



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

State of West Virginia
Master Agreement

Order Date: 2017-12-18

CORRECT ORDER NUMBER
 MUST APPEAR ON ALL PACKAGES,
 INVOICES, AND SHIPPING PAPERS.
 QUESTIONS CONCERNING THIS
 ORDER SHOULD BE DIRECTED TO
 THE DEPARTMENT CONTACT.

Order Number: CMA 0212 0212 RECMGT	Procurement Folder: 401321
Document Name: SWC Records Management	Reason for Modification:
Document Description: Records Management Statewide Contract	
Procurement Type: Central Master Agreement	
Buyer Name: Stephanie L Gale	
Telephone: (304) 558-8801	
Email: stephanie.l.gale@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2016-12-01
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2018-11-30

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000126524 IRON MOUNTAIN INCORPORATED PO BOX 27128 NEW YORK NY 100877128 US Vendor Contact Phone: (304) 549-6423 Extension: Discount Percentage: 0.0000 Discount Days: 0	Requestor Name: Larry McDonnell Requestor Phone: (304) 558-9999 Requestor Email: larry.d.mcdonnell@wv.gov

INVOICE TO	SHIP TO
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US	STATE OF WEST VIRGINIA VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US

Total Order Amount	Open End
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AGENCY COPY

W Harper 12/19/17

PURCHASING DIVISION AUTHORIZATION SIGNED BY: <i>Linda Harper</i> DATE: <i>12-19-17</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM SIGNED BY: <i>[Signature]</i> DATE: <i>[Date]</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION SIGNED BY: <i>Melissa Bell</i> DATE: <i>DEC 21 2017</i> ELECTRONIC SIGNATURE ON FILE
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12/20/17

Extended Description:

Documentation to assign contract from vendor account 000000126525 to the headquarters account 000000126524, effective 12/1/2017. Old procurement folder 251142.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	78131804			CF	\$0.000000
	Service From	Service To			

Commodity Line Description: Contract Item 1: Transfer Existing Records to New Facility

Extended Description:

5.2.1 Contract Item #1: The Vendor must transfer existing records to the new storage facility within 90 days of award.

5.2.1.1 Vendor to provide cost Per Cubic Foot.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	78131804			CF	\$0.000000
	Service From	Service To			

Commodity Line Description: Contract Item 2: Indexing Existing Records

Extended Description:

5.2.2 Contract Item #2: The Vendor must index existing records.

5.2.2.1 Vendor to provide cost Per Cubic Foot.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	78131804			CF	\$0.265000
	Service From	Service To			

Commodity Line Description: Contract Item 3: Monthly Storage Fee

Extended Description:

5.2.3 Contract Item #3: The Vendor must accommodate storage of a minimum of 230,000 cubic feet for the State's records currently housed with the ability to expand.

5.2.3.1 Vendor to provide monthly cost Per Cubic Foot.

5.2.3.2 The Vendor must invoice each state Agency storing records at the facility monthly in arrears.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	44111515			BOX	\$1.890000
	Service From	Service To			

Commodity Line Description: Contract Item 4: Storage Boxes

Extended Description:

5.2.4 Contract Item #4: The Vendor must provide storage boxes; Dimensions: 10"W x 12"L x 15"H.

5.2.4.1 Vendor to provide cost Per Box.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	78131804			BOX	\$0.000000
	Service From	Service To			

Commodity Line Description: Contract Item 5: Records Pick Up

Extended Description:

5.2.5 Contract Item #5: The Vendor must pick up the records within a maximum of five (5) business days after written notification by the Agency.

5.2.5.1 Vendor to provide cost Per Box.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	78131804			BOX	\$0.000000
	Service From	Service To			

Commodity Line Description: Contract Item 6: Indexing New Records

Extended Description:

5.2.6 Contract Item #6: The Vendor must index all new records.

5.2.6.1 Vendor to provide cost Per Box.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
7	78131804			PAGE	\$0.280000
	Service From	Service To			

Commodity Line Description: Contract Item 7: Retrieval of Paper Records, digitized

Extended Description:

5.2.7 Contract Item #7: Vendor must retrieve any paper records in storage and provide a digitalized version of said record when requested by any Agency within a maximum of three (3) business days. The request must be completed during normal business hours.

5.2.7.1 Vendor to provide cost Per Page.

5.2.7.2 The Vendor must upload the digitalized record to a secure online portal or server and provide an access or hyperlink to the agency by email so the record can be accessed.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
8	78131804			PAGE	\$0.400000
	Service From	Service To			

Commodity Line Description: Contract Item 8: Emergency Retrieval Paper Records digitized

Extended Description:

5.2.8 Contract Item #8: The Vendor must retrieve any paper records in storage and provide a digitalized version of said record when requested by an Agency sending a written Emergency notification within a maximum of one (1) business day.

5.2.8.1 Vendor to provide cost Per Page.

5.2.8.2 The Vendor must upload the digitalized record to a secure server and provide a hyperlink to the customer by email so the record can be accessed.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
9	78131804			BOX	\$1.840000
	Service From	Service To			

Commodity Line Description: Contract Item 9: Retrieval of Records

Extended Description:

5.2.9 Contract Item #9: The Vendor must retrieve any records in storage and hand deliver it to the authorized Agency personnel within three (3) business days of written notification. Records must be delivered during normal business hours. Records containing confidential information must be signed for by authorized personnel.

5.2.9.1 Vendor to provide cost Per Box.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
10	78131804			BOX	\$9.790000
	Service From	Service To			

Commodity Line Description: Contract Item 10: Emergency Retrieval of Records

Extended Description:

5.2.10 Contract Item #10: The Vendor must retrieve any records in storage and deliver it to requesting Agency within one (1) business day if it is identified by the agency as an Emergency. Records containing confidential information must be signed for by authorized personnel.

5.2.10.1 Vendor to provide cost Per Box.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
11	80161508			BOX	\$3.060000
	Service From	Service To			

Commodity Line Description: Contract Item 11: Destruction of Paper Records

Extended Description:

5.2.11 Contract Item #11: The Vendor must provide destruction of specified paper records at the authorized Agency representative's written request. Records must be destroyed by a crosscut shredder for paper records.

5.2.11.1 Vendor to provide cost Per Box.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
12	80161508			BOX	\$22.500000
	Service From	Service To			

Commodity Line Description: Contract Item 12: Destruction of Microfilm

Extended Description:

5.2.12 Contract Item #12: The Vendor must provide destruction of Microfilm at the authorized Agency representatives request. Microfilm must be incinerated or shredded at a minimum of 1/35" strip or smaller.

5.2.12.1 Vendor to provide cost Per Box

GENERAL TERMS AND CONDITIONS:

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

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

Term Contract

Initial Contract Term: This Contract becomes effective on December 1, 2016 and extends for a period of one (1) year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed ~~thirty-six (36)~~ months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

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

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

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

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

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

Other: See attached.

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

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

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

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

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

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

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

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

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

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

LABOR/MATERIAL PAYMENT BOND: The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award. In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

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

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

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

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

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

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

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

8. 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.

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

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

_____ for _____

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

11. 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.

12. 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.

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

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

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

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

16. 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.

17. 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.

18. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-6.1.e.

19. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

20. 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.

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

22. 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.

23. 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.

24. 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.

25. 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.

26. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

27. 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.

28. 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.

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

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. 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.

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, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.

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

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

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

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

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

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

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

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

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

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open 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.

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.

Iron Mountain

(Name, Title)

Heather Sweesy, Business Development Executive

(Printed Name and Title)

1201 Freedom Road, Cranberry Township, PA 16066

(Address)

(724) 679-0672 None

(Phone Number) / (Fax Number)

heather.sweesy@ironmountain.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.

Iron Mountain Information Management, LLC

(Company)



(Authorized Signature) (Representative Name, Title)

Dale R. Lawing, SVP & GM, North Central Region

(Printed Name and Title of Authorized Representative)

October 25, 2016

(Date)

(724) 679-0672 (for primary RFQ Contact)

(Phone Number) (Fax Number)

**AMENDMENT TO REQUEST FOR QUOTATION
FOR RECORDS MANAGEMENT & OFF-SITE STORAGE SERVICES
STATE OF WEST VIRGINIA
Bid No.: CRFQ 0212 SWC1700000006
Dated: October 25, 2016**

In the event that the State of West Virginia (the "State" or "Customer") awards a contract to Iron Mountain Information Management, LLC ("Iron Mountain" or "Vendor") as a result of this Request for Quotation ("RFQ"), the terms and conditions of such resulting contract (the "Agreement") shall be amended to include the following additional terms and conditions (the "Vendor Terms"). In the event of a conflict between the below stated Vendor Terms and the terms and conditions set forth in the Agreement, the Vendor Terms set forth below shall be deemed to be the controlling terms and conditions.

1. **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement or any document referenced herein, this section entitled "Limitation of Liability" shall control with respect to Iron Mountain's liability in connection with the Deposits and related data. For the purposes of this Agreement, Customer declares the following values for items stored under this Agreement ("Deposits"): (a) for hard-copy records, \$1.00 per carton, linear foot of open-shelf files or other storage pricing unit, and (b) for media, the cost of replacing the physical item (each a "Declared Value"). Customer acknowledges that it has declined to declare an excess valuation, for which an excess valuation fee would have been charged. Iron Mountain shall not be liable under this Agreement, with respect to any claims related to the Deposits and data therein or with respect to any non-storage services or electronic storage services performed, unless Iron Mountain fails to exercise such care as a reasonably careful person would exercise under like circumstances. If liable, the amount of Iron Mountain's liability with respect to Deposits and related data is limited to the Declared Value set forth above. Deposits and data are not insured by Iron Mountain against loss or damage, however caused. If Deposits and/or data are placed in the custody of a third-party carrier for transportation by the State of West Virginia, the carrier shall be solely responsible for any claim related to the Deposits and/or data while in the custody of the carrier. In no event shall either party be liable for any consequential, incidental, special or punitive damages, or for loss of profits or loss or interruption of business, or the cost of recreating any data or information, regardless of whether an action is brought in tort, contract or under any other theory of liability. This section is not intended to, and shall not be construed as, excluding or limiting any liability contrary to applicable law or public policy, including by way of example liability for death or bodily injury, with respect to which the parties acknowledge are not subject to the foregoing limitations. If applicable law or public policy renders any portion of this section unenforceable or invalid, the remainder of the section shall remain in full force and effect. Additionally, this section does not apply to a data breach attributable to lost, stolen, or improperly viewed records. In the event that a record is lost, stolen, or improperly viewed, Iron Mountain will be responsible for costs reasonable required to mitigate the consequences of such breach.
2. **Operational Procedures.** Customer shall comply with Iron Mountain's reasonable operational requirements, as modified from time to time, regarding cartons, carton integrity, delivery/pickup volumes, preparation for pickup, security, secure shredding protocols, access and similar matters. Extraordinary volume requests may involve additional costs, such as overtime, which Customer will pay at Iron Mountain's overtime rates, provided Customer consents to such costs in advance.
3. **Governmental Orders.** Iron Mountain is authorized to comply with any subpoena or similar order related to the materials provided to it by Customer, at Customer's expense, provided that Iron Mountain notifies Customer promptly upon receipt thereof, unless such notice is prohibited

by law. Iron Mountain will cooperate with Customer's efforts to quash or limit any subpoena, at Customer's expense.

4. **Ownership Warranty.** Customer warrants that it is the owner or legal custodian of the materials provided to Iron Mountain and has full authority to direct their disposition in accordance with the terms of this Agreement. Customer shall reimburse Iron Mountain for any expenses reasonably incurred by Iron Mountain (including reasonable legal fees) by reason of Iron Mountain's compliance with the instructions of Customer in the event of a dispute concerning the ownership, custody or disposition of Customer's materials provided by Customer to Iron Mountain.
5. **Safe Materials and Premises.** Customer shall not store with Iron Mountain nor deliver to Iron Mountain for shredding any material that is highly flammable, explosive, hazardous, toxic, radioactive, medical waste, organic material which may attract vermin or insects, or otherwise dangerous or unsafe to store or handle, or any material which is regulated under any federal or state law or regulation relating to the environment. Customer shall not store negotiable instruments, jewelry, check stock or other items that have intrinsic value. Any Customer premises where Iron Mountain employees perform services or make deliveries hereunder shall be free of hazardous substances and any other hazardous or dangerous conditions.
6. **Force Majeure.** In no event shall either party be liable for delay or inability to perform caused by acts of God, governmental actions, labor unrest, acts of terrorism, riots, unusual traffic delays or other causes beyond its reasonable control.
7. **Performance of Services by Affiliates.** Iron Mountain may subcontract, delegate and/or assign its obligations under this Agreement, in whole or in part, to an affiliate of Iron Mountain. An affiliate means any entity controlling, controlled by, under common control with, or having a common parent with Iron Mountain. Iron Mountain acknowledges that it shall remain directly liable to the Customer for the performance of such any and all such delegated obligations.

State of West Virginia

By: _____

West Virginia Attorney General
(Approval as to form)

Approved as to Form and Legal Content:
Iron Mountain Legal Department



Name: Robert Liljedahl
Customer: State of West Virginia
Date: January 5, 2017

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyvi.html>.
 - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
 - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
 - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
 - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
 - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
 - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
 - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
 - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. Support of Individual Rights.

- i. Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at www.state.wv.us/admin/purchase/vrc/agencyvii.htm and,

unless otherwise directed by the Agency in writing, the Office of Technology at incident@wv.gov or <https://apps.wv.gov/otlr/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance In Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is named as an adverse party.

4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents

and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: _____

Name of Associate: Iron Mountain Information Management, LLC

Signature: _____

Signature: Dale R. Lawing Dale R. Lawing

Title: _____

Title: SVP

Date: _____

Date: 12/21/2016

Form - WYBA-00004
Revised 06.28.2013

Approved as to Form and Legal Content:
Iron Mountain Legal Department

[Signature]

Name: Robert Lijedahl
Customer: State of West Virginia
Date: December 21, 2016

APPROVED AS TO FORM TIME 2/1/16
BY [Signature]
BY [Signature]

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. PHI not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Associate: Iron Mountain Information Management

Name of Agency: State of West Virginia

Describe the PHI (do not include any actual PHI). If not applicable, please indicate the same.

All PHI contained in current and future documents
stored by the Iron Mountain.

REQUEST FOR QUOTATION
State Wide Contract for Records Management

SPECIFICATIONS – REVISED 10/20/2016

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the State of West Virginia to establish an open-end contract for records management and storage services.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in Section 2 of the General Terms and Conditions.
 - 2.1 **“Contract Item” or “Contract Items”** means the list of items identified in Section 4.1 below and on the Pricing Pages.

 - 2.1 **“Box”** means a storage container used for temporary or permanent storage of files, record, or records. A standard box size is 15”L x 12”W x 10”H equal to approximately one (1) cubic foot in size.

 - 2.2 **“Business Hours”** means Monday – Friday 8:00 AM through 5:00 PM EST excluding weekends and Federal and State holidays. State Holidays are as follows:
 - New Year’s Day (January 1)
 - Martin Luther King Day (Third Monday in January)
 - President’s Day (Third Monday in February)
 - Memorial Day (Last Monday in May)
 - West Virginia Day (June 20)
 - Independence Day (July 4)
 - Labor Day (First Monday in September)
 - Columbus Day (Second Monday in October)
 - Veterans Day (November 11)
 - Thanksgiving (Fourth Thursday in November)
 - Day After Thanksgiving (Fourth Friday in November)
 - Christmas Day (December 25)

 - 2.2 **“Character”** means any letter, number, space, punctuation mark, or symbol that can be typed.

 - 2.3 **“Cubic Feet”** means the volume of a cube with sides of one foot in length.

 - 2.4 **“Disaster”** means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether such occurrence is caused by an act of God, nature or man, including an enemy of the United States..

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- 2.5 “Emergency”** means records must be delivered during business hours, after hours, weekends, or holidays.
- 2.6 “HIPAA”** means Health Insurance Portability and Accountability Act.
- 2.7 “NFPA”** means National Fire Protection Association.
- 2.8 “Pricing Pages”** means the schedule of prices, estimated order quantity and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
- 2.9 “Record”** means a document, book, paper, photograph, sound recording or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in Chapter 5A Article 8 for the Department of Administration.
- 2.10 “Solicitation”** means the official notice of an opportunity to supply the State with goods or services that are published by the Purchasing Division.

3. CURRENT ENVIRONMENT:

- 3.1** Pursuant to the West Virginia Code §5A-8-1 through §5A-8-22, and Legislative Rules 148-CSR-12, 148-CSR-13, and 148-CSR-14, the Department of Administration is responsible for the management of the State’s day-to-day record storage system.
- 3.2** Agencies are required to follow properly approved retention/destruction schedules. These schedules are required to be submitted to the Department of Administration for approval.
- 3.3** Currently records are stored in Charleston, WV and are picked-up at the Agency sites by the Vendor. The Agency sites are located throughout the entire state. Most records are received in boxes approximately 1 cubic foot in size. However, some are delivered in other formats previously approved by the State Records Administrator or the records management Vendor.

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

4.1 Vendor must be Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health (HITECH) compliant. An executed BAA (copy included with solicitation) will be required prior to award.

4.2 Vendor must have established information security and privacy policies. Vendor must provide proof of a third party audit of the security and privacy policies within the last 365 days upon request.

4.3 Vendor must follow industry standard on storage procedure guidelines established by the Association of Records Managers and Administrators (ARMA). ARMA has published guidelines for records management – ANSI/ARMA 8-2005 Retention Management for Records and Information.

4.4 Vendor must have an established personnel security program designed to evaluate employee trustworthiness before being granted access to sensitive data. Vendor must provide documentation of security program upon request.

5. GENERAL REQUIREMENTS:

5.1 Contract Items and Mandatory Requirements: Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

Facility Requirements:

5.1.1 The Vendor must provide a facility that will protect all records from disaster as defined in West Virginia State Code 5A-8-3.

5.1.1.1 The Vendor must absorb cost related to recovery or restoration of damaged records in the care of the Vendor.

5.1.2 The Vendor must provide a facility for existing and new records within the State of West Virginia.

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- 5.1.3** The Vendor must provide a facility that meets the following requirements for archival storage of records.
- 5.1.3.1** The Vendor must provide a storage area to accommodate a minimum of 230,000 cubic feet for the State's records and must have the capacity to expand with the State as our storage requirements increase.
- 5.1.3.2** The Vendor must provide a facility that meets local building codes. Documentation from an applicable municipal or county office must be submitted prior to award.
- 5.1.3.2.1** Documentation must be in the form of a memo or letter with an official seal stamped from the applicable municipal or county office.
- 5.1.3.3** The Vendor's storage facility must provide the following security measures.
- 5.1.3.3.1** Facility must have security locks at each exterior entrance.
- 5.1.3.3.2** Facility must have a 24 hour-7 days a week-365 days a year monitored anti-intrusion alarm system to protect against unauthorized entry.
- 5.1.3.3.3** Facility must have control procedures in place to ensure access security and must enforce said access policies and procedures. Vendor must provide documentation of such policies and procedures which ensure that only allow authorized individuals can access records. Documentation must be provided prior to award. Facility must enforce controls on access to records storage areas.
- 5.1.3.4** The storage room must have an independent circulating system to keep the air as free as possible of pollutants and dust and to prevent the entry of unfiltered air from other parts of the building.

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- 5.1.3.5** The Vendor must provide smoke detection. Smoke detection systems must meet the requirements of NFPA 72, National Fire Alarm Code, and must be maintained in accordance with NFPA 72, Part H.
- 5.1.3.6** The Vendor must provide a clean agent system that complies with the NFPA 2001 Standard on a pre-action sprinkler system. This system must be used in the records storage areas.
- 5.1.3.7** The Vendor must provide a storage area that is climate controlled with a maximum temperature of 65°F and relative humidity levels at 35-45% ± 5%. These temperatures must be maintained 24 hours a day, 7 days a week, 365 days a year.
- 5.1.3.8** The Vendor must limit its flooding risk by storing records in a facility that is located out of the 100-year floodplain.
 - 5.1.3.8.1** Vendor must provide an elevation certificate from a land surveyor verifying the facility is out of the 100-year floodplain prior to award.
- 5.1.3.9** The Vendor must keep records a minimum of one inch off the floor with the optimum of three inches. Records must be stored away from windows, steam, sewer or water pipes.
- 5.1.3.10** The Vendor must provide a moisture detection system throughout the storage facility.
- 5.1.3.11** The Vendor must minimize light exposure by providing motion detectors and timers for the lighting system throughout the storage room.
- 5.1.4** The State records can only be viewed by authorized parties. The Vendor's facility must be secured to allow access only to those approved to retrieve/view records for their respective Agency. The Vendor must implement and document policies and procedures for accessing the records in the facility.

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- 5.1.4.1** Proof documenting the system in the form of a company memo outlining the policy and procedure must be submitted prior to award.

Indexing and Invoicing:

- 5.1.5** The Vendor must provide indexing for each box or file submitted. The Vendor must provide a minimum of 60 characters per box or per file.
- 5.1.6** The Vendor must invoice each state Agency storing records at the facility monthly in arrears.
- 5.1.7** The Vendor must invoice according to the prices and categories contained in this solicitation and the Vendor's response. When the Vendor must ship the materials to the Agency location, the costs for postage will be invoiced as a pass-through charge. The shipping invoice must be provided within 5 days of service being completed.
- 5.1.8** The Vendor must provide a log of personnel or visitors that have accessed records identified as regulated upon agency request.
- 5.1.9** The Vendor must provide the Department of Administration with monthly reports showing the Agencies storing records in the facility during that month and listing the total amount of cubic feet of storage and extended cost for each Agency.
- 5.1.10** The Vendor must include on their monthly invoice to the Agency all billing activity detail for the month.

Requirements and Pricing for Storage, Supplies, Pick Up, Retrieval, and Destruction

STORAGE

- 5.2.1** Contract Item #1: The Vendor must transfer existing records to the new storage facility within 90 days of award.
- 5.2.1.1** Vendor to provide cost Per Cubic Foot.
- 5.2.1.2** The successful vendor will be responsible for moving all boxes from the existing locations in the Charleston area to the new location within 90 days of award.

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5.2.1.3 The state will notify each Agency with documents currently in storage of the vendor and his responsibilities. Each agency will have a minimum time of two (2) weeks to remove all documents in storage or be billed for services rendered by the new vendor. The agency will continue to pay the old vendor until the new vendor picks up the agency's boxes.

5.2.1.4 The successful vendor and the former vendor will meet to develop mutually agreed upon schedules for pick-up of the agency boxes.

5.2.1.5 The successful vendor shall be responsible for the pick-up and organization of all documents remaining in storage at the former vendor's location.

5.2.1.6 The successful vendor will move existing records in existing boxes or furnish boxes as needed at no additional or separate cost. The successful vendor will repackage as needed at no additional or separate cost.

5.2.2 Contract Item #2: The Vendor must index existing records.

5.2.2.1 Vendor to provide cost Per Cubic Foot.

5.2.3 Contract Item #3: The Vendor must accommodate storage of a minimum of 230,000 cubic feet for the State's records currently housed with the ability to expand.

5.2.3.1 Vendor to provide monthly cost Per Cubic Foot.

5.2.3.2 The Vendor must invoice each state Agency storing records at the facility monthly in arrears.

SUPPLIES

5.2.4 Contract Item #4: The Vendor must provide storage boxes; Dimensions:15"L x 12"W x 10"H.

5.2.4.1 Vendor to provide cost Per Box

PICK UP

5.2.5 Contract Item #5: The Vendor must pick up the records within a maximum of five (5) business days after written notification by the Agency.

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5.2.5.1 Vendor to provide cost Per Box.

5.2.6 Contract Item #6: The Vendor must index all new records.

5.2.6.1 Vendor to provide cost Per Box.

RETRIEVAL

5.2.7 Contract Item #7: Vendor must retrieve any paper records in storage and provide a digitalized version of said record when requested by any Agency within a maximum of three (3) business days. The request must be completed during normal business hours.

5.2.7.1 Vendor to provide cost Per Page.

5.2.7.2 The Vendor must upload the digitalized record to a secure online portal or server and provide an access or hyperlink to the agency by email so the record can be accessed.

5.2.8 Contract Item #8: The Vendor must retrieve any paper records in storage and provide a digitalized version of said record when requested by an Agency sending a written Emergency notification within a maximum of one (1) business day.

5.2.8.1 Vendor to provide cost Per Page.

5.2.8.2 The Vendor must upload the digitalized record to a secure server and provide a hyperlink to the customer by email so the record can be accessed.

5.2.9 Contract Item #9: The Vendor must retrieve any records in storage and hand deliver it to the authorized Agency personnel within three (3) business days of written notification. Records must be delivered during normal business hours. Records containing confidential information must be signed for by authorized personnel.

5.2.9.1 Vendor to provide cost Per Box

5.2.10 Contract Item #10: The Vendor must retrieve any records in storage and deliver it to requesting Agency within one (1) business

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day if it is identified by the agency as an Emergency. Records containing confidential information must be signed for by authorized personnel.

5.2.10.1 Vendor to provide cost Per Box

DESTRUCTION

5.2.11 Contract Item #11: The Vendor must provide destruction of specified paper records at the authorized Agency representative's written request. Records must be destroyed by a crosscut shredder for paper records.

5.2.11.1 Vendor to provide cost Per Box

5.2.12 Contract Item #12: The Vendor must provide destruction of Microfilm at the authorized Agency representative's request. Microfilm must be incinerated or shredded at a minimum of 1/35" strip or smaller.

5.2.12.1 Vendor to provide cost Per Box

6. CONTRACT AWARD:

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

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

6.2 Pricing Pages: The Vendor should complete the Pricing Pages by entering in the price for each contract item on wvOASIS and Exhibit A. Pricing Page the Vendor should complete the Pricing Pages in their entirety as failure to do so may result in the Vendor's bids being disqualified.

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

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

Stephanie Gale, Senior Buyer
West Virginia Department of Administration
Purchasing Division
2019 Washington Street East
Charleston, WV 25305
Phone: (304) 558-8801
Fax: (304) 558-4115
Email: Stephanie.L.Gale@wv.gov

7. ORDERING AND PAYMENT:

- 7.1 Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.
- 7.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

8. DELIVERY AND RETURN:

- 8.1 Delivery Time:** Vendor shall deliver standard orders within three (3) working days after orders are received. Vendor shall deliver emergency orders within one (1) working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.
- 8.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

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

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- 8.3 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.
- 8.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.
- 8.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

9. VENDOR DEFAULT:

- 9.1** The following shall be considered a vendor default under this Contract.
- 9.1.1** Failure to provide Contract Items in accordance with the requirements contained herein.
 - 9.1.2** Failure to comply with other specifications and requirements contained herein.
 - 9.1.3** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
 - 9.1.4** Failure to remedy deficient performance upon request.

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

9.2.1 Immediate cancellation of the Contract.

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

9.2.3 Any other remedies available in law or equity.

10. MISCELLANEOUS:

10.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

10.2 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

10.3 Reports: Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.

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

Contract Manager: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____