

From: Whittaker, Frank M <Frank.M.Whittaker@wv.gov>
Sent: Friday, March 27, 2020 12:26 PM
To: Toomey, John <John.Toomey@wv.gov>
Cc: Nisbet, Guy L <Guy.L.Nisbet@wv.gov>; Chambers, Jessica S <Jessica.S.Chambers@wv.gov>; Totten, Mark L <Mark.L.Totten@wv.gov>; McAllister, Justin T <Justin.T.McAllister@wv.gov>
Subject: FW: WVOT Emergency Extension - CA Technologies/Broadcom Mainframe

John,

Your request to seek an emergency purchase of mainframe software maintenance and support products as described in your email below is approved. Please follow all emergency procedures outlined in the Purchasing Division Procedures Handbook. This approval is not authorization to purchase from any particular vendor or manufacturer. Please provide all supporting documentation to this office within 30 days of this approval.

Thank you,

Frank Whittaker, CPPB
Assistant Director
West Virginia Purchasing Division
2019 Washington Street. East
Charleston, WV 25305
304-558-2316
Frank.m.whittaker@wv.gov

From: Nisbet, Guy L <Guy.L.Nisbet@wv.gov>
Sent: Friday, March 27, 2020 10:09 AM
To: Sheets, Mike - Purchasing <William.M.Sheets@wv.gov>; Whittaker, Frank M <Frank.M.Whittaker@wv.gov>
Subject: FW: WVOT Emergency Extension - CA Technologies/Broadcom Mainframe

FYI

Sincerely,

Guy L. Nisbet
304.558.2596 (office) CISCO - 57506
304.558.3970 (fax)
WV. Purchasing Division - Supervisor

From: Chambers, Jessica S <Jessica.S.Chambers@wv.gov>
Sent: Friday, March 27, 2020 9:16 AM

To: Whittaker, Frank M <Frank.M.Whittaker@wv.gov>
Cc: Nisbet, Guy L <Guy.L.Nisbet@wv.gov>
Subject: FW: WVOT Emergency Extension - CA Technologies/Broadcom Mainframe

From: Toomey, John <John.Toomey@wv.gov>
Sent: Thursday, March 26, 2020 4:05 PM
To: Chambers, Jessica S <Jessica.S.Chambers@wv.gov>
Cc: McAllister, Justin T <Justin.T.McAllister@wv.gov>; Spence, Joshua D (OT) <Joshua.D.Spence@wv.gov>; Abbott, Heather D <Heather.D.Abbott@wv.gov>; Henson, Sandra D <Sandra.D.Henson@wv.gov>; Jones, Jennelle H <Jennelle.H.Jones@wv.gov>
Subject: WVOT Emergency Extension - CA Technologies/Broadcom Mainframe

Jessica,

WVOT is requesting an emergency purchase/extension for one (1) year to the Mainframe CA Technologies, a Broadcom Company per the attached quote. This was previously on CPO ISC19*01, please note there was an order of precedent document, wv-96, etc. negotiated.

Service Dates: 03/31/2020 to 03/30/2021

Amount \$506,258.00

Emergency Purchase Justification:

The emergency mainframe products include: CA 1 TAPE MANAGEMENT, CA VISION:Sixty, AllFusion CA-Librarian Base, CA RC/Query for DB2 for z/OS, CA RC/Migrator for DB2 for z/OS, CA RC/Update for DB2 for z/OS, CA RC/Secure for DB2 for z/OS, CA Plan Analyzer for DB2 for z/OS, CA Report Facility for TSO, CA InterTest for CICS for z/OS Plus, CA VISION:Results, CA TPX Session Management for z/OS Plus.

These are core software needed to run the mainframe. Without them, the state cannot function. State users won't be able to logon, databases won't be able to process data and the state loses all ability to access tape, which is critical to core functions.

The timing of this procurement was unfortunate due to conflicting priorities of the Agency, especially over the last 2 weeks. This happened also in part due to a staffing issue within the Mainframe unit and Purchasing unit. The mainframe unit was without a manager for a number of months and that position just got filled last week. The new manager found this quickly and has been working with staff this week to get this situation resolved.

By approving WVOT's emergency purchase, it will give the agency time to work on a direct award for this procurement for the future years required. Without approval of the emergency, the state's mainframe will cease to operate.

Broadcom
1320 Ridder Park Drive
San Jose, CA 95131
broadcom.com



February 27, 2020

Via Electronic Mail (natalie.w.faulkner@wv.gov)

Natalie Faulkner
Data Center – Mainframe Systems Programmer
West Virginia Office of Technology
1900 Kanawha Blvd E - Bldg 7 Rm 101
Charleston, WV 25305

RE: Sourcing Information for CA Technologies Products

Dear Ms. Faulkner,

CA, Inc. (CA) is the owner or licensee of the proprietary mainframe and distributed software products indicated below. While the products and technical support/maintenance may be purchased from CA or its authorized resellers, new releases and enhancements for the products are developed exclusively by CA employees, its licensors and contractors. Only CA employees, its licensors and contractors have access to the source code of these proprietary products (other than typical industry source code escrow arrangements). Typically, resellers do not have access to the CA source code.

Product names:

CA 1 TAPE MANAGEMENT MIPS
CA VISION:Sixty
AllFusion CA-Librarian Base
CA RC/Query for DB2 for z/OS MIPS
CA RC/Migrator for DB2 for z/OS MIPS
CA RC/Update for DB2 for z/OS MIPS
CA RC/Secure for DB2 for z/OS MIPS
CA Plan Analyzer for DB2 for z/OS MIPS
CA Report Facility for TSO MIPS
CA InterTest for CICS for z/OS Plus
CA VISION:Results
CA TPX Session Management for z/OS Plus

If you have any further questions regarding the above please contact the Global Service Center at 1-800-CALL-CAI option 4.

Thank you for your inquiry.

Sincerely,

DocuSigned by:

21602DA0353A464...

Lisa A. Kiefer

Sr. Principal, Sales Accounting

CA Technologies, a BROADCOM Company



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

State of West Virginia
Purchase Order

Order Date: 2019-04-25

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: CPO 0210 4435 ISC1900000006	Procurement Folder: 561225
Document Name: Mainframe Software Maintenance and Support (OT19093)	Reason for Modification:
Document Description: Mainframe Software Maintenance and Support (OT19093)	Award of CSSD ISC1900000003.
Procurement Type: Central Sole Source	
Buyer Name: Jessica S Chambers	
Telephone: (304) 558-0246	
Email: jessica.s.chambers@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2019-05-01
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2020-03-31

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000103933 CA Inc 2291 WOOD OAK DR HERNDON VA 20171 US Vendor Contact Phone: (703) 709-4389 Extension: Discount Percentage: 0.0000 Discount Days: 0	Requestor Name: Larry D McDonnell Requestor Phone: (304) 558-9999 Requestor Email: larry.d.mcdonnell@wv.gov

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV 25305 US	IS&C - DATA CENTER MANAGER DEPARTMENT OF ADMINISTRATION BLDG 6 RM B110 1900 KANAWHA BLVD E CHARLESTON WV 25305-0135 US

Total Order Amount:	\$458,982.58
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PURCHASING DIVISION AUTHORIZATION	ATTORNEY GENERAL APPROVAL AS TO FORM	ENCUMBRANCE CERTIFICATION
SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE	SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE	SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE

Extended Description:

Direct Award

Mainframe Software Maintenance and Support (OT19093)

This Purchase Order constitutes the acceptance of contract made by and between the State of West Virginia by the Purchasing Director for the Agency, The West Virginia Department of Administration, Office of Technology and the vendor: CA Inc., of Herndon, VA for a contract to provide software maintenance and support services per the Vendor's Quote and Terms and Conditions all incorporated herein by reference and made apart of hereof.

Effective Dates: 05/01/2019 - 03/31/2020

No Renewals Remaining

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81112200	0.00000			\$458,982.58
Service From	Service To	Manufacturer	Model No	Delivery Date	
2019-05-01	2020-03-31				

Commodity Line Description: Mainframe Software Maintenance and Support

Extended Description:

To provide ongoing maintenance and support on mainframe software products manufactured by CA Technologies that are utilized by all state agencies that use OT's Mainframe Enterprise Server.

ORDER OF PRECEDENT AND MODIFICATION ADDENDUM

THIS ORDER OF PRECEDENT AND MODIFICATION ADDENDUM, (hereinafter "Addendum") by and between CA, Inc. (hereinafter "CA") and State of West Virginia Office of Technology (hereinafter "State of West Virginia"), (both referred to as "Parties"), is intended to modify certain terms and conditions submitted by the Parties and to provide an order of precedent for all documents that comprise the contract resulting from the direct award solicitation identified as OT19093 (the "Contract").

NOW THEREFORE, the Parties hereto hereby agree as follows:

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the Contract document in this section. In that way, any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

Contract Documents:

- a. **Order of Precedence and Modification Addendum** (this document) – First Priority
 - b. **WV-96 Agreement Addendum** (Attached as Exhibit A) – Second Priority
 - c. **General Terms and Conditions** (Attached as Exhibit B)– Third Priority
 - d. **Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements** (Attached as Exhibit C)
 - e. **CA Order Form** (Attached as part of Exhibit D)– Fourth Priority
 - f. **CA Information Security Practices** (Attached as part of Exhibit D) – Fifth Priority
2. **Document Modifications:** The documents included in this Contract referred to below are modified as shown below. Any modification of the documents not included below, or modified through the established order of precedence above, are expressly rejected.
 - a. **General Terms and Conditions:**
 - i. **Insurance:** The term entitled "8. INSURANCE:" is removed in its entirety and replaced with the following:

8. INSURANCE: During the term of this Contract, Broadcom Inc., including any of its subsidiaries, including CA, Inc., will maintain in effect, either by purchase of the insurance noted below, or, in lieu of purchasing such insurance, will maintain through a self-insured/self-funded retention or program, no less than the minimum levels of coverage referenced herein.
 - ii. **Pricing:** The term entitled "13. PRICING" is removed in its entirety and replaced with the following:

13. PRICING: The pricing is specified in Order Form 00058297.0
 - iii. **Payment in Arrears:** The term entitled "14. PAYMENT IN ARREARS" is removed in its entirety and replaced with the following:

14. PAYMENT IN ARREARS: Payment terms are governed first by the WV-96 and then by the Order Form 00058297.0.
 - iv. **Payment Methods:** The term entitled "15. PAYMENT METHODS" is removed in its entirety and replaced with the following:

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer.
 - v. **Warranty:** The term entitled "28. WARRANTY" is removed in its entirety.
 - vi. **Indemnification:** The term entitled "36. INDEMNIFICATION" is removed in its entirety.
 - vii. **Additional Agency and Local Government Use:** The term entitled "38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE" is removed in its entirety.

viii. **Background Check:** The term entitled "41. BACKGROUND CHECK" is removed in its entirety and replaced with the following:

41. BACKGROUND CHECK: The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present on the Capitol complex based upon results of a criminal background check.

b. WV-96

i. **Payment:** The term entitled "2. PAYMENT" is modified by including a final sentence that states "If Customer's account is sixty (60) days or more overdue, CA reserves the right, with 30 days prior written notice, to withhold performance of its obligations under this Contract, without liability, until such amounts are paid in full.

ii. **Risk Shifting:** The term entitled "8. RISK SHIFTING" is modified by adding a final sentence that states the following:

"Notwithstanding the foregoing, the parties agree that this provision does not apply to the liability limit addressed in Section 9."

iii. **Limiting Liability:** The term entitled "9. LIMITING LIABILITY" is removed in its entirety and replaced with the following:

Any language limiting vendor's liability for direct damages to less than the value of this Contract (amounts paid or due assuming for valuation purposes the vendors contract obligations are completed in full) are revised to cover direct damages for at least the value of the Contract.

IN WITNESS WHEREOF, the Parties have entered into this Addendum as of the date of last signature below.

STATE OF WEST VIRGINIA

By: 

Name:

Justin T. McAllister CFO

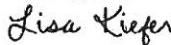
Its:

Date:

4-24-19

CA, INC.

DocuSigned by:



By:

21602DA0353A464...

Name:

Lisa Kiefer

Its:

Principal, Sales Accounting

Date:

April 24, 2019 | 12:26 PM EDT

EXHIBIT A

WV-96
1/1/2019

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.


WV-96
1/1/2019

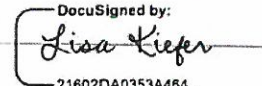
- 12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

- 19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strike through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: 
 By: Justin T. McAllister CFO
 Printed Name: Justin T. McAllister
 Title: CFO
 Date: 4-24-19

Vendor: CA Inc.
 By: 
 Printed Name: 21602DA0353A464...
 Title: Lisa Kiefer
 Date: Principal, Sales Accounting

April 24, 2019 | 12:26 PM EDT

Exhibit B

GENERAL TERMS AND CONDITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

Term Contract

Initial Contract Term: **Initial Contract Term:** This Contract becomes effective on 5/1/2014 and extends for a period of 11 Months

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to zero (0) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

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

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

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

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

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

Other: See attached.

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

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

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

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

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

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

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

Vendor must maintain:

- Commercial General Liability Insurance** in at least an amount of: _____ per occurrence.
- Automobile Liability Insurance** in at least an amount of: _____ per occurrence.
- Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence.
- Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.
- Cyber Liability Insurance** in an amount of: _____ per occurrence.
- Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.
- Pollution Insurance** in an amount of: _____ per occurrence.
- Aircraft Liability** in an amount of: _____ per occurrence.
-
-
-
-

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

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

10. [Reserved]

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

_____ for _____

Liquidated Damages Contained in the Specifications

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

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

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

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

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

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

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

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

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

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

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

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

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

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

Revised 01/24/2019

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 of such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

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

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

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

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

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

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

(Name, Title) *Justin T. McAllister*

(Printed Name and Title) Justin T. McAllister CFO

(Address) 1900 Kanawha Blvd, Charleston WV

(Phone Number) / (Fax Number) 304-957-8184

(email address) Justin.T.McAllister@wv.gov

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.

CA Inc.

(Company) _____

DocuSigned by:

 21602DA0353A464...

(Authorized Signature) (Representative Name, Title) _____

Lisa Kiefer Principal, Sales Accounting

(Printed Name and Title of Authorized Representative) _____

April 24, 2019 | 12:26 PM EDT

(Date) _____

703-709-4563

(Phone Number) (Fax Number) _____

Exhibit C

Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements

1.0 INTRODUCTION

The Executive Branch has adopted privacy and information security policies to protect confidential and personally identifiable information (hereinafter all referred to as Confidential Information). This Notice sets forth the vendor's responsibilities for safeguarding this information.

2.0 DEFINITIONS

- 2.1 Breach** shall mean the acquisition, access, use or disclosure of Confidential Information which compromises the security or privacy of such information.
- 2.2 Confidential Information**, shall include, but is not limited to, trade secrets, personally identifiable information, protected health information, financial information, financial account number, credit card numbers, debit card numbers, driver's license numbers, State ID numbers, social security numbers, employee home addresses, employee marital status, employee maiden name, etc.
- 2.3 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.

3.0 BACKGROUND

Agencies maintain Confidential Information, including, but not limited to, trade secrets, personally identifiable information, protected health information, financial information, financial account numbers, credit card numbers, debit card numbers, driver's license numbers, State ID numbers, social security numbers, employee home addresses, etc. Federal laws, including, but not limited to, the Health Insurance Portability and Accountability Act, the Privacy Act of 1974, Fair Credit Reporting Act and State laws require that certain information be safeguarded. In some situations, Agencies delegate, through contract provisions, functions to vendors that involve the vendor's collection, use and/or disclosure of Confidential Information. WV State government must take appropriate steps to ensure its compliance with those laws and desires to protect its citizens' and employees' privacy, and therefore, must require that its vendors also obey those laws.

Utilization of safeguards can greatly minimize potential exposure to sensitive information, and vendors are expected to adhere to industry standard best practices in the management of data collected by, or on behalf of, the State, and in the vendor's possession for a business purpose. Even when sound practices and safeguards are in use, exposures can occur as the result of a

Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements

theft, loss, or compromise of data, or systems containing data. At these times, vendors must be accountable for the loss of data in their possession by ***immediately reporting*** the incident surrounding the loss, and by absorbing any cost associated with the appropriate response actions deemed by the State to be reasonable and necessary. Additional vendor funding may be needed for required activities, such as: rapid notification to affected persons, and provision of a call center to handle inquiries. Notification and call handling will use a State-specified method, format, language, and personnel staffing level.

4.0 POLICY

- 4.1 All vendors for the Executive Branch of West Virginia State government shall sign both the RFP or RFQ, as applicable, and the Purchase Order which contain the confidentiality statement, incident response accountability acknowledgement, and adopt this policy by reference.
- 4.2 Vendors must contact the Privacy Officer of the Agency with which they are contracting to obtain Agency-specific privacy policies, procedures and rules, when applicable.
- 4.3 For vendors' information, Agencies generally require at least the following minimum standards of care in the handling of their Confidential Information:
 - 4.3.1 Confidential Information shall only be used or disclosed for the purposes designated in the underlying contract and at no time shall it be disclosed or used for a personal, non-work or non-contract related reason, unless specifically authorized in writing by the Agency.
 - 4.3.2 In all circumstances, vendors shall have no ownership rights or interests in any data or information, including Confidential Information. All data collected by the vendor on behalf of the Agency, or received by the vendor from the Agency, is owned by the Agency. There are no exceptions to this provision.
 - 4.3.3 In no circumstance shall a vendor use Confidential Information, or data, in any way detrimental to the Agency or to any individual whose records reside in the vendor's control. This prohibition shall not be construed to curtail a vendor's whistleblower rights under Federal and State law. If, in the process of making a good faith report under the provisions of W. Va. Code § 6C-1-1 et seq. or the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), (Pub. L. No. 104-191) 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") or any other relevant whistleblower law, a vendor finds it necessary to

Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements

disclose Confidential Information to an appropriate authority in accordance with those statutes, the disclosure will not be treated as a Breach of the Agency's security, privacy or confidentiality policies, as long as the confidential nature of the information is explicitly conveyed to the authorized recipient.

- 4.3.4 The State may periodically monitor and/or audit use of the information systems and other record-keeping systems at a vendor location or a State location in an effort to ensure compliance with this policy. In addition, the State may audit, and require strengthening of, vendor policies and/or practices as they impact security of State data within the vendor's possession.
- 4.3.5 Any collection, use or disclosure of information that is determined by the Agency to be contrary to the confidentiality statement, law or Agency policy may result in termination of the underlying contract.
- 4.3.6 The confidentiality and incident response accountability statement contained within the RFP or RFQ, as applicable, and the Purchase Order shall survive termination of the underlying contract.
- 4.4 If there is an incident that involves theft, loss, or compromise of State Confidential Information, the following reporting and/or actions must be taken by the vendor, on its own behalf, or on behalf of its subcontractor:
 - 4.4.1 If the event involves a theft, or is incidental to another crime, appropriate law enforcement officials shall be notified and a police report generated to document the circumstances of the crime, with a goal to establish whether the crime involved a motive to obtain the sensitive data. A copy of the police report will be forwarded in accordance with 4.4.2.3.
 - 4.4.2 Notification of Breach.
 - 4.4.2.1 Upon the **discovery** of Breach of security of Confidential Information, if the Confidential Information was, or is reasonably believed to have been, acquired by an unauthorized person, the vendor shall notify the individuals identified in 4.4.2.3 immediately by telephone call plus e-mail, web form or fax; or,
 - 4.4.2.2 Within 24 hours by e-mail or fax of any **suspected** Security Incident, intrusion or unauthorized use or disclosure of Confidential Information, in violation of the underlying contract and this Notice, of potential loss of confidential data affecting the underlying contract.
 - 4.4.2.3 Notification required by the above two sections shall be provided to:

Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements

(1) the Agency contract manager whose contact information may be found at www.state.wv.us/admin/purchase/vrc/agencyli.htm and, (2) unless otherwise directed by the Agency in writing, the Office of Technology at incident@wv.gov.

- 4.4.2.4** The vendor shall immediately investigate such actual or suspected Security Incident, Breach, or unauthorized use or disclosure of Confidential Information. Within 72 hours of the discovery, if an actual Breach has occurred, the vendor shall notify the individuals identified in 4.4.2.3 of the following: (a) What data elements were involved and the extent of the data involved in the Breach (e.g. number of records or affected individual's data); (b) The identity of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or Confidential Information; (c) A description of where the Confidential Information is believed to have been improperly transmitted, sent, or utilized; (d) A description of the probable causes of the improper use or disclosure; and (e) Whether any Federal or State laws requiring individual notifications of Breaches are triggered.
- 4.4.2.5** Agency will coordinate with the vendor to determine additional specific actions that will be required of the vendor for mitigation of the Breach, which may include notification to the individual or other authorities.
- 4.4.2.6** All associated costs shall be borne by the vendor. This may include, but not be limited to costs associated with notifying affected individuals.
- 4.5** The State may require that a vendor provide evidence of adequate background checks, including a nationwide record search, for individuals who are entrusted by the vendor to work with State information.
- 4.6** The State requires that any vendor taking possession of State data have comprehensive policies and practices to adequately safeguard that information, and further that the sensitivity of the information is clearly identified and documented in writing, with signed acknowledgement by the vendor that the sensitivity is understood, before it is conveyed to the vendor. Vendor policy should articulate all safeguards in place for the State information, including provisions for destruction of all data, including backup copies of the data, at the end of the vendor's legitimate need to possess the data. All State-owned media containing State information will be returned to the State when no longer legitimately needed by the vendor.
- 4.7** All vendor owned devices that contain or transport any State Confidential Information must be encrypted using the AES algorithm, and an industry

**Notice of State of West Virginia
Confidentiality Policies and Information Security Accountability Requirements**

standard methodology. This includes desktop and laptop computers (whole drive encryption – not file encryption), personal digital assistants (PDA), smart phones, thumb or flash-type drives, CDs, diskettes, backup tapes, etc.

Exhibit D



CA, Inc. ("CA")
2291 Wood Oak Drive Herndon, Virginia 20171

Order Form

Effective Date of this Order Form: 3/31/2019 (Amendment Number 7)	Order Form #: 00058297.0 (When using a Purchase Order, please reference this number thereby incorporating the terms, pricing and governing contract defined herein.)	
Customer Name: WEST VIRGINIA OFFICE OF TECHNOLOGY (which may be referred to as "Customer" or "You" or "Licensee" in the referenced Governing Contract below)	Customer ID No: 4685	
Customer Address: 1900 Kanawha Blvd E, Bldg 5, 10Th Floor, Charleston, WV, US, 25305-0009		
Billing Address: 1900 Kanawha Blvd E, Bldg 5, 10Th Floor, Charleston, WV, US, 25305-0009		
Billing Contact: NATALIE FAULKNER	Phone: 304-558-5914	E-mail: nfaulkner@wvadmin.gov
Shipment Address: 1900 Kanawha Blvd E, Bldg 5, 10Th Floor, Charleston, WV, US, 25305-0009		
Shipping Contact: NATALIE FAULKNER	Territory:	
Technical Contact: NATALIE FAULKNER	Phone: 304-558-5914	E-mail: nfaulkner@wvadmin.gov
Name of Governing Contract: MLA-9/25/1997, Order Form and Addendum effective April 1, 2005 (Under License Agreement 991126) and subsequent Amendments One and Two and Order Form One (Amendment Three) and Order Form Two (Amendment Four), Order Form effective March 29, 2014 (Amendment Number Five) and Order Form effective March 31, 2017 (Amendment Number Six)		For Customer Administrative Purposes Only:
Governing Contract No.: 991126		PO Required?
CA Software licensed may be subject to Specific Program Documentation ("SPD") located at: https://support.ca.com/us/licensing/license-agreements.html		PO #:

Offer Expiration

The pricing and terms offered herein expire unless Customer executes and delivers this document to CA prior to 5 PM EST on the Effective Date, however this provision shall be null and void and have no legal effect if this document is countersigned by CA.

Payment Profile (USD)

Payment Date	Total Fees Due
3/31/2019	\$229,491.29
10/1/2019	\$229,491.29

In the event Customer purchases CA Maintenance ("CA Maintenance" may also be referred to as "CA Support"), technical and customer care expertise for CA Software is available 24x7x365 from CA's self-service web portal and by telephone for Severity 1 issues, or during regular business hours by telephone for any other issue. Technical support will be provided in accordance with the overview and guidelines available on CA Support Online at: <https://support.ca.com>.



CA, Inc. ("CA")
 2291 Wood Oak Drive Herndon, Virginia 20171

Order Form

CA Mainframe Software Information (USD)

Mainframe CA Software	License Type*	Operating System	Authorized Use Limitation	Start Date**	End Date	Ship (Y/N)
CA VISION:Results	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA VISION:Sixty™	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
AllFusion® CA-Librarian® Base	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA RC/Query® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA RC/Migrator® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA RC/Update® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA RC/Secure® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA Plan Analyzer® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA Report Facility for TSO MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA TPX Session Management for z/OS Plus	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA One TAPE MANAGEMENT MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA InterTest for CICS for z/OS Plus	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N

*With respect to perpetual licenses, Start Date and End Date refer to the start date and end date for Support.

**If no date stated, the start date is the Effective Date of the Order Form. The dates set out in the CA Software tables shall in no way be deemed to impact or change the Effective Date of this Order Form. All amounts are exclusive of taxes which will be payable in addition to the fees listed above.

Mainframe CPU Information

As of the Effective Date of this Order Form, Customer is running the Mainframe CA Software with the Authorized Use Limitation as listed in the above grid on the following CPU(s):

Make	Model	Serial Number	Location
IBM	2828-S02	068D77	1900 Kanawha Blvd E, Bldg 5, 10Th Floor, Charleston, WV, US, 25305-0009

1. Product Deliveries

Any CA Software identified with "NO" under the heading entitled "Ship" above was previously delivered to Customer by CA and therefore will not be delivered to Customer again. Any operating system identified as "Generic", "GA", or "MULTI-PLATFORM" denotes such operating systems for which the CA Software is made generally available by CA in accordance with CA current published specifications.

2. Extension of Term

The Term of the license is hereby Extended (the "Extended Term") and shall commence on March 31, 2019 and shall expire on March 30, 2020.

3. Stabilized Products

Notwithstanding anything contained herein or in the License Agreement to the contrary, Licensee understands and acknowledges that AllFusion® CA-Librarian® Base (the "Stabilized Product") has been stabilized by CA which means that, although CA is currently providing telephone support for such Licensed Program, CA is not providing enhancements, or new releases or modifications of the Stabilized Product. Licensee agrees that CA has no obligation to provide any such enhancements, modifications or new releases and that no charge for the same has been included in the fees payable under this agreement.



Order Form

CA, Inc. ("CA")
 2291 Wood Oak Drive Herndon, Virginia 20171

4. Product Migration

- The Product(s) listed in the table below under the column "Original Product(s)" have been terminated and replaced with the Product(s) listed under the column "Migrated Product(s)".
- In consideration of the termination of the Original Product(s) licenses, CA makes available to Customer licenses of the Migrated Product(s).
- All financial obligations relating to the Original Product(s) remain valid and enforceable and are applicable to the Migrated Product(s), and
- The Migrated Product(s) are subject to the Agreement and this Order Form.

CA Contract	Original Product(s)	Original Authorized Use Limitation	Migrated Product(s)	New Authorized Use Limitation
40258143	CA InterTest for CICS	872 MIPS	CA InterTest for CICS for z/OS Plus	872 MIPS
	CA One TAPE MANAGEMENT	872 MIPS	CA One TAPE MANAGEMENT MIPS	872 MIPS
	CA Plan Analyzer® for DB2 for z/OS	872 MIPS	CA Plan Analyzer® for DB2 for z/OS MIPS	872 MIPS
	CA RC/Migrator® for DB2 for z/OS	872 MIPS	CA RC/Migrator® for DB2 for z/OS MIPS	872 MIPS
	CA RC/Query® for DB2 for z/OS	872 MIPS	CA RC/Query® for DB2 for z/OS MIPS	872 MIPS
	CA RC/Secure® for DB2 for z/OS	872 MIPS	CA RC/Secure® for DB2 for z/OS MIPS	872 MIPS
	CA RC/Update® for DB2 for z/OS	872 MIPS	CA RC/Update® for DB2 for z/OS MIPS	872 MIPS
	CA Report Facility for TSO	872 MIPS	CA Report Facility for TSO MIPS	872 MIPS
	CA TPX Session Management Extended Package	872 MIPS	CA TPX Session Management for z/OS Plus	872 MIPS

5. Termination for Convenience

The following clause hereby amends the referenced master and applies to all pre-existing transactions currently in place between the parties.

Customer may terminate this Agreement together with each and all Transaction Documents in effect as of the date of termination (collectively, the Agreement), without cause and without further charge or expense at any time, immediately upon written notice to CA sent to usagereporting@ca.com. On or after the termination date, with the exception of any fully paid-up perpetual licenses if the termination is effective after the initial Term, Customer must either: a) delete all full or partial copies of the Software from all computing or storage equipment and verify such deletion in a statement signed by a Vice-President or a duly authorized representative and sent to usagereporting@ca.com, or b) return to CA all full or partial copies of the Software. Once Customer's verification or the Software copies are received, CA will pay Customer a pro-rata refund of any License, SaaS, and/or Support fees Customer pre-paid (Refund Fees) in accordance with the paragraph below. Refund Fees will be calculated on the number of months remaining in the Term of the applicable Transaction Document. If the Software is licensed under a Perpetual License, Customer will receive a pro-rated refund of the License Fee only if notice of termination is issued during the initial Term of the applicable Transaction Document.

If the Agreement is terminated without cause, neither party shall have further obligations under the Agreement, except that the parties shall remain bound by the Confidentiality obligations in the Agreement, Refund Fees will be paid within sixty (60) days from the termination date, and any unpaid fees reflecting the Services (defined as software license, SaaS, maintenance and professional services for purposes of this section) delivered prior to the termination date plus any reasonable charges having resulted from the termination shall become immediately due.

6. Renewal

This Agreement shall be automatically renewed for successive one (1) year terms thereafter (each a Renewal Term) until and unless either Party provides the other Party with written notice of non-renewal forty-five (45) days prior to the end of the Initial Term or the Renewal Term. CA will invoice Customer at least thirty (30) days prior to the expiration of the Initial Term or the Renewal Term.

7. Authorized Signatory Clause

The undersigned hereby certifies that he/she is authorized to bind the government agency identified herein to the terms and conditions of this agreement.

8. Limiting Liability



Order Form

CA, Inc. ("CA")
2291 Wood Oak Drive Herndon, Virginia 20171

EXCEPT IN THE CASE OF A BREACH OF TITLE, INFRINGEMENT OF CA'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY, AND OF THIRD PARTY CLAIMS ARISING UNDER THE INDEMNIFICATION SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NEITHER PARTY (INCLUDING ANY OF CA'S SUPPLIERS) SHALL BE LIABLE FOR A) ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT NECESSARILY LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND OR ANY LOSS OF DATA BY USE OF ANY CA OFFERING, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES; AND B) IN NO EVENT WILL A PARTY'S LIABILITY, EXCEED THE FEES PAID AND OR OWED FOR THE PRODUCT OR SERVICE THAT GAVE RISE TO THE BREACH.

Entire Agreement

This document, and any applicable exhibits or referenced Governing Contract and applicable supplementary terms as defined herein constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. No term or condition contained in Customer's purchase order or similar document will apply unless agreed upon hereunder, even if CA has accepted the order set forth in such purchase order, and all such terms or conditions are otherwise hereby expressly rejected by CA. No modification or claimed waiver of any provision herein shall be valid except by written amendment signed by authorized representatives of Customer and CA.

WEST VIRGINIA OFFICE OF TECHNOLOGY

CA, Inc.

Signature:

Signature:

DocuSigned by:

21802DA0353A464

Name: Justin T. McAllister CFO

Name: Lisa Kiefer

Title: CFO

Title: Principal, Sales Accounting

Date: 4-24-19

Date: ~~March 29, 2019 | 1:07 PM EDT~~

Information Security Practices

Protecting Customer Data



A message to our Customers/ A message from our Chief Information Security Officer

CA Technologies recently celebrated its 40th birthday. Few technology companies have had the good fortune of making it through a decade, let alone four, and for that we thank our customers for continuing to put their business and trust in CA. It is a responsibility we do not take lightly, and one we have embedded in every aspect of our culture. Just this year, our CEO Mike Gregoire rolled out a new culture Mission that is entirely focused on you, your experience with CA, and your goals. When you win, we win.

In the era of the Application Economy, your data has become more than just a part of your business, it has become the cornerstone, and one that is constantly under attack. Every day we hear about a cybersecurity breach, hack, or troubling misuse of information. Taking measures to protect and secure your data is something CA has done for years, but we want our customers to know and understand how robust our practices are. CA is fully committed to protecting your data and information as if it were our own.

Our information security program is a holistic approach that considers every aspect of how we may store, collect, access, or touch your data. From engineering to finance, every person at CA plays a role. This document outlines the policies, procedures, and physical and technical safeguards we have implemented to achieve this. We are proud of what we do, but we are always working to make it better, faster, and more secure. As always, we thank you for our business, and look forward to another 40+ years of being the technology company you trust.

Securely Yours,

A handwritten signature in black ink, appearing to read 'David Billeter', with a long horizontal flourish extending to the right.

David Billeter

Chief Information Security Officer (CISO)

I. SECURITY BY DESIGN

a. Secure Code Development

All CA developers are required to follow CA's Product Securability Policy and Procedure which provides for securability standards, strategies, and tactics for each phase of the product development lifecycle informed and consistent with industry best practices. The procedure requires product classification based on risk rankings determined by use cases, application of static code analysis tools, and penetration testing.

b. Secure Code Release

Prior to release of any product to CA's Customers, antivirus/antimalware scanning is performed, and based on the risk profile additional penetration testing may be performed. Any identified vulnerabilities are tracked in the central CA defect tracking system together with an associated risk rating and are not approved by the Securability Center of Excellence unless remediated. Vulnerabilities are ranked using the Common Vulnerability Scoring System (CVSS) in accordance with the NIST Framework to determine their severity and response.

II. HOW A CUSTOMER'S DATA COMES INTO CA AND ITS PROTECTION

a. Access to Customer Data

CA may obtain Customer data in a number of ways, including, through a support ticket, services engagements, or the use of a CA SaaS offering. All files submitted by our customers, regardless of how acquired, is categorized as "Highly Confidential Data" requiring the highest degree of protection. In the event CA's professional services team is required to be at a Customers' facility, such individuals are prohibited from downloading any Customer data to their devices and removing them from the Customer's facility.

b. Physical Security

CA maintains and administers the following physical access controls:

- Employees and contractors are subject to background checks prior to being offered employment or given access to CA's facilities and systems.
- All facilities require badge access for employees and contractors and intrusion detection alarms at ingress and egress points. Visitor access must be logged in a physical access log and visitors are escorted through restricted areas in the facility.

- All data centers where Customer data is processed or stored are further protected by security guards and monitoring cameras (e.g., CCTVs) 24/7.

c. CA Authorized User Names, Passwords and Authentication

CA monitors access rights to ensure access adheres to the least privilege principle commensurate with the CA's user's job responsibilities, logs all access and security events, and uses software that enables rapid analysis of user activities.

CA's passwords are administered in the following manner:

- Passwords are communicated separately from user IDs
- Passwords are not shared
- Initial password generation is random
- Initial password change is required
- Passwords must have minimum length and complexity and must be changed on a regular interval without reuse of recent previous passwords
- CA passwords are encrypted and passwords are never recoverable and can only be securely reset.

III. Enterprise Role-Based Access

The logical access procedures define the request, approval, access provisioning and de-provisioning processes. The logical access procedures restrict user access (local or remote) based on user job function for applications and databases (role/profile based appropriate access) for applications, databases and systems to ensure segregation of duties and are reviewed, administered, and documented based on on-boarding, resource re-assignment or separation. User access reviews are performed to ensure access is appropriate throughout the year.

All CA system administrators are authenticated using multi-factor authentication for system access through privileged access management. In addition, the use of privileged access management enables all system admin sessions and console access to be recorded and CA records all such sessions and access for audit and forensic purposes.

For Customer data entered via a CA SaaS Offering, CA database administrators (DBAs) may be required to access Customer data in the course of various technical operations. Default DBA accounts in the database are expired and locked except when the account is required to be used by the DBA to complete their job. Database access is granted upon formal authorization through a ticket and access is granted only to authorized personnel based on job responsibilities registered in an Active Directory. Where it is not feasible to lock the DBA account, passwords are changed for each access request. All database accesses

are logged. Employees' user access accounts are reviewed on a quarterly basis. Access account reports are generated by a Security Analyst and sent to managers for review and approval. This review and approval are documented in a CA support ticket where any discrepancies and resolutions, if any are listed.

IV. HOW IS DATA TRANSMITTED? NETWORK SECURITY MANAGEMENT

a. Network Controls

CA utilizes firewalls for access control between CA's networks and the Internet. Firewall access is restricted to a small set of super users/administrators with appropriate approvals. Firewalls are established with minimum rights necessary to accomplish tasks by role and access is authorized on a "deny by default" policy.

Periodic network vulnerability scans are performed and any critical vulnerabilities identified are promptly remediated. In addition, penetration tests are also performed by security professionals, both CA employees and third parties.

b. Network/Communication Security Policy/Encryption

Defined Access Control Lists (ACLs) to restrict traffic on routers and/or firewalls are reviewed and approved by network administrators. IP addresses in the ACLs are specific and anonymous connections are prohibited.

Customer data is encrypted while in transit over any public network or wireless network (wireless networks are not used in SaaS Offerings) via CA's Secure File Transfer Protocol (SFTP) to transmit flat files.

CA utilizes an information protection and control solution that is designed and administered to minimize the accidental, negligent and malicious misuse of data through email and other communications aimed outside of CA's firewalls (e.g., a data loss prevention (DLP) solution).

[remainder of page intentionally left blank]

c. Remote Access Administration

The following remote access settings are applicable:

- Unauthorized remote connections from devices (e.g., modems) are disabled as part of standard configuration.
- The data flow in the remote connection is encrypted and multi-factor authentication is utilized during the login process.
- Remote connection settings limit the ability of remote users to access both initiating network and remote network simultaneously (no split tunneling).

d. Third Party Remote Access

Dependent third party service provider (i.e., subcontractor) remote access adheres to the same or similar controls, and any subcontractor remote access has valid business justification.

e. Removable Media

Removable media is not in use for the delivery of CA Technologies SaaS offerings. In addition, all laptops and other removable media on which Customer data is stored, such as backup tapes, are encrypted.

V. AUDITS OF CONTROLS AND CERTIFICATIONS

The respective audit criteria (e.g., PCI, SSAE 16 SOC 1, TYPE 2) followed by third party auditors inspecting CA's security practices with regard to SaaS offerings along with summary reports of the auditors can be found at: <http://www.ca.com/us/lpg/saas-summary-audit-report.aspx>. In addition, CA's internal data centers, those which may house Customer data received through support or services interactions, are ISO/IEC 20000 for IT service management and ISO/IEC 27001 for security controls certified.

VI. SECURITY INCIDENTS

CA maintains a highly confidential cybersecurity Incident Response Plan designed to identify, categorize, remove, and remediate cybersecurity incidents. The Plan is reviewed bi-monthly with annual tabletop exercises. The mission of the CA Technologies Cybersecurity Operations is to prepare the organization to identify and respond to information security threats and incidents while containing and restoring normal service operations as quickly and effectively as possible.

In the event CA discovers a security incident, CA has the following target response and remediation time lines:

Severity Level	Description	Examples	Target Response	Target Remediation/ Escalation
1	Incidents that have a severe impact on CA Technologies or its customers' business or services	<ul style="list-style-type: none"> Malicious code attacks Unauthorized access Denial of Service (DoS) affecting an entire campus Compromise of host with sensitive data, including Sensitive Personal Data 	1 Hour	2 Hours
2	Incidents that have a significant impact, or the potential to have a severe impact on CA Technologies or its customers' business or services	<ul style="list-style-type: none"> Attempts to gain unauthorized access DOS attack affecting a building or department Open mail relay 	4 Hours	1 Business Day
3	Incidents that have a minimal impact with the potential for significant or severe impact on CA Technologies or its customers' business or services	<ul style="list-style-type: none"> Unauthorized network probes or system scans Isolated virus infections 	1 Business Day	2 Business Days
4	Incidents that have a minimal impact with no potential for significant or severe impact on CA Technologies or its customers' business or services	<ul style="list-style-type: none"> Improper Usage, Unauthorized software (non-malicious) Policy Violations 	2+ Business Days	2+ Business Days

VII. COMPLIANCE WITH DATA PRIVACY LAWS

- a. CA Technologies' Privacy Statement is posted on our website (www.ca.com/us/privacy), and local websites in other countries, and describes how

- CA Technologies uses personally identifiable information that it collects on the website as well as data collected off-line.
- b. CA Technologies implements processes designed to ensure that we comply with all applicable data privacy and security laws in the US and in all countries in which we do business, including breach notification laws, state and federal privacy-related legislation, and national laws.
 - c. CA Technologies has several internal Privacy Policies, including an HR Privacy Policy and a Privacy and Data Protection Policy, which mirrors the EU Data Privacy requirements.
 - d. CA Technologies also maintains a Policy that specifically addresses the handling of customer data and a Written Information Security Plan (WISP) in compliance with the Massachusetts information security regulations and other US laws.
 - e. In September of 2016, CA self-certified to the EU-US Privacy Shield framework which was designed by the U.S. Department of Commerce and European Commission to provide global companies with a mechanism to comply with EU data protection requirements when transferring personal data from the European Union to the United States in support of transatlantic commerce. In April of 2017, CA self-certified to the Swiss-US Privacy Shield framework. CA's participation in the Privacy Shield means that CA and its U.S. subsidiaries have agreed to comply with the Privacy Shield Framework regarding the collection, use, and retention of EU and Swiss personal data that it uses as a data processor. To learn more about the Privacy Shield Framework, and to view CA's certification page, please visit <https://www.privacyshield.gov/>.
 - f. CA Technologies also holds Binding Corporate Rules for Controllers and this is our method for transferring data globally as a data controller http://ec.europa.eu/justice/data-protection/international-transfers/binding-corporate-rules/bcr_cooperation/index_en.htm.
 - g. In addition, CA Technologies has prepared a downloadable data processing agreement (DPA) setting out CA's commitment to privacy and data protection when processing customer data in connection with the provision of products and services to our customers and partners. This DPA also covers with the transfer of personal data outside of the European Economic Area and Switzerland in connection with the provision of such products and services. The DPA can be found at www.ca.com/us/data-transfers.aspx. If you have any questions, please feel free to send an email to datatransfers@ca.com.



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

State of West Virginia
Purchase Order

Order Date: 2019-04-25

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: CPO 0210 4435 ISC1900000006	Procurement Folder: 561225
Document Name: Mainframe Software Maintenance and Support (OT19093)	Reason for Modification:
Document Description: Mainframe Software Maintenance and Support (OT19093)	Award of CSSD ISC1900000003.
Procurement Type: Central Sole Source	
Buyer Name: Jessica S Chambers	
Telephone: (304) 558-0246	
Email: jessica.s.chambers@wv.gov	
Shipping Method: Best Way	Effective Start Date: 2019-05-01
Free on Board: FOB Dest, Freight Prepaid	Effective End Date: 2020-03-31

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000103933 CA Inc 2291 WOOD OAK DR HERNDON VA 20171 US Vendor Contact Phone: (703) 709-4389 Extension: Discount Percentage: 0.0000 Discount Days: 0	Requestor Name: Larry D McDonnell Requestor Phone: (304) 558-9999 Requestor Email: larry.d.mcdonnell@wv.gov

INVOICE TO	SHIP TO
DEPARTMENT OF ADMINISTRATION OFFICE OF TECHNOLOGY 1900 KANAWHA BLVD E, BLDG 5 10TH FLOOR CHARLESTON WV 25305 US	IS&C - DATA CENTER MANAGER DEPARTMENT OF ADMINISTRATION BLDG 6 RM B110 1900 KANAWHA BLVD E CHARLESTON WV 25305-0135 US

Total Order Amount: \$458,982.58

PURCHASING DIVISION AUTHORIZATION SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION SIGNED BY: DATE: ELECTRONIC SIGNATURE ON FILE
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Extended Description:

Direct Award

Mainframe Software Maintenance and Support (OT19093)

This Purchase Order constitutes the acceptance of contract made by and between the State of West Virginia by the Purchasing Director for the Agency, The West Virginia Department of Administration, Office of Technology and the vendor: CA Inc., of Herndon, VA for a contract to provide software maintenance and support services per the Vendor's Quote and Terms and Conditions all incorporated herein by reference and made apart of hereof.

Effective Dates: 05/01/2019 - 03/31/2020

No Renewals Remaining

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81112200	0.00000			\$458,982.58
Service From	Service To	Manufacturer	Model No	Delivery Date	
2019-05-01	2020-03-31				

Commodity Line Description: Mainframe Software Maintenance and Support

Extended Description:

To provide ongoing maintenance and support on mainframe software products manufactured by CA Technologies that are utilized by all state agencies that use OT's Mainframe Enterprise Server.

ORDER OF PRECEDENT AND MODIFICATION ADDENDUM

THIS ORDER OF PRECEDENT AND MODIFICATION ADDENDUM, (hereinafter "Addendum") by and between CA, Inc. (hereinafter "CA") and State of West Virginia Office of Technology (hereinafter "State of West Virginia"), (both referred to as "Parties"), is intended to modify certain terms and conditions submitted by the Parties and to provide an order of precedent for all documents that comprise the contract resulting from the direct award solicitation identified as OT19093 (the "Contract").

NOW THEREFORE, the Parties hereto hereby agree as follows:

1. **Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the Contract document in this section. In that way, any terms and conditions contained in the first priority document shall prevail over conflicting terms in the second priority document, and so on.

Contract Documents:

- a. **Order of Precedence and Modification Addendum** (this document) – First Priority
 - b. **WV-96 Agreement Addendum** (Attached as Exhibit A) – Second Priority
 - c. **General Terms and Conditions** (Attached as Exhibit B)– Third Priority
 - d. **Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements** (Attached as Exhibit C)
 - e. **CA Order Form** (Attached as part of Exhibit D)– Fourth Priority
 - f. **CA Information Security Practices** (Attached as part of Exhibit D) – Fifth Priority
2. **Document Modifications:** The documents included in this Contract referred to below are modified as shown below. Any modification of the documents not included below, or modified through the established order of precedence above, are expressly rejected.
 - a. **General Terms and Conditions:**
 - i. **Insurance:** The term entitled "8. INSURANCE:" is removed in its entirety and replaced with the following:

8. INSURANCE: During the term of this Contract, Broadcom Inc., including any of its subsidiaries, including CA, Inc., will maintain in effect, either by purchase of the insurance noted below, or, in lieu of purchasing such insurance, will maintain through a self-insured/self-funded retention or program, no less than the minimum levels of coverage referenced herein.
 - ii. **Pricing:** The term entitled "13. PRICING" is removed in its entirety and replaced with the following:

13. PRICING: The pricing is specified in Order Form 00058297.0
 - iii. **Payment in Arrears:** The term entitled "14. PAYMENT IN ARREARS" is removed in its entirety and replaced with the following:

14. PAYMENT IN ARREARS: Payment terms are governed first by the WV-96 and then by the Order Form 00058297.0.
 - iv. **Payment Methods:** The term entitled "15. PAYMENT METHODS" is removed in its entirety and replaced with the following:

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer.
 - v. **Warranty:** The term entitled "28. WARRANTY" is removed in its entirety.
 - vi. **Indemnification:** The term entitled "36. INDEMNIFICATION" is removed in its entirety.
 - vii. **Additional Agency and Local Government Use:** The term entitled "38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE" is removed in its entirety.

viii. **Background Check:** The term entitled "41. BACKGROUND CHECK" is removed in its entirety and replaced with the following:

41. BACKGROUND CHECK: The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present on the Capitol complex based upon results of a criminal background check.

b. WV-96

i. **Payment:** The term entitled "2. PAYMENT" is modified by including a final sentence that states "If Customer's account is sixty (60) days or more overdue, CA reserves the right, with 30 days prior written notice, to withhold performance of its obligations under this Contract, without liability, until such amounts are paid in full.

ii. **Risk Shifting:** The term entitled "8. RISK SHIFTING" is modified by adding a final sentence that states the following:

"Notwithstanding the foregoing, the parties agree that this provision does not apply to the liability limit addressed in Section 9."

iii. **Limiting Liability:** The term entitled "9. LIMITING LIABILITY" is removed in its entirety and replaced with the following:

Any language limiting vendor's liability for direct damages to less than the value of this Contract (amounts paid or due assuming for valuation purposes the vendors contract obligations are completed in full) are revised to cover direct damages for at least the value of the Contract.

IN WITNESS WHEREOF, the Parties have entered into this Addendum as of the date of last signature below.

STATE OF WEST VIRGINIA

By: 

Name:

Justin T. McAllister CFO

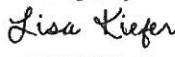
Its:

Date:

4-24-19

CA, INC.

By:

DocuSigned by:

21602DA0353A464...

Name:

Lisa Kiefer

Its:

Principal, Sales Accounting

Date:

April 24, 2019 | 12:26 PM EDT

EXHIBIT A

WV-96
1/1/2019

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"):

Vendor:

Contract/Lease Number ("Contract"):

Commodity/Service:

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.


Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.


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- 12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
- 19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strike through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General’s authorized representative expressly agree to and knowingly approve those alterations.

State: 
 By: Justin T. McAllister CFO
 Printed Name: Justin T. McAllister
 Title: CFO
 Date: 4-24-19

Vendor: CA Inc.
 By: 
 Printed Name: 21602DA0353A464...
 Title: Lisa Kiefer
 Date: Principal, Sales Accounting

April 24, 2019 | 12:26 PM EDT

Exhibit B

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 5/1/2014 and extends for a period of 11 Months

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to zero (0) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

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

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

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

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

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

Other: See attached.

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

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

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

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

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

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

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

Vendor must maintain:

- Commercial General Liability Insurance** in at least an amount of: _____ per occurrence.
- Automobile Liability Insurance** in at least an amount of: _____ per occurrence.
- Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence.
- Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.
- Cyber Liability Insurance** in an amount of: _____ per occurrence.
- Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.
- Pollution Insurance** in an amount of: _____ per occurrence.
- Aircraft Liability** in an amount of: _____ per occurrence.
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-

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

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

10. [Reserved]

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

_____ for _____

Liquidated Damages Contained in the Specifications

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

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

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

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

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

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

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

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

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

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

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

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

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

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

Revised 01/24/2019

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 of such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

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

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

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

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

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

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

(Name, Title) *Justin T. McAllister*

(Printed Name and Title) Justin T. McAllister CFO

(Address) 1900 Kanawha Blvd, Charleston WV

(Phone Number) / (Fax Number) 304-957-8184

(email address) Justin.T.McAllister@wv.gov

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.

CA Inc.

(Company) _____

DocuSigned by:

 21602DA0353A464...

(Authorized Signature) (Representative Name, Title) _____

Lisa Kiefer Principal, Sales Accounting

(Printed Name and Title of Authorized Representative) _____

April 24, 2019 | 12:26 PM EDT

(Date) _____

703-709-4563

(Phone Number) (Fax Number) _____

Exhibit C

Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements

1.0 INTRODUCTION

The Executive Branch has adopted privacy and information security policies to protect confidential and personally identifiable information (hereinafter all referred to as Confidential Information). This Notice sets forth the vendor's responsibilities for safeguarding this information.

2.0 DEFINITIONS

- 2.1 Breach** shall mean the acquisition, access, use or disclosure of Confidential Information which compromises the security or privacy of such information.
- 2.2 Confidential Information**, shall include, but is not limited to, trade secrets, personally identifiable information, protected health information, financial information, financial account number, credit card numbers, debit card numbers, driver's license numbers, State ID numbers, social security numbers, employee home addresses, employee marital status, employee maiden name, etc.
- 2.3 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.

3.0 BACKGROUND

Agencies maintain Confidential Information, including, but not limited to, trade secrets, personally identifiable information, protected health information, financial information, financial account numbers, credit card numbers, debit card numbers, driver's license numbers, State ID numbers, social security numbers, employee home addresses, etc. Federal laws, including, but not limited to, the Health Insurance Portability and Accountability Act, the Privacy Act of 1974, Fair Credit Reporting Act and State laws require that certain information be safeguarded. In some situations, Agencies delegate, through contract provisions, functions to vendors that involve the vendor's collection, use and/or disclosure of Confidential Information. WV State government must take appropriate steps to ensure its compliance with those laws and desires to protect its citizens' and employees' privacy, and therefore, must require that its vendors also obey those laws.

Utilization of safeguards can greatly minimize potential exposure to sensitive information, and vendors are expected to adhere to industry standard best practices in the management of data collected by, or on behalf of, the State, and in the vendor's possession for a business purpose. Even when sound practices and safeguards are in use, exposures can occur as the result of a

Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements

theft, loss, or compromise of data, or systems containing data. At these times, vendors must be accountable for the loss of data in their possession by ***immediately reporting*** the incident surrounding the loss, and by absorbing any cost associated with the appropriate response actions deemed by the State to be reasonable and necessary. Additional vendor funding may be needed for required activities, such as: rapid notification to affected persons, and provision of a call center to handle inquiries. Notification and call handling will use a State-specified method, format, language, and personnel staffing level.

4.0 POLICY

- 4.1 All vendors for the Executive Branch of West Virginia State government shall sign both the RFP or RFQ, as applicable, and the Purchase Order which contain the confidentiality statement, incident response accountability acknowledgement, and adopt this policy by reference.
- 4.2 Vendors must contact the Privacy Officer of the Agency with which they are contracting to obtain Agency-specific privacy policies, procedures and rules, when applicable.
- 4.3 For vendors' information, Agencies generally require at least the following minimum standards of care in the handling of their Confidential Information:
 - 4.3.1 Confidential Information shall only be used or disclosed for the purposes designated in the underlying contract and at no time shall it be disclosed or used for a personal, non-work or non-contract related reason, unless specifically authorized in writing by the Agency.
 - 4.3.2 In all circumstances, vendors shall have no ownership rights or interests in any data or information, including Confidential Information. All data collected by the vendor on behalf of the Agency, or received by the vendor from the Agency, is owned by the Agency. There are no exceptions to this provision.
 - 4.3.3 In no circumstance shall a vendor use Confidential Information, or data, in any way detrimental to the Agency or to any individual whose records reside in the vendor's control. This prohibition shall not be construed to curtail a vendor's whistleblower rights under Federal and State law. If, in the process of making a good faith report under the provisions of W. Va. Code § 6C-1-1 et seq. or the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), (Pub. L. No. 104-191) 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") or any other relevant whistleblower law, a vendor finds it necessary to

Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements

disclose Confidential Information to an appropriate authority in accordance with those statutes, the disclosure will not be treated as a Breach of the Agency's security, privacy or confidentiality policies, as long as the confidential nature of the information is explicitly conveyed to the authorized recipient.

- 4.3.4 The State may periodically monitor and/or audit use of the information systems and other record-keeping systems at a vendor location or a State location in an effort to ensure compliance with this policy. In addition, the State may audit, and require strengthening of, vendor policies and/or practices as they impact security of State data within the vendor's possession.
- 4.3.5 Any collection, use or disclosure of information that is determined by the Agency to be contrary to the confidentiality statement, law or Agency policy may result in termination of the underlying contract.
- 4.3.6 The confidentiality and incident response accountability statement contained within the RFP or RFQ, as applicable, and the Purchase Order shall survive termination of the underlying contract.
- 4.4 If there is an incident that involves theft, loss, or compromise of State Confidential Information, the following reporting and/or actions must be taken by the vendor, on its own behalf, or on behalf of its subcontractor:
 - 4.4.1 If the event involves a theft, or is incidental to another crime, appropriate law enforcement officials shall be notified and a police report generated to document the circumstances of the crime, with a goal to establish whether the crime involved a motive to obtain the sensitive data. A copy of the police report will be forwarded in accordance with 4.4.2.3.
 - 4.4.2 Notification of Breach.
 - 4.4.2.1 Upon the **discovery** of Breach of security of Confidential Information, if the Confidential Information was, or is reasonably believed to have been, acquired by an unauthorized person, the vendor shall notify the individuals identified in 4.4.2.3 immediately by telephone call plus e-mail, web form or fax; or,
 - 4.4.2.2 Within 24 hours by e-mail or fax of any **suspected** Security Incident, intrusion or unauthorized use or disclosure of Confidential Information, in violation of the underlying contract and this Notice, of potential loss of confidential data affecting the underlying contract.
 - 4.4.2.3 Notification required by the above two sections shall be provided to:

Notice of State of West Virginia Confidentiality Policies and Information Security Accountability Requirements

(1) the Agency contract manager whose contact information may be found at www.state.wv.us/admin/purchase/vrc/agencyli.htm and, (2) unless otherwise directed by the Agency in writing, the Office of Technology at incident@wv.gov.

- 4.4.2.4** The vendor shall immediately investigate such actual or suspected Security Incident, Breach, or unauthorized use or disclosure of Confidential Information. Within 72 hours of the discovery, if an actual Breach has occurred, the vendor shall notify the individuals identified in 4.4.2.3 of the following: (a) What data elements were involved and the extent of the data involved in the Breach (e.g. number of records or affected individual's data); (b) The identity of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or Confidential Information; (c) A description of where the Confidential Information is believed to have been improperly transmitted, sent, or utilized; (d) A description of the probable causes of the improper use or disclosure; and (e) Whether any Federal or State laws requiring individual notifications of Breaches are triggered.
- 4.4.2.5** Agency will coordinate with the vendor to determine additional specific actions that will be required of the vendor for mitigation of the Breach, which may include notification to the individual or other authorities.
- 4.4.2.6** All associated costs shall be borne by the vendor. This may include, but not be limited to costs associated with notifying affected individuals.
- 4.5** The State may require that a vendor provide evidence of adequate background checks, including a nationwide record search, for individuals who are entrusted by the vendor to work with State information.
- 4.6** The State requires that any vendor taking possession of State data have comprehensive policies and practices to adequately safeguard that information, and further that the sensitivity of the information is clearly identified and documented in writing, with signed acknowledgement by the vendor that the sensitivity is understood, before it is conveyed to the vendor. Vendor policy should articulate all safeguards in place for the State information, including provisions for destruction of all data, including backup copies of the data, at the end of the vendor's legitimate need to possess the data. All State-owned media containing State information will be returned to the State when no longer legitimately needed by the vendor.
- 4.7** All vendor owned devices that contain or transport any State Confidential Information must be encrypted using the AES algorithm, and an industry

**Notice of State of West Virginia
Confidentiality Policies and Information Security Accountability Requirements**

standard methodology. This includes desktop and laptop computers (whole drive encryption – not file encryption), personal digital assistants (PDA), smart phones, thumb or flash-type drives, CDs, diskettes, backup tapes, etc.

Exhibit D



CA, Inc. ("CA")
2291 Wood Oak Drive Herndon, Virginia 20171

Order Form

Effective Date of this Order Form: 3/31/2019 (Amendment Number 7)		Order Form #: 00058297.0 (When using a Purchase Order, please reference this number thereby incorporating the terms, pricing and governing contract defined herein.)	
Customer Name: WEST VIRGINIA OFFICE OF TECHNOLOGY (which may be referred to as "Customer" or "You" or "Licensee" in the referenced Governing Contract below)			Customer ID No: 4685
Customer Address: 1900 Kanawha Blvd E, Bldg 5, 10Th Floor, Charleston, WV, US, 25305-0009			
Billing Address: 1900 Kanawha Blvd E, Bldg 5, 10Th Floor, Charleston, WV, US, 25305-0009			
Billing Contact: NATALIE FAULKNER		Phone: 304-558-5914	E-mail: nfaulkner@wvadmin.gov
Shipment Address: 1900 Kanawha Blvd E, Bldg 5, 10Th Floor, Charleston, WV, US, 25305-0009			
Shipping Contact: NATALIE FAULKNER		Territory:	
Technical Contact: NATALIE FAULKNER		Phone: 304-558-5914	E-mail: nfaulkner@wvadmin.gov
Name of Governing Contract: MLA-9/25/1997, Order Form and Addendum effective April 1, 2005 (Under License Agreement 991126) and subsequent Amendments One and Two and Order Form One (Amendment Three) and Order Form Two (Amendment Four), Order Form effective March 29, 2014 (Amendment Number Five) and Order Form effective March 31, 2017 (Amendment Number Six)			For Customer Administrative Purposes Only:
Governing Contract No.: 991126			PO Required?
CA Software licensed may be subject to Specific Program Documentation ("SPD") located at: https://support.ca.com/us/licensing/license-agreements.html			PO #:

Offer Expiration

The pricing and terms offered herein expire unless Customer executes and delivers this document to CA prior to 5 PM EST on the Effective Date, however this provision shall be null and void and have no legal effect if this document is countersigned by CA.

Payment Profile (USD)

Payment Date	Total Fees Due
3/31/2019	\$229,491.29
10/1/2019	\$229,491.29

In the event Customer purchases CA Maintenance ("CA Maintenance" may also be referred to as "CA Support"), technical and customer care expertise for CA Software is available 24x7x365 from CA's self-service web portal and by telephone for Severity 1 issues, or during regular business hours by telephone for any other issue. Technical support will be provided in accordance with the overview and guidelines available on CA Support Online at: <https://support.ca.com>.



CA, Inc. ("CA")
 2291 Wood Oak Drive Herndon, Virginia 20171

Order Form

CA Mainframe Software Information (USD)

Mainframe CA Software	License Type*	Operating System	Authorized Use Limitation	Start Date**	End Date	Ship (Y/N)
CA VISION:Results	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA VISION:Sixty™	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
AllFusion® CA-Librarian® Base	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA RC/Query® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA RC/Migrator® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA RC/Update® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA RC/Secure® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA Plan Analyzer® for DB2 for z/OS MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA Report Facility for TSO MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA TPX Session Management for z/OS Plus	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA One TAPE MANAGEMENT MIPS	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N
CA InterTest for CICS for z/OS Plus	UMF	MVS	872 MIPS	3/31/2019	3/30/2020	N

*With respect to perpetual licenses, Start Date and End Date refer to the start date and end date for Support.

**If no date stated, the start date is the Effective Date of the Order Form. The dates set out in the CA Software tables shall in no way be deemed to impact or change the Effective Date of this Order Form. All amounts are exclusive of taxes which will be payable in addition to the fees listed above.

Mainframe CPU Information

As of the Effective Date of this Order Form, Customer is running the Mainframe CA Software with the Authorized Use Limitation as listed in the above grid on the following CPU(s):

Make	Model	Serial Number	Location
IBM	2828-S02	068D77	1900 Kanawha Blvd E, Bldg 5, 10Th Floor, Charleston, WV, US, 25305-0009

1. Product Deliveries

Any CA Software identified with "NO" under the heading entitled "Ship" above was previously delivered to Customer by CA and therefore will not be delivered to Customer again. Any operating system identified as "Generic", "GA", or "MULTI-PLATFORM" denotes such operating systems for which the CA Software is made generally available by CA in accordance with CA current published specifications.

2. Extension of Term

The Term of the license is hereby Extended (the "Extended Term") and shall commence on March 31, 2019 and shall expire on March 30, 2020.

3. Stabilized Products

Notwithstanding anything contained herein or in the License Agreement to the contrary, Licensee understands and acknowledges that AllFusion® CA-Librarian® Base (the "Stabilized Product") has been stabilized by CA which means that, although CA is currently providing telephone support for such Licensed Program, CA is not providing enhancements, or new releases or modifications of the Stabilized Product. Licensee agrees that CA has no obligation to provide any such enhancements, modifications or new releases and that no charge for the same has been included in the fees payable under this agreement.



Order Form

CA, Inc. ("CA")
 2291 Wood Oak Drive Herndon, Virginia 20171

4. Product Migration

- The Product(s) listed in the table below under the column "Original Product(s)" have been terminated and replaced with the Product(s) listed under the column "Migrated Product(s)".
- In consideration of the termination of the Original Product(s) licenses, CA makes available to Customer licenses of the Migrated Product(s).
- All financial obligations relating to the Original Product(s) remain valid and enforceable and are applicable to the Migrated Product(s), and
- The Migrated Product(s) are subject to the Agreement and this Order Form.

CA Contract	Original Product(s)	Original Authorized Use Limitation	Migrated Product(s)	New Authorized Use Limitation
40258143	CA InterTest for CICS	872 MIPS	CA InterTest for CICS for z/OS Plus	872 MIPS
	CA One TAPE MANAGEMENT	872 MIPS	CA One TAPE MANAGEMENT MIPS	872 MIPS
	CA Plan Analyzer® for DB2 for z/OS	872 MIPS	CA Plan Analyzer® for DB2 for z/OS MIPS	872 MIPS
	CA RC/Migrator® for DB2 for z/OS	872 MIPS	CA RC/Migrator® for DB2 for z/OS MIPS	872 MIPS
	CA RC/Query® for DB2 for z/OS	872 MIPS	CA RC/Query® for DB2 for z/OS MIPS	872 MIPS
	CA RC/Secure® for DB2 for z/OS	872 MIPS	CA RC/Secure® for DB2 for z/OS MIPS	872 MIPS
	CA RC/Update® for DB2 for z/OS	872 MIPS	CA RC/Update® for DB2 for z/OS MIPS	872 MIPS
	CA Report Facility for TSO	872 MIPS	CA Report Facility for TSO MIPS	872 MIPS
	CA TPX Session Management Extended Package	872 MIPS	CA TPX Session Management for z/OS Plus	872 MIPS

5. Termination for Convenience

The following clause hereby amends the referenced master and applies to all pre-existing transactions currently in place between the parties.

Customer may terminate this Agreement together with each and all Transaction Documents in effect as of the date of termination (collectively, the Agreement), without cause and without further charge or expense at any time, immediately upon written notice to CA sent to usagereporting@ca.com. On or after the termination date, with the exception of any fully paid-up perpetual licenses if the termination is effective after the initial Term, Customer must either: a) delete all full or partial copies of the Software from all computing or storage equipment and verify such deletion in a statement signed by a Vice-President or a duly authorized representative and sent to usagereporting@ca.com, or b) return to CA all full or partial copies of the Software. Once Customer's verification or the Software copies are received, CA will pay Customer a pro-rata refund of any License, SaaS, and/or Support fees Customer pre-paid (Refund Fees) in accordance with the paragraph below. Refund Fees will be calculated on the number of months remaining in the Term of the applicable Transaction Document. If the Software is licensed under a Perpetual License, Customer will receive a pro-rated refund of the License Fee only if notice of termination is issued during the initial Term of the applicable Transaction Document.

If the Agreement is terminated without cause, neither party shall have further obligations under the Agreement, except that the parties shall remain bound by the Confidentiality obligations in the Agreement, Refund Fees will be paid within sixty (60) days from the termination date, and any unpaid fees reflecting the Services (defined as software license, SaaS, maintenance and professional services for purposes of this section) delivered prior to the termination date plus any reasonable charges having resulted from the termination shall become immediately due.

6. Renewal

This Agreement shall be automatically renewed for successive one (1) year terms thereafter (each a Renewal Term) until and unless either Party provides the other Party with written notice of non-renewal forty-five (45) days prior to the end of the Initial Term or the Renewal Term. CA will invoice Customer at least thirty (30) days prior to the expiration of the Initial Term or the Renewal Term.

7. Authorized Signatory Clause

The undersigned hereby certifies that he/she is authorized to bind the government agency identified herein to the terms and conditions of this agreement.

8. Limiting Liability



Order Form

CA, Inc. ("CA")
2291 Wood Oak Drive Herndon, Virginia 20171

EXCEPT IN THE CASE OF A BREACH OF TITLE, INFRINGEMENT OF CA'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY, AND OF THIRD PARTY CLAIMS ARISING UNDER THE INDEMNIFICATION SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW NEITHER PARTY (INCLUDING ANY OF CA'S SUPPLIERS) SHALL BE LIABLE FOR A) ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY NATURE, INCLUDING, BUT NOT NECESSARILY LIMITED TO, LOSS OF PROFIT, DAMAGES RELATING TO MONIES SAVED OR FEES GENERATED AND OR ANY LOSS OF DATA BY USE OF ANY CA OFFERING, REGARDLESS OF WHETHER A PARTY WAS APPRISED OF THE POTENTIAL FOR SUCH DAMAGES; AND B) IN NO EVENT WILL A PARTY'S LIABILITY, EXCEED THE FEES PAID AND OR OWED FOR THE PRODUCT OR SERVICE THAT GAVE RISE TO THE BREACH.

Entire Agreement

This document, and any applicable exhibits or referenced Governing Contract and applicable supplementary terms as defined herein constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. No term or condition contained in Customer's purchase order or similar document will apply unless agreed upon hereunder, even if CA has accepted the order set forth in such purchase order, and all such terms or conditions are otherwise hereby expressly rejected by CA. No modification or claimed waiver of any provision herein shall be valid except by written amendment signed by authorized representatives of Customer and CA.

WEST VIRGINIA OFFICE OF TECHNOLOGY

CA, Inc.

Signature:

Signature:

DocuSigned by:

21802DA0353A464

Name: Justin T. McAllister CFO

Name:

Lisa Kiefer

Title:

CFO

Title:

Principal, Sales Accounting

Date:

4-24-19

Date:

March 29, 2019 | 1:07 PM EDT

Information Security Practices

Protecting Customer Data



A message to our Customers/ A message from our Chief Information Security Officer

CA Technologies recently celebrated its 40th birthday. Few technology companies have had the good fortune of making it through a decade, let alone four, and for that we thank our customers for continuing to put their business and trust in CA. It is a responsibility we do not take lightly, and one we have embedded in every aspect of our culture. Just this year, our CEO Mike Gregoire rolled out a new culture Mission that is entirely focused on you, your experience with CA, and your goals. When you win, we win.

In the era of the Application Economy, your data has become more than just a part of your business, it has become the cornerstone, and one that is constantly under attack. Every day we hear about a cybersecurity breach, hack, or troubling misuse of information. Taking measures to protect and secure your data is something CA has done for years, but we want our customers to know and understand how robust our practices are. CA is fully committed to protecting your data and information as if it were our own.

Our information security program is a holistic approach that considers every aspect of how we may store, collect, access, or touch your data. From engineering to finance, every person at CA plays a role. This document outlines the policies, procedures, and physical and technical safeguards we have implemented to achieve this. We are proud of what we do, but we are always working to make it better, faster, and more secure. As always, we thank you for our business, and look forward to another 40+ years of being the technology company you trust.

Securely Yours,

A handwritten signature in black ink, appearing to read 'David Billeter', with a long horizontal flourish extending to the right.

David Billeter

Chief Information Security Officer (CISO)

I. SECURITY BY DESIGN

a. Secure Code Development

All CA developers are required to follow CA's Product Securability Policy and Procedure which provides for securability standards, strategies, and tactics for each phase of the product development lifecycle informed and consistent with industry best practices. The procedure requires product classification based on risk rankings determined by use cases, application of static code analysis tools, and penetration testing.

b. Secure Code Release

Prior to release of any product to CA's Customers, antivirus/antimalware scanning is performed, and based on the risk profile additional penetration testing may be performed. Any identified vulnerabilities are tracked in the central CA defect tracking system together with an associated risk rating and are not approved by the Securability Center of Excellence unless remediated. Vulnerabilities are ranked using the Common Vulnerability Scoring System (CVSS) in accordance with the NIST Framework to determine their severity and response.

II. HOW A CUSTOMER'S DATA COMES INTO CA AND ITS PROTECTION

a. Access to Customer Data

CA may obtain Customer data in a number of ways, including, through a support ticket, services engagements, or the use of a CA SaaS offering. All files submitted by our customers, regardless of how acquired, is categorized as "Highly Confidential Data" requiring the highest degree of protection. In the event CA's professional services team is required to be at a Customer's facility, such individuals are prohibited from downloading any Customer data to their devices and removing them from the Customer's facility.

b. Physical Security

CA maintains and administers the following physical access controls:

- Employees and contractors are subject to background checks prior to being offered employment or given access to CA's facilities and systems.
- All facilities require badge access for employees and contractors and intrusion detection alarms at ingress and egress points. Visitor access must be logged in a physical access log and visitors are escorted through restricted areas in the facility.

- All data centers where Customer data is processed or stored are further protected by security guards and monitoring cameras (e.g., CCTVs) 24/7.

c. CA Authorized User Names, Passwords and Authentication

CA monitors access rights to ensure access adheres to the least privilege principle commensurate with the CA's user's job responsibilities, logs all access and security events, and uses software that enables rapid analysis of user activities.

CA's passwords are administered in the following manner:

- Passwords are communicated separately from user IDs
- Passwords are not shared
- Initial password generation is random
- Initial password change is required
- Passwords must have minimum length and complexity and must be changed on a regular interval without reuse of recent previous passwords
- CA passwords are encrypted and passwords are never recoverable and can only be securely reset.

III. Enterprise Role-Based Access

The logical access procedures define the request, approval, access provisioning and de-provisioning processes. The logical access procedures restrict user access (local or remote) based on user job function for applications and databases (role/profile based appropriate access) for applications, databases and systems to ensure segregation of duties and are reviewed, administered, and documented based on on-boarding, resource re-assignment or separation. User access reviews are performed to ensure access is appropriate throughout the year.

All CA system administrators are authenticated using multi-factor authentication for system access through privileged access management. In addition, the use of privileged access management enables all system admin sessions and console access to be recorded and CA records all such sessions and access for audit and forensic purposes.

For Customer data entered via a CA SaaS Offering, CA database administrators (DBAs) may be required to access Customer data in the course of various technical operations. Default DBA accounts in the database are expired and locked except when the account is required to be used by the DBA to complete their job. Database access is granted upon formal authorization through a ticket and access is granted only to authorized personnel based on job responsibilities registered in an Active Directory. Where it is not feasible to lock the DBA account, passwords are changed for each access request. All database accesses

are logged. Employees' user access accounts are reviewed on a quarterly basis. Access account reports are generated by a Security Analyst and sent to managers for review and approval. This review and approval are documented in a CA support ticket where any discrepancies and resolutions, if any are listed.

IV. HOW IS DATA TRANSMITTED? NETWORK SECURITY MANAGEMENT

a. Network Controls

CA utilizes firewalls for access control between CA's networks and the Internet. Firewall access is restricted to a small set of super users/administrators with appropriate approvals. Firewalls are established with minimum rights necessary to accomplish tasks by role and access is authorized on a "deny by default" policy.

Periodic network vulnerability scans are performed and any critical vulnerabilities identified are promptly remediated. In addition, penetration tests are also performed by security professionals, both CA employees and third parties.

b. Network/Communication Security Policy/Encryption

Defined Access Control Lists (ACLs) to restrict traffic on routers and/or firewalls are reviewed and approved by network administrators. IP addresses in the ACLs are specific and anonymous connections are prohibited.

Customer data is encrypted while in transit over any public network or wireless network (wireless networks are not used in SaaS Offerings) via CA's Secure File Transfer Protocol (SFTP) to transmit flat files.

CA utilizes an information protection and control solution that is designed and administered to minimize the accidental, negligent and malicious misuse of data through email and other communications aimed outside of CA's firewalls (e.g., a data loss prevention (DLP) solution).

[remainder of page intentionally left blank]

c. Remote Access Administration

The following remote access settings are applicable:

- Unauthorized remote connections from devices (e.g., modems) are disabled as part of standard configuration.
- The data flow in the remote connection is encrypted and multi-factor authentication is utilized during the login process.
- Remote connection settings limit the ability of remote users to access both initiating network and remote network simultaneously (no split tunneling).

d. Third Party Remote Access

Dependent third party service provider (i.e., subcontractor) remote access adheres to the same or similar controls, and any subcontractor remote access has valid business justification.

e. Removable Media

Removable media is not in use for the delivery of CA Technologies SaaS offerings. In addition, all laptops and other removable media on which Customer data is stored, such as backup tapes, are encrypted.

V. AUDITS OF CONTROLS AND CERTIFICATIONS

The respective audit criteria (e.g., PCI, SSAE 16 SOC 1, TYPE 2) followed by third party auditors inspecting CA's security practices with regard to SaaS offerings along with summary reports of the auditors can be found at: <http://www.ca.com/us/lpg/saas-summary-audit-report.aspx>. In addition, CA's internal data centers, those which may house Customer data received through support or services interactions, are ISO/IEC 20000 for IT service management and ISO/IEC 27001 for security controls certified.

VI. SECURITY INCIDENTS

CA maintains a highly confidential cybersecurity Incident Response Plan designed to identify, categorize, remove, and remediate cybersecurity incidents. The Plan is reviewed bi-monthly with annual tabletop exercises. The mission of the CA Technologies Cybersecurity Operations is to prepare the organization to identify and respond to information security threats and incidents while containing and restoring normal service operations as quickly and effectively as possible.

In the event CA discovers a security incident, CA has the following target response and remediation time lines:

Severity Level	Description	Examples	Target Response	Target Remediation/ Escalation
1	Incidents that have a severe impact on CA Technologies or its customers' business or services	<ul style="list-style-type: none"> • Malicious code attacks • Unauthorized access • Denial of Service (DoS) affecting an entire campus • Compromise of host with sensitive data, including Sensitive Personal Data 	1 Hour	2 Hours
2	Incidents that have a significant impact, or the potential to have a severe impact on CA Technologies or its customers' business or services	<ul style="list-style-type: none"> • Attempts to gain unauthorized access • DOS attack affecting a building or department • Open mail relay 	4 Hours	1 Business Day
3	Incidents that have a minimal impact with the potential for significant or severe impact on CA Technologies or its customers' business or services	<ul style="list-style-type: none"> • Unauthorized network probes or system scans • Isolated virus infections 	1 Business Day	2 Business Days
4	Incidents that have a minimal impact with no potential for significant or severe impact on CA Technologies or its customers' business or services	<ul style="list-style-type: none"> • Improper Usage, • Unauthorized software (non-malicious) • Policy Violations 	2+ Business Days	2+ Business Days

VII. COMPLIANCE WITH DATA PRIVACY LAWS

- a. CA Technologies' Privacy Statement is posted on our website (www.ca.com/us/privacy), and local websites in other countries, and describes how

- CA Technologies uses personally identifiable information that it collects on the website as well as data collected off-line.
- b. CA Technologies implements processes designed to ensure that we comply with all applicable data privacy and security laws in the US and in all countries in which we do business, including breach notification laws, state and federal privacy-related legislation, and national laws.
 - c. CA Technologies has several internal Privacy Policies, including an HR Privacy Policy and a Privacy and Data Protection Policy, which mirrors the EU Data Privacy requirements.
 - d. CA Technologies also maintains a Policy that specifically addresses the handling of customer data and a Written Information Security Plan (WISP) in compliance with the Massachusetts information security regulations and other US laws.
 - e. In September of 2016, CA self-certified to the EU-US Privacy Shield framework which was designed by the U.S. Department of Commerce and European Commission to provide global companies with a mechanism to comply with EU data protection requirements when transferring personal data from the European Union to the United States in support of transatlantic commerce. In April of 2017, CA self-certified to the Swiss-US Privacy Shield framework. CA's participation in the Privacy Shield means that CA and its U.S. subsidiaries have agreed to comply with the Privacy Shield Framework regarding the collection, use, and retention of EU and Swiss personal data that it uses as a data processor. To learn more about the Privacy Shield Framework, and to view CA's certification page, please visit <https://www.privacyshield.gov/>.
 - f. CA Technologies also holds Binding Corporate Rules for Controllers and this is our method for transferring data globally as a data controller http://ec.europa.eu/justice/data-protection/international-transfers/binding-corporate-rules/bcr_cooperation/index_en.htm.
 - g. In addition, CA Technologies has prepared a downloadable data processing agreement (DPA) setting out CA's commitment to privacy and data protection when processing customer data in connection with the provision of products and services to our customers and partners. This DPA also covers with the transfer of personal data outside of the European Economic Area and Switzerland in connection with the provision of such products and services. The DPA can be found at www.ca.com/us/data-transfers.aspx. If you have any questions, please feel free to send an email to datatransfers@ca.com.

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 San Jose, CA, US, 95131

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Quote Number:	CPQ-315553	If issuing a PO, please ensure Quote # is referenced.	Quote Expiration Date:	May 31, 2020
Version:	1			

CA Contact Information:

Name:	David Long	Phone Number:	+1 (916) 635 9006	E-mail:	David.Long@broadcom.com
Title:	FSE				

Effective Date of this RENO	Mar 31, 2020				
Customer Name	WEST VIRGINIA DEPARTMENT OF ADMINISTRATION - OFFICE OF TECHNOLOGY	Customer ID No:	5224245		
Customer Address	1900 Kanawha Blvd E Charleston WV 25305-0009 US				
Billing Address:	1900 Kanawha Blvd E Charleston WV 25305-0009 US				
Billing Contact:	NATALIE FAULKNER	E-mail:	Natalie.W.Faulkner@wv.gov		
Shipment Address:	1900 Kanawha Blvd E Bldg 5, 10Th Floor Charleston WV25305-0009 US				
Shipping Contact:	NATALIE FAULKNER	E-mail:	Natalie.W.Faulkner@wv.gov		
PO # :					
EMEA Only Territory					

Renewal Table(s):

Mainframe CA Software

CA Contract No	Product Code	Product Name	Authorized Use Limitation	License Type	Start Date	End Date
40299724	CA1BSM002	CA 1 TAPE MANAGEMENT MIPS	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	VSNSIX002	CA VISION:Sixty	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	LIBBAS002	AllFusion CA-Librarian Base	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	RCQBSM002	CA RC/Query for DB2 for z/OS MIPS	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	RCMBSM002	CA RC/Migrator for DB2 for z/OS MIPS	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	RCUBSM002	CA RC/Update for DB2 for z/OS MIPS	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	RCSBSM002	CA RC/Secure for DB2 for z/OS MIPS	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	PLABSM002	CA Plan Analyzer for DB2 for z/OS MIPS	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	RFTBSM002	CA Report Facility for TSO MIPS	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	INTCPC002	CA InterTest for CICS for z/OS Plus	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	VSNRES002	CA VISION:Results	872 MIPS	UMF	March 31, 2020	March 30, 2021
40299724	TPXSM002	CA TPX Session Management for z/OS Plus	872 MIPS	UMF	March 31, 2020	March 30, 2021

 Payment-Schedule **USD** (tax not included):

Due Date	Due Amount
Mar 31, 2020	\$506,258.00
Quote Total	\$506,258.00

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All payment amounts are hereby committed through the Renewal Period defined below.

Renewal Period: Mar 31, 2020 through Mar 30, 2021

The renewal of the usage and maintenance / subscription / maintenance for the CA Software and/or SaaS ("CA Offering") listed in this RENO will be governed by the underlying license agreement, order form(s) and additional terms and conditions that currently govern the license to such CA Offering. If the underlying end user license agreement is no longer valid or referenceable for this renewal, the terms of the Online Foundation Agreement and applicable Module located at: <https://broadcom.com/licensing>, and the Specific Program Documentation (the "SPD") applicable to the CA Software and Maintenance and/or CA SaaS Listing, located at CA's website address at <https://broadcom.com/licensing> shall apply (the applicable license agreement is referred to as the "Agreement"). Terms of use governing your use of CA Support are available at: <https://casupport.broadcom.com/>, and/or in the CA SaaS Listing applicable to the CA SaaS, located at CA's website address at <https://broadcom.com/licensing>. All fees hereunder shall be due and payable thirty (30) days from invoice date unless otherwise stated in the Agreement.

Customer's use of the CA Software and/or SaaS ("CA Offering") shall be subject to (a) the contents of this Product Renewal Notification, (b) the Specific Program Documentation (the "SPD") applicable to the CA Software and Maintenance and/or CA SaaS Listing, located at CA's website address at <https://broadcom.com/licensing>, and (c) terms of the Online Foundation Agreement and applicable Module located at: <https://broadcom.com/licensing> (collectively the "Agreement"). Terms of use governing your use of CA Support are available at: <https://casupport.broadcom.com/> and/or in the CA SaaS Listing applicable to the CA SaaS, located at CA's website address at <https://broadcom.com/licensing>. In the event payment terms are not a part of your CA license, the following shall apply: "All payments shall be made without deduction or set off and are due thirty (30) days from receipt of CA's invoice. Customer agrees to pay any applicable VAT, GST, sales tax, and any other applicable taxes (collectively the Taxes) in addition to the fees when such payments are due. CA may charge interest of one percent (1%) per month compounded for the entire overdue period or the maximum amount allowed by law unless Customer has a bona fide dispute supported by written explanation. If Customer's account is sixty (60) days or more overdue, CA reserves the right with prior written notice to withhold performance of its obligations under the Agreement, without liability, until such amounts are paid in full. All fees are non-cancellable and non-refundable unless a pro-rated refund applies as provided in the applicable Module."

If Customer requires a purchase order ("PO") to be issued in order to comply with the payment terms of the Agreement, Customer shall issue and provide CA a PO for either: (1) the full term and total fees that are due or (2) individual POs based on the Payment Schedule table set forth above to cover the full term, contemporaneously with the execution of this Transaction Document or as soon as practicable thereafter.

If Customer does not require a PO as noted above, Customer hereby certifies that no purchase order is required in order for Customer to comply with the payment terms set forth in the Agreement.

Failure to timely remit payment of all amounts set forth in the Payment Schedule shall immediately and without notice, to the full extent permitted by applicable law, relieve CA of any and all support obligations hereunder and all Customer subscription use rights shall be suspended until payment is tendered at which time use rights shall recommence and after payment of a twenty percent (20%) reinstatement fee support services shall also recommence.

Purchase Order Requirement	
Yes	
No	

If Customer requires a purchase order ("PO") to be issued in order to comply with the payment terms of the Agreement, Customer shall issue and provide CA a PO for either: (1) the full term and total fees that are due or (2) individual POs based on the Payment Schedule table set forth above to cover the full term, the first of which must be provided contemporaneously with the execution of this Transaction Document or as soon as practicable thereafter. Subsequent POs must be provided prior to the payment dates set forth in the Payment Profile table.

If Customer does not require a PO as noted above, Customer hereby certifies that no purchase order is required in order for Customer to comply with the payment terms set forth in the Agreement.

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Failure to timely remit payment of all amounts set forth in the Payment Schedule shall, immediately and without notice, to the maximum extent permitted by applicable law and the Governing Agreement, relieve CA of any and all support obligations hereunder and all Customer subscription use rights shall be suspended until payment is tendered at which time use rights shall recommence and after payment of a twenty percent (20%) reinstatement fee support services shall also recommence.

Check box if applicable:

Please cancel maintenance/license for the following contract numbers(s):
Please furnish cancellation reason.

Please fill here:

Data Privacy

In the event CA is acting as a data processor for Customer under the GDPR, CA's processing shall be subject to and in accordance with CA's global Data Processing Addendum <https://www.broadcom.com/company/legal/ca/data-transfers?intcmp=footernavhttps://casupport.broadcom.com/> ("DPA"). Where Customer and CA have already entered into a data processing agreement or addendum, this shall continue to govern such activity.

Annual Fee Increase

During the Term, CA may increase the fees hereunder for the Licensed Software up to 10% annually by providing Customer with advance notice including through pricing notices posted at CA support site no less than 90 days prior to such changes taking place but in no event will CA purport to effect a price change while in any particular calendar year (i.e., price changes will only be effective on January 1 of the year following that in which notice was provided).

Termination for Convenience

Customer may terminate this Agreement as well as any and all other agreements under which Customer may procure any CA offering in whole or in part together with each and all Transaction Documents (or any order forms or other ordering documents) in effect as of the date of termination (collectively, the Agreement), without cause and without further charge or expense at any time, immediately upon written notice to CA sent to usage.reporting@broadcom.com. On or after the termination date, with the exception of any fully paid-up perpetual licenses if the termination is effective after the initial Term, Customer must either: a) delete all full or partial copies of the Software from all computing or storage equipment and verify such deletion in a statement signed by a Vice-President or a duly authorized representative and sent to usage.reporting@broadcom.com, or b) return to CA all full or partial copies of the Software. Once Customer's verification or the Software copies are received, CA will pay Customer a pro-rata refund of any License, SaaS, and/or Support fees Customer pre-paid (Refund Fees) in accordance with the paragraph below. Refund Fees will be calculated on the number of months remaining in the Term of the applicable Transaction Document. If the Software is licensed under a Perpetual License, Customer will receive a pro-rated refund of the License Fee only if notice of termination is issued during the initial Term of the applicable Transaction Document. If the Agreement is terminated without cause, neither party shall have further obligations under the Agreement, except that the parties shall remain bound by the Confidentiality obligations in the Agreement, Refund Fees will be paid within sixty (60) days from the termination date, and any unpaid fees reflecting the Services (defined as may be applicable: software license, SaaS, maintenance and professional services for purposes of this section) delivered prior to the termination date shall become immediately due.

This RENO and the Agreement along with any other referenced documents, is the entire agreement of the parties regarding the subject matter herein. Any terms and conditions in a purchase order shall not apply. In the event of conflict between the terms in this RENO and the terms of any previous agreement, the terms of this RENO shall prevail as to the subject matter herein.

Please sign and return by fax or email to your CA Contact.

Authorized Signature : _____

Date : _____

Print Name : _____

Title : _____

1320 Ridder Park Drive,
San Jose, CA, US, 95131

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Customer Name : WEST VIRGINIA DEPARTMENT OF ADMINISTRATION - OFFICE OF TECHNOLOGY