFILES

This section briefly explains IDC's key observations resulting in a vendor's position in the IDC MarketScape. While every vendor is evaluated against each of the criteria outlined in the Appendix, the description here provides a summary of each vendor's strengths and challenges.

Exterro

Exterro is positioned in the Leaders category in the 2019 IDC MarketScape for worldwide ediscovery SaaS review software vendor assessment.

Exterro was founded in 2007 and is currently headquartered in Portland, Oregon. Exterro has a robust portfolio outside of ediscovery review and even offers on-premises software as well. In addition, Exterro recently acquired Jordan Lawrence to provide compliance and privacy management tools to its portfolio. Further, Exterro has a complete offering of adjacent legal use cases under different modules.

Strengths

- **Security**: Exterro is currently the only ediscovery tool that has achieved any FedRAMP certification. Exterro's achievement of FedRAMP-ready status sets it apart for government use cases. Exterro also has SOC 2 attestation and strong encryption both at rest and in transit.
- **Adjacent use cases**: Exterro has deep functionality around FOIA requests and now privacy management. Exterro has a client-facing portal that collects FOIA requests to further

streamline the process. With the Jordan Lawrence acquisition, Exterro provides more than just traditional ediscovery use cases and now offers compliance and privacy functions under different product umbrellas but within the same corporate umbrella.

- **Review prioritization**: Exterro provides one of most robust smart labeling functions based on continuous active learning. These tools crawl the corpus of data and help prioritize documents for review. The tool then bubbles up the most relevant documents to be next in line for a reviewer to look at.

Challenges

- **Pricing**: While certainly not the most expensive option, Exterro's pricing is dependent on the functionality desired as well as several other factors. To make the leap to the next level, the company's ediscovery functions need to move toward a more flat fee arrangement for all customers.

- **Service provider partnerships**: Further, seeking out partnerships with service providers could bolster Exterro's market visibility. Service providers are major business in ediscovery, and getting buy-in from them to use your review tool is an essential business strategy.

Consider Exterro When

Consider Exterro when bidding on government contracts and trying to do more than just straight ediscovery reviews. Exterro is the swiss army knife of ediscovery. While a great review tool in its own right, Exterro's bread and butter is the ability to be a cost-effective tool for government agencies that need a capable review tool that has built-in use cases for other functions.

APPENDIX

Reading an IDC MarketScape Graph

For the purposes of this analysis, IDC divided potential key measures for success into two primary categories: capabilities and strategies.

Positioning on the y-axis reflects the vendor's current capabilities and menu of services and how well aligned the vendor is to customer needs. The capabilities category focuses on the capabilities of the company and product today, here and now. Under this category, IDC analysts will look at how well a vendor is building/delivering capabilities that enable it to execute its chosen strategy in the market.

Positioning on the x-axis, or strategies axis, indicates how well the vendor's future strategy aligns with what customers will require in three to five years. The strategies category focuses on high-level decisions and underlying assumptions about offerings, customer segments, and business and go-to-market plans for the next three to five years.

The size of the individual vendor markers in the IDC MarketScape represents the market share of each individual vendor within the specific market segment being assessed.

IDC MarketScape Methodology

IDC MarketScape criteria selection, weightings, and vendor scores represent well-researched IDC judgment about the market and specific vendors. IDC analysts tailor the range of standard characteristics by which vendors are measured through structured discussions, surveys, and interviews with market leaders, participants, and end users. Market weightings are based on user interviews, buyer surveys, and the input of IDC experts in each market. IDC analysts base individual

vendor scores, and ultimately vendor positions, on the IDC MarketScape, on detailed surveys and interviews with the vendors, publicly available information, and end-user experiences in an effort to provide an accurate and consistent assessment of each vendor's characteristics, behavior, and capability.

Market Definition

IDC's ediscovery software market is a segment within the broader ediscovery and information governance research program. The market focuses on software and applications, which span the Electronic Discovery Reference Model (EDRM) including early case assessment applications, ediscovery review platforms, full spectrum ediscovery suites, and applications focused on individual EDRM components. These applications automate business process management (BPM) and data management activities during early case assessment, early data assessment (EDA), collection, review, analysis, and production. These applications primarily offer search, text analytics, and data mining functions and offer business process workflow automation, project management, document management, and decision support mechanisms. In most instances, these applications are offered as standalone full suites or complementary software products. In some cases, specific applications are offered solely as add-on modules that run atop propriety archiving or enterprise content management platforms. For the purpose of this IDC MarketScape, the review software must enable the processing, review, analysis, and production of the documents in conjunction with litigation or investigations. The software must also be deployed in the public cloud.

IDC believes that by incorporating references to the Electronic Discovery Reference Model, it will be better positioned to describe and delineate individual product functionality, address software products that are narrowly focused to achieve specific tasks, and demonstrate the effects of certain software products on the EDRM's information governance pillar. Further, when IDC mentions "technology-assisted review" or TAR, this is referring to what is also known as predictive coding. TAR 1.0 consists of loading seed sets into an algorithm to predict the relevance of the rest of the corpus of data. Whereas TAR 2.0 relies on continuous active learning to hone the predictive coding seed set as the reviewers update the document review pane.

LEARN MORE

Related Research

- *Worldwide eDiscovery Software Forecast, 2019-2023* (IDC #US45344219, July 2019)
- *Worldwide eDiscovery Services Revenue Forecast, 2019-2023* (IDC #US45068019, May 2019)
- *2019 Legal and Corporate Strategy Digital Transformation Survey* (IDC #US44776719, April 2019)
- *2018 U.S. Archiving and eDiscovery Survey: Analytics and AI* (IDC #US44405118, October 2018)
- *IDC's Worldwide Digital Transformation Use Case Taxonomy, 2018: Legal and Corporate Strategy* (IDC #US44258618, September 2018)
- *Legal Tech and eDiscovery: Who Makes the Buying Decisions?* (IDC #US44262818, September 2018)
- *Market Analysis Perspective: Worldwide eDiscovery, 2018* (IDC #US44257518, September 2018)

- *Worldwide eDiscovery Services Forecast, 2018-2022* (IDC #US43993618, June 2018)

Synopsis

This IDC study represents a vendor assessment of providers offering ediscovery review software delivered via SaaS/public cloud through the IDC MarketScape model. The assessment reviews both quantitative and qualitative characteristics that define current market demands and expected buyer needs for ediscovery review software. The evaluation is based on a comprehensive and rigorous framework that assesses how each vendor stacks up, and the framework highlights the key factors that are expected to be the most significant for achieving success in the ediscovery review software market over the short and long terms.

"The cloud computing revolution has finally reached the legal tech world. eDiscovery vendors must optimize their products to compete in this new cloud world. According to IDC's 2018 *Archiving and eDiscovery Survey,* 45.7% of ediscovery software is now deployed via SaaS. IDC expects that percentage to continue to rise for the foreseeable future." — Ryan O'Leary, senior research analyst, Legal, Risk, and Compliance

About IDC

International Data Corporation (IDC) is the premier global provider of market intelligence, advisory services, and events for the information technology, telecommunications and consumer technology markets. IDC helps IT professionals, business executives, and the investment community make fact-based decisions on technology purchases and business strategy. More than 1,100 IDC analysts provide global, regional, and local expertise on technology and industry opportunities and trends in over 110 countries worldwide. For 50 years, IDC has provided strategic insights to help our clients achieve their key business objectives. IDC is a subsidiary of IDG, the world's leading technology media, research, and events company.

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This certification affirms the business is woman-owned, operated and controlled and is valid through the date herein.

WBENC National WBE Certification was processed and validated by Women's Business Council - Southwest, a WBENC Regional Partner Organization.

Certification Granted: May 9, 2016
Expiration Date: May 9, 2021
WBENC National Certification Number: 2005128828

Debbie Hurst

Authorized by Debbie Hurst, President Women's Business Center

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