

Request for Bid	 <p style="text-align: center;">Marshall University Office of Purchasing One John Marshall Drive Huntington, WV 25755-4100 Direct all inquiries regarding this order to: (304) 696-3157</p>	Bid # EMCUNITY
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Vendor:	For information call:
Phone:	Buyer: Tracey Brown-Dolinski browndolinsk@marshall.edu and purchasing@marshall.edu
FEIN/SSN:	Phone: (304) 696-3157

Sealed requests to bid for furnishing the supplies, equipment or services described below will be received by the Institution. TO RECEIVE CONSIDERATION FOR AWARD, THE BID WILL BE SUBMITTED IN BONFIRE, SIGNED, AND RECEIVED ON OR BEFORE THE DATE AND TIME SHOWN FOR THE BID OPENING. Prices will be based on units specified. Bidders will enter the delivery date or time for each item contained herein. The Institution reserves the right to accept or reject bids on each item separately or as a whole, to reject any or all bids, to waive informalities or irregularities and to contract as the best interests of the Institution may require. BIDS ARE SUBJECT TO THE GENERAL TERMS AND CONDITIONS AS PRINTED ON THE REVERSE SIDE HEREOF AND AS SET FORTH HEREIN.

DATE 02/18/2020	DELIVERY IS REQUIRED NO LATER THAN	DEPARTMENT REQUISITION NO.	QUOTE OPENS: 3:00 PM on March 10, 2020	BIDDER MUST ENTER DELIVERY DATE FOR EACH ITEM BID
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Item #	Quantity	Description	Unit Price	Extended Price
		<p>Marshall University will accept sealed bids for the following items and services until 3:00 pm on March 10, 2020. At that time, quotations will be opened and recorded in Room 125, Old Main Building, Huntington, WV 25755.</p> <p style="text-align: center;">Dell EMC Unity</p> <p style="text-align: center;">(No Substitutions)</p>		

Total

To the Office of Purchasing,
In compliance with the above, the undersigned offers and agrees, if this offer is accepted within _____ calendar days (30 calendar days (unless a different period is inserted by the purchaser) from the bid opening date, specified above, to furnish any or all items upon which prices are offered, at the price set opposite each item, delivered at the designated point(s), within the time specified.

Bidder's guarantees shipment from _____ within _____ days	Bidder's name Vendor) _____
FOB _____ After receipt of order at address shown	Title _____
Terms _____	Signed By _____
	Typed Name _____
	Street Address _____
	City/State/Zip _____
	Date: _____ Phone _____
	Fein: _____

INSTRUCTIONS TO VENDORS

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

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

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

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

A **NON-MANDATORY** pre-bid meeting will be held at the following place and time:

A **MANDATORY** pre-bid meeting will be held at the following place and time:

All Vendors submitting a written bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No person attending the pre-bid meeting may represent more than one (1) Vendor.

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

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

INSTRUCTIONS TO VENDORS

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

If possible, questions submitted at least five (5) business days prior to a scheduled pre-bid meeting will be discussed at the pre-bid meeting. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

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

Submissions should include solicitation number in the subject line.

Question Submission Deadline (date and time): February 28, 2020 at 9:00am

Submit Questions to: Tracey Brown-Dolinski
Old Main 125
One John Marshall Drive
Huntington, WV 25755
Fax: (304) 696-3333 (Vendors should not use this fax number for bid submission)
Email: browndolinsk@marshall.edu

- 5. VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Marshall University Office of Purchasing is binding.
- 6. BID SUBMISSION:** All bids must be submitted electronically through Bonfire™ or signed and delivered by the Vendor to the Marshall University Office of Purchasing at the address listed above on or before the date and time of the bid opening. Any bid received by the Office of Purchasing staff is in the possession of the Office of Purchasing and will not be returned for any reason.

The Office of Purchasing will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via Bonfire™, hand delivery, or delivery by courier.

Please see Attachment B for instructions on submitting bonds through Bonfire™.

INSTRUCTIONS TO VENDORS

A bid that is not submitted electronically through Bonfire™ should contain the information listed below on the face of the envelope or the bid may be rejected by the University.

SEALED BID: EMCUNITY

CONTACT: Tracey Brown-Dolinski

SOLICITATION NAME: Dell EMC Unity

SOLICITATION CLOSING DATE: March 10, 2020

SOLICITATION CLOSING TIME: 3:00 pm

- 7. BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by Bonfire™ (in the case of electronic submission), when the bid is delivered via mail or courier and time stamped by the official Marshall University Office of Purchasing's time clock or when the bid is delivered and is time stamped by the official Marshall University Office of Purchasing's time clock.

Bid Opening Date and Time: Tuesday, March 10, 2020

Bid Opening Location: Marshall University Office of Purchasing
Old Main 125
One John Marshall Drive
Huntington, WV 25755

- 8. ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official addendum issued by the University. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.
- 9. BID FORMATTING:** Vendor should type or electronically enter the information onto its written bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

INSTRUCTIONS TO VENDORS

- 10. ALTERNATES:** Any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or Vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the University at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
- 11. EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.
- 12. COMMUNICATION LIMITATIONS:** In accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, communication with Marshall University or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the Marshall University Office of Purchasing, is strictly prohibited without prior Office of Purchasing approval for such communication.
- 13. REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the registration fee, if applicable.
- 14. UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.
- 15. PREFERENCE:** Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and should include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at:
<http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.
- 15A. RECIPROCAL PREFERENCE:** The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, if reciprocal preference is requested by a West Virginia resident vendor, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. A request form to help facilitate the request can be found at:
<http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

INSTRUCTIONS TO VENDORS

- 16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
- 17. WAIVER OF MINOR IRREGULARITIES:** The Chief Procurement Officer reserves the right to waive minor irregularities in bids or specifications in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy.
- 18. ELECTRONIC FILE ACCESS RESTRICTIONS:** Vendor must ensure that its submission in Bonfire™ can be accessed and viewed by the University staff immediately upon bid opening. The University will consider any file that cannot be immediately access and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and therefore unacceptable. A Vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or removed access restrictions to allow the University to print or electronically save documents provided that those documents are viewable by the University prior to obtaining the password or removing the access restriction.
- 19. NON-RESPONSIBLE:** The Chief Procurement Officer reserves the right to reject the bid of any Vendor as Non-Responsible in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, when the Chief Procurement Officer determines that the Vendor submitting the bid does not have the capability to fully perform or lacks the integrity and reliability to assure good-faith performance.
- 20. NON-RESPONSIVE:** The Chief Procurement Officer reserves the right to reject the bid of any Vendor as Non-Responsive in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, when the Chief Procurement Officer determines that the Vendor submitting the bid does not conform to the mandatory or essential requirements contained in the solicitation.
- 21. ACCEPTANCE/REJECTION:** The University may accept or reject any bid in whole, or in part in accordance with Marshall University Board of Governors Policy No. FA-9 Purchasing Policy.

INSTRUCTIONS TO VENDORS

22. 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 Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, §5-22-1 et seq., §5G-1-1 et seq., and the West Virginia Freedom of Information Act in W. Va. Code § 29B-1-1 et seq.

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

Submission of any bid, proposal, or other document to the Marshall University Office of Purchasing constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The University may 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 W. Va. Code § 47-22-1 et seq. and subject to W. Va. Code 29B-1-4(a) (1). All submissions are subject to public disclosure without notice.

23. PURCHASING AFFIDAVIT: The University is prohibited from awarding a contract to any bidder that owes a debt to the State or political subdivision of the State. Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Marshall University Office of Purchasing affirming under oath that it is not in default on any monetary obligation owed to the State or a political subdivision of the State.
<http://www.state.wv.us/admin/purchase/vrc/pAffidavit.pdf>

24. INTERESTED PARTY DISCLOSURE: West Virginia Code § 6D-1-4 requires that the vendor submit to the Marshall University Office of Purchasing a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.
http://www.state.wv.us/admin/purchase/VRC/Ethics_DisclosureInterestedParties_2018.pdf

25. WITH THE BID REQUIREMENTS: In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the Chief Procurement Officer reserves the right to request those items after bid opening and prior to contract award pursuant to the authority to waive minor irregularities in bids or specifications under Marshall University Board of Governors Policy No. FA-9 Purchasing Policy. This authority does not apply to instances where state law mandates receipt with the bid.

MARSHALL UNIVERSITY

GENERAL TERMS AND CONDITIONS

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document constitutes acceptance of this contract (the Contract) made by and between Marshall University (University or Marshall) and the Vendor. Vendor's signature to the Contract signifies Vendor's agreement to be bound by and accept the terms and conditions contained in the Contract. Therefore, the parties agree that the following contractual terms and conditions are dominant over any competing terms made a part of the Contract. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THESE GENERAL TERMS AND CONDITIONS, THESE GENERAL TERMS AND CONDITIONS SHALL CONTROL**

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, if applicable, included with the Solicitation/Contract.

2.1 "Award Document" means the document that identifies the Vendor as the Contract holder when signed by the Vendor and Marshall University's Office of Purchasing and, when necessary, approved as to form by the Attorney General.

2.2 "Bid" or "Proposal" means the Vendor's verbal bid or written bid provided in response to a solicitation by the University.

2.3 "Board" means the Governing Board of Marshall University.

2.4 "Buyer" means an individual designated by a Chief Procurement Officer to perform designated purchasing and acquisition functions as authorized by the Chief Procurement Officer.

2.5 "Chief Procurement Officer" means the individual designated by the President of Marshall University to manage, oversee and direct the purchasing and acquisition of supplies, equipment, services, and printing for the University.

2.6 "Contract" means the binding agreement that is entered between the University and the Vendor to provide requested goods and/or services requested in the Solicitation.

2.7 "Governing Board" means the Marshall University Board of Governors as provided for in the West Virginia state code.

2.8 "Higher Education Institution" means an institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended.

2.9 "Office of Purchasing" means the section within Marshall University headed by the Chief Procurement Officer and its personnel.

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2.10 "Purchasing Card" or "P-Card" means 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.

2.11 "Responsible Bidder" and "Responsible Vendor" mean a person and/or vendor who have the capability in all respects to perform contract requirements, and the integrity and reliability which will assure good faith performance.

2.12 "Responsive Bidder" and "Responsive Vendor" mean a person and/or a vendor who has submitted a bid which conforms in all material respects to the invitation to bid.

2.13 "Solicitation" means the notice of an opportunity to supply the University with goods and services.

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

2.15 "University" means Marshall University or Marshall.

2.16 "Vendor" or "Vendors" means any entity providing either a verbal or written 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.

2.17 "Will", "Shall" and "Must" identifies a mandatory item or requirement that concludes the duty, obligation or requirement imposed is mandatory, as opposed to being directory or permissive.

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

Term Contract

Initial Contract Term: The Contract becomes effective on _____ and extends for a period of _____ year(s).

Renewal Term: The Contract may be renewed upon the mutual written consent of the University and the Vendor. Any request for renewal should be submitted to the University thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of the Contract is limited to _____ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of the Contract is prohibited.

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Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period form term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.

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 and Agency.

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

Fixed Period Contract with Renewals: The Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract must be completed within ___ days. Upon completion, the Vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ successive one-year periods or multiple periods of less than one year provided that the multiple renewal periods do not exceed _ months in total.

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

Other: See appendix 1.

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

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

Open End Contract: Quantities stated in the solicitation are approximations only, based on estimates supplied by the University. It is understood and agreed that the Contract shall cover the quantities 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.

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- One-Time Purchase:** The 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 the Contract without an appropriate change order approved by the Vendor, University, and/or when necessary, the Attorney General's office.

6. EMERGENCY PURCHASES: The Chief Procurement Officer may suspend the use of a university wide mandatory contract (the University's Office of Purchasing has created standard specifications that are establish University wide contracts for commonly used commodities and services that are needed on a repetitive basis), or the competitive bidding process to allow a Department to purchase goods or services in the open market if 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, provided that a required University emergency purchase with another vendor does not cause a breach of contract.

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

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

- LABOR/MATERIAL PAYMENT BOND:** The 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 Marshall University Office of Purchasing Office prior to Contract award.

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

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

INSERT ADDITIONAL CONDITIONS BELOW:

- Proof authorized Dell Partner
- Proof authorized Dell Distributor

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications prior to Contract award regardless whether that requirement is listed above.

8. INSURANCE: The Vendor shall furnish proof of the insurance identified by a checkmark below prior to Contract award. Subsequent to contract award, and prior to the insurance expiration date, Vendor shall provide the University with proof that the insurance mandated herein has been continued. Vendor must also provide with immediate notice of any changes in its insurance policies mandated herein, including but not limited to, policy cancelation, policy reduction, or change in insurers. The insurance coverages identified below must be maintained throughout the life of the contract. The Vendor shall also furnish proof of any additional insurance requirements prior to the Contract award regardless of whether that insurance requirement is listed in this section.

Any provisions requiring the University to maintain any type of insurance for either of its or the Vendors benefit is deleted.

Vendor must maintain:

- Commercial General Liability Insurance** in at least an amount of: 1,000,000 per occurrence and an aggregate of 2,000,000.
- Automobile Liability Insurance** in at least an amount of: _____ per occurrence and an aggregate of _____.
- Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence and an aggregate of _____.
- Commercial Crime and Third-Party Fidelity Insurance** in an amount of: _____ per occurrence and an aggregate of _____.
- Cyber Liability Insurance** in an amount of: 5,000,000 per occurrence and an aggregate of 5,000,000. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in performance of the Contract and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
- Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract. _____ per occurrence and an aggregate of _____.

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

10. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the University'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

11. ACCEPTANCE: Vendor's signature on the certification and signature page, constitutes an offer to the University that cannot be unilaterally withdrawn, signifies that the product or service proposed by Vendor meets the mandatory requirements for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions unless otherwise indicated.

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

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

15. PAYMENT METHODS: The Vendor must accept payment by electronic funds transfer or P-Card for payment of all orders under this Contract unless the box below is checked.

Vendor is not required to accept the State of West Virginia's P-Card or by electronic funds transfer as payment for all goods and services for the reason(s) stated below:

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16. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract. Any references contained in the Contract, Vendor's bid, or in any American Institute of Architects documents obligating the University to pay to compensate Vendor, in whole or in part, for lost profit, pay a termination fee, pay liquidated damages if the Contract is terminated early, seeking to accelerate payments in the event of Contract termination, default, or non-funding, costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is hereby deleted. Any language imposing and interest or charges due to late payment is deleted.

17. 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.

18. 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.

19. LIMITING LIABILITY: Any language limiting the Vendor's liability for direct damages is deleted.

20. TAXES: The Vendor shall pay any applicable sales, use, personal property or other taxes arising out of the Contract and the transactions contemplated hereby. The University is exempt from federal and state taxes and will not pay or reimburse such taxes. The University will, upon request, provide a tax-exempt certificate to confirm its tax-exempt status.

21. FISCAL YEAR FUNDING: The Contract shall continue for the term stated herein, contingent upon funds being appropriated by the WV Legislature or otherwise being made 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 University 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.

22. CANCELLATION/RIGHT TO TERMINATE: The University reserves the right to cancel/terminate the 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 University may also cancel any purchase or Contract upon thirty (30) days written notice to the Vendor. In the event of early cancellation, the University agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are delete that seek to require the State to (1) compensate Vendor, in whole or in part, for loss profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

In the event that a vendor fails to honor any contractual term or condition, the Chief Procurement Officer may cancel the contract and re-award the contract to the next lowest responsible and responsive bidder in accordance with the Marshall University Board of Governors Policy No. FA-9 Purchasing Policy, section 7.4.1

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Any language seeking to accelerate payments in the event of Contract termination, default or non-funding is hereby deleted.

23. RIGHT OF FIRST REFUSAL Any language seeking to give the Vendor a Right of First Refusal is hereby deleted.

24. DISPUTES – Any language binding the University 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 University shall be brought in the West Virginia Legislative 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.

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

26. 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.

27. APPLICABLE LAW: The 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, W. Va. Code or Marshall University Board of Governors Policy No. FA-9 Purchasing Policy is void and of no effect. 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

28. COMPLIANCE WITH GOVERNING 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. 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.

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

30. MODIFICATIONS: Notwithstanding anything contained in the Contract to the contrary, no modification of the Contract shall be binding without mutual written consent of the University, and the Vendor.

31. 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.

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32. NO WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of the 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.

Any provisions requiring the University to waive any rights, claims or defenses is hereby deleted.

33. SUBSEQUENT FORMS: The terms and conditions contained in the Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the University 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.

34. ASSIGNMENT: Neither the Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the University and any other government or office that may be required to approve such assignments.

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.

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

36. UNIVERSITY EMPLOYEES: University employees are not permitted to utilize the Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

37. 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 University, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the University's policies, procedures, and rules.

Proposals are NOT to be marked as confidential or proprietary 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-1-1, et. seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the University's sole discretion. The University shall not be liable in any way for disclosure of any such records

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Any provisions regarding confidentiality of 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.

38. 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 W. Va. Code §18B-5-4 and the Freedom of Information Act in W.Va. Code Chapter 29B.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, CONTAINING A TRADE SECRET(S), OR IS OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Marshall University Office of Purchasing constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document.

39. LICENSING: 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 University 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 University or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the University to verify that the Vendor is licensed and in good standing with the above entities.

40. ANTITRUST: In submitting a bid to, signing a contract with, or accepting an Award Document from Marshall University, the Vendor agrees to convey, sell, assign, or transfer to the University 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 Marshall University. Such assignment shall be made and become effective at the time the University tenders the initial payment to Vendor.

41. 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.

42. 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.

43. VENDOR CERTIFICATIONS: By signing its bid or entering into the 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 the Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity

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that could be considered a violation of law; and (4) that it has reviewed the Contract 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 University. 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 the all State agencies as required.

44. VENDOR RELATIONSHIP: The relationship of the Vendor to the University shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the 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 University 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 University 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.

45. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the University, 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.

46. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §18B-5-5 and §5A-3-18 the University 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 Marshall University Office of Purchasing affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

47. WEST VIRGINIA DRUG-FREE WORKPLACE CONFORMANCE AFFIDAVIT West Virginia Alcohol and Drug-Free Workplace Act requires public improvement contractors to have and implement a drug-free workplace policy that requires drug and alcohol testing. This act is applicable to any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract for which the value of contract is over \$100,000. No public authority may award a public improvement contract which is to be let to bid to a contractor unless the terms of the contract require the

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contractor and its subcontractors to implement and maintain a written drug-free workplace policy and the contractor and its subcontractors provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free workplace policy.

48. DISCLOSURE OF INTERESTED PARTIES A state agency may not enter into a contract, or a series of related contracts, that has/have an actual or estimated value of \$1,000,000 or more until the business entity submits to the contracting state agency a Disclosure of Interested Parties to the applicable contract.

49. CONFLICT OF INTEREST: Vendor, its officers, 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 University.

50. MARSHALL UNIVERSITY'S INFORMATION TECHNOLOGY SERVICES AND SUPPORT DEPARTMENT (IT) FEES: If a vendor requires services through the Marshall University's IT Department, they must reimburse the University at the IT Rate Schedule which is located at: <https://www.marshall.edu/it/rates/>.

51. PUBLICITY: Vendor shall not, in any way or in any form, publicize or advertise the fact that Vendor is supplying goods or services to the University without the express written consent of the Marshall University Communications Department. Requests should be sent to ucomm@marshall.edu.

52. UNIVERSITY MARKS: Vendor shall not, in any way or in any form use the University's trademarks or other intellectual property without the express written consent of the Marshall University Communications Department. Requests should be sent to ucomm@marshall.edu.

53. INTELLECTUAL PROPERTY: The University will own all rights, title and interest in any and all intellectual property rights created in the performance or otherwise arising out of the agreement, and Vendor will execute any assignments of other documents necessary for the University to perfect such rights, provided that, for research collaboration pursuant to subcontracts under sponsored research agreements, intellectual property rights will be governed by the terms of the grant or contract to the University to the extent such intellectual property terms to apply to subcontractors.

54. FERPA: Vendor agrees to abide by the Family Education Rights and Privacy Act of 1974 ("FERPA). To the extent that Vendor receives personally identifiable information from education records as defined in (FERPA), Vendor agrees to abide by the limitations on re-disclosure set forth in which states that the officers, employees and agents of a party that receives education record information from Marshall may use the information, but only for the purposes for which the disclosure was made.

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55. REPORTS: Vendor shall provide the University with the following reports identified by a checked box below:

- Such reports as the University may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by University, etc.
- Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by University.

56. PREFERENCE FOR THE USE OF DOMESTIC STEEL PRODUCTS IN STATE CONTRACT PROJECTS: Pursuant to W.Va. Code §5A-3-56, (a)(1) Except when authorized pursuant to the provisions of subsection (b) of this section, 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 (2):

(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 any materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after the effective date of this section 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.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the Director of the West Virginia Department of Administration, Purchasing Division ("Director of the Purchasing Division") may, in writing, authorize the use of foreign steel products if:

(1) The cost for each contract item used does not exceed one tenth of one percent of the total contract cost or \$2,500, whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

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

57. PREFERENCE FOR DOMESTIC ALUMINUM, GLASS AND STEEL PRODUCTS:

In Accordance with W. Va. Code § 5-19-1 et seq.,

(a) Every state spending unit, as defined in chapter five-a, shall require that every contract or subcontract 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 contain a provision that, if any aluminum, glass or steel products are to be supplied in the performance of the contract, or subcontract, only domestic aluminum, glass or steel products shall be supplied unless the spending officer, as defined in chapter five-a, determines, in writing, after the receipt of offers or bids, that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest or that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements: Provided,

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That this article applies to any public works contract awarded in an amount more than \$50,000, and with regard to steel only, this article applies to any public works contract awarded in an amount more than \$50,000 or requiring 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.

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

(Name, Title)

(Printed Name and Title)

(Address)

(Phone Number)

(Fax Number)

(Email Address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through BONFIRE, 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 Marshall University 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 will properly register with the WV Purchasing Division and Marshall University.

(Company)

(Authorized Signature)

(Printed Name and Title of Authorized Representative)

(Date)

(Phone Number)

(Fax Number)

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Marshall University General Terms and Conditions

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: EMCUNITY
(If Applicable)

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

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

Addendum Numbers Received:

(Check the box next to each addendum received)

<input type="checkbox"/> Addendum No. 1	<input type="checkbox"/> Addendum No. 6
<input type="checkbox"/> Addendum No. 2	<input type="checkbox"/> Addendum No. 7
<input type="checkbox"/> Addendum No. 3	<input type="checkbox"/> Addendum No. 8
<input type="checkbox"/> Addendum No. 4	<input type="checkbox"/> Addendum No. 9
<input type="checkbox"/> Addendum No. 5	<input type="checkbox"/> Addendum No. 10

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

Company

Authorized Signature

Date

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

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Marshall University General Terms and Conditions

Appendix 1

SPECIAL TERMS/DETAILED SPECIFICATION

A. FINANCING:

1. Master Lease Purchase Financing

The State of WV has a statewide Master Lease Purchase Financing Agreement issued by the Finance Division of the Department of Administration. The resulting purchase may be financed under the Master Lease Purchase Financing Agreement. Any request to enter into a lease purchase agreement other than the Master Lease Purchasing Financing Agreement must be approved in advance.

2. Third Party Financing

Bidders that are bidding, using a third party for financing, must identify the company, quote the interest rate, and include a copy of their lease or rental contract. Failure of the third party to agree to the terms of this document may disqualify your bid.

A.2.1. Bidder's Interest Rate

The University may elect to purchase and finance through another source.

Indicate net interest rate: _____% for a 3-year term.

Indicate net interest rate: _____% for a 5-year term

B. DELL EQUIPMENT CERTIFICATION

- Equipment to be Dell as specified. No substitutions or Dell Compatible Equipment will be acceptable.
- Vendor must be an authorized Dell Partner. **Provide proof of certification with Bid.**
- Equipment must be ordered through a Dell Authorized Distributor. Please provide the distributor's name. Dell Authorized Distributor: _____
- All Equipment within the Bonfire Bid Table named **EMCUNITY Bid Table**, must be new. Reconditioned or used equipment will not be accepted.

C. AWARD

One contract award is anticipated under this solicitation. Multiple contract awards shall not be made.

D. INSTALLATION

Installation of the equipment will be by others.

E. DELIVERY/FREIGHT

Delivery Charges. Bid prices shall include all delivery and freight charges paid by the bidder, F.O.B. Destination, unless otherwise provided in the solicitation. Any invoiced delivery charges not quoted and itemized on the purchase order are subject to rejection and non-payment.

Bidders maximum number of days for delivery of items after receipt of order (ARO) is 30 days. Any days beyond the maximum must be disclosed within Bonfire during the bidding process.

Delivery for all items on this order will be made to:

Brent Burgess or Mike Adkins
Marshall University Drinko Library 435
Huntington, WV-25755 United States

F. DELL NETWORK EQUIPMENT MAINTENANCE SERVICES

Bidders must be qualified and experienced in providing and administering annual maintenance contracts for Dell. Dell maintenance must be provided directly from the manufacturer coverage must include 24 X 7 support, next business day, and advanced replacement of equipment.

The selected reseller will have the option of four (4) annual renewals after the issuance of the initial contract by providing new quotes during each renewal period allowing for adjustment for the current installed base of equipment.

After the initial award Marshall University may request maintenance dates moved to our coordinate with our fiscal year (July 1 to June 30). The reseller must return the updated quotes by April 1st of each year. New quotes based on the same discount rate (% off list price) as quoted in this original contract.

G. PRICING SUBMISSION

- Pricing must be entered using the Bonfire Bid Table named EMCUNITY Cost Sheet. Pricing must be provided for all items. Failure to provide pricing for all line items shall be cause for rejection of the bid.
- Please indicate an equipment trade-in value.

Attachment A

	QTY	Part Number	Description	Cost
UNITY XT680 PRD				
Hardware	1	D4SL12C25FAF	UNITY 680F DPE 25 X 2.5 DELL FLD RCK	
Hardware	1	D44PC10ITAF	UNITY 2X4 PORT CARD 10GBE OPT AF	
Hardware	22	D4F-2SFXL2-7680	D4F 7.68TB ALL FLASH 25X2.5 SSD	
Hardware	1	D4DPEKITAF	UNITY DPE INSTALL KIT AF	
Hardware	1	D4SL16FAF	UNITY 2X4 PORT IO 16GB FC AF	
Hardware	4	D4SFP10AF	UNITY 2X10GBE OPT SFPS AF	
Hardware	1	SYSTEM	APPSYNC	
Software	1	458-002-525	UNITY AFA BASE SOFTWARE+ DARE=IC	
Software	1	458-001-736	APPSYNC BSC FOR UNITY 500F/550F/680F=IC	
Software	1	SAS-458-000-142	POWERPROTECT SNAPSHOT MANAGER L-TRIAL=IB	
Software	1	458-002-414	DATA PROTECTION CENTRAL ENTRY=CA	
Software	18	456-113-545	COMMERCIAL DPS DDVE BUNDLE SOCKETS=IA	
Software	36	456-113-573	DD VE PERPETUAL CAP CHNL ENTRY 1TB=CA	
Software	18	456-113-666	COMMERCIAL BUNDLE RP4VM ENABLER ENTRY=IA	
Software	2	456-113-568	DPS 2TB AVE ENABLER ENTRY=CA	
Software	1	456-113-570	DPS DP SEARCH ENABLER ENTRY=CA	
Software	1	456-113-572	DPA SINGLE FED REPORTING SERVER ENTRY=IA	
Software	1	456-113-571	EMC DPA ENABLER-B ENTRY=CB	
Software	1	458-002-398	COMMERCIAL DPS DDVE BUNDLE	
Software	20	SAS-456-000-076	POWERPROTECT SNAPSHOT MANAGER L-TRIAL=IB	
Software	1	458-001-585	RP BASIC FOR UNITY380F/480F/680F/880F=IC	
Software	1	458-002-628	STORAGE M+R FOR UNITYXT = IC	
Maintenance - Hardware	1	M-PSP-HWE-005	PROSUPPORT PLUS 4HR/MC HARDWARE SUPPORT - 60.00 MNTHS	
Maintenance - Software	1	M-PSP-SWE-005	PROSUPPORT PLUS 4HR/MC SOFTWARE SUPPORT - 60.00 MNTHS	
Maintenance - Software	1	M-PSM-SWE-005	PROSUPPORT 4HR/MC SOFTWARE SUPPORT - 36.00 MNTHS	
Maintenance - Software	1	M-PSP-SW-DD-E1	PROSUPPORT PLUS 4HR/MC SOFTWARE SUPPORT - 60.00 MNTHS	
Maintenance - Software	1	M-PSP-SW-DD-E1	PROSUPPORT PLUS 4HR/MC SOFTWARE SUPPORT - 60.00 MNTHS	
Maintenance - Software	1	M-PSM-SW-CL-S02	PROSUPPORT 4HR/MC SW SUB SUPPORT - 6.00 MNTHS	
Maintenance - Software	1	M-PSM-SWE-005	PROSUPPORT 4HR/MC SOFTWARE SUPPORT - 12.00 MNTHS	
Maintenance - Software	1	M-PSM-SWE-005	PROSUPPORT 4HR/MC SOFTWARE SUPPORT - 36.00 MNTHS	
Training	1	CE-UNITYDD	UNITY TRAINING CLASS 1 PERSON	
Training	900	CE-PDPDPDTC0001	1 TRAINING CREDIT VALID 1YR (PDP DP)	

Use Bonfire Table

Services	1	PS-PDP-RP4VMDP	PDP FOR RECOVERPOINT FOR VM
Services	1	PS-PDP-P30DPS	30DAYPOSTDEPLOYASSIST DPS
Services	1	PS-PDPAD-DPSSPDP	PDP ADDON, DATA PROTECTN SUITE SOLN PKG
Connectrix B-Series			
Hardware	2	DS-6620R-16-B-24	DS-6620R-B 24P/48P 16GB RTF 24SFP SWITCH
Hardware	20	CTX-OM4-5M	OM4 50/125 MICRON OPTICAL CBL LC-LC 5M
Hardware	8	CTX-OM4-3M	OM4 50/125 MICRON OPTICAL CBL LC-LC 3M
Hardware	2	C13-PWR-12	C13 POWER CORD PAIR NEMA5-15P PLUGS 2MTR
Maintenance - Hardware	1	M-PSP-HW-E-002	PROSUPPORT PLUS 4HR/MC HARDWARE SUPPORT - 60.00 MNTHS
Credit			
Equipment Trade In Credit			



Attachment B

Submission Instructions for Suppliers

Please follow these instructions to submit via our Public Portal.

1. Prepare your submission materials:

Requested Information

Name	Type	# Files	Requirement	Instructions
Proposal	File Type: PDF (.pdf)	Multiple	Required	Include: Alternate Financing, Proof of authorizations, signed bid front page and if applicable addendum.
EMCU Cost Table (BT-56ET)	BidTable: Excel (.xlsx)	1	Required	You will need to fill out the provided Response Template for this BidTable. The Response Template can be downloaded from the project listing on the Bonfire portal.

Commodity Codes

Commodity Set	Commodity Code	Title	Description
UNSPSC	432115	Computers	A computer is a device that accepts information (in the form of digital data) and manipulates it for some result based on a program or sequence of instructions on how data is to be processed. Complex computers also include the means for storing data (including the program, which is also a form of data) for some necessary duration. A program may be invariable and built into the computer (and called logic circuitry as it is on microprocessors) or different programs may be provided to the computer (loaded into its storage and then started by an administrator or user). Today's computers have both kinds of programming.
UNSPSC	432225	Network security equipment	Equipment for securing networks.
UNSPSC	432226	Network service equipment	Equipment, software, and services for transferring data in a network across standards based protocols



Commodity Set	Commodity Code	Title	Description
UNSPSC	81161801	Data communication equipment or platform rental or leasing service	A service involving the rental or leasing of data communication equipment or platforms

Requested Documents:

Please note the type and number of files allowed. The maximum upload file size is 1000 MB.

Please do not embed any documents within your uploaded files, as they will not be accessible or evaluated.

Requested BidTables:

The BidTable Response Templates can be obtained at <https://marshall.bonfirehub.com/opportunities/24144>.

Please note that BidTables may take a significant amount of time to prepare.

2. Upload your submission at:

<https://marshall.bonfirehub.com/opportunities/24144>

Your submission must be uploaded, submitted, and finalized prior to the Closing Time of **Mar 06, 2020 3:00 PM EST**. We strongly recommend that you give yourself sufficient time and **at least ONE (1) day** before Closing Time to begin the uploading process and to finalize your submission.

Important Notes:

Each item of Requested Information will only be visible after the Closing Time.

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STATE COLLEGE AND UNIVERSITY SYSTEM OF WEST VIRGINIA
LEASE PURCHASE AGREEMENT

THIS LEASE PURCHASE AGREEMENT, Made this ____ day of _____, _____, by and between _____, a corporation duly organized and existing under the laws of the State of _____, ("Lessor"), and _____, STATE OF WEST VIRGINIA ("Lessee").

The parties hereto do mutually covenant and agree as follows:

1. **Lease:** Pursuant to the provisions of Chapter 18B of the West Virginia Code, _____, Lessee, a body politic duly organized and existing under the laws of the State of West Virginia, agrees to lease from Lessor the items of equipment specified in Exhibit A attached hereto ("Equipment"), and Lessor, as specified above, agrees to lease to Lessee the Equipment in accordance with the terms and conditions of this Lease Purchase Agreement ("Lease"). Upon execution, this Lease is binding on and enforceable against Lessor and Lessee in accordance with its terms.
2. **Covenants of Lessor:** Lessor, and any assignee of Lessor, shall allow Lessee to quietly have, hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor during the term of this Lease, except as expressly set forth in this Lease.
3. **Covenants of Lessee:** Lessee is authorized under the Constitution and laws of the State of West Virginia to enter into this Lease. No approval, consent or withholding of objection is required from any governmental authority not a signatory to this Lease with respect to the performance or obligations of Lessee under this Lease. This Lease will not violate any judgment, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien or encumbrance upon the assets of the Lessee or on the Equipment pursuant to, any other instrument to which Lessee is a party.
4. **Equipment Delivery and Acceptance:** Lessee shall accept the Equipment when and if delivered and placed in good working order in accordance with the Purchase Order for such item of Equipment and hereby authorizes the Lessor to add to this Lease the serial number of each item of Equipment so delivered. Lessee shall have sixty (60) days from date of delivery to accept the Equipment and deliver an Equipment Acceptance Certificate, as shown in Exhibit C, or to have the Equipment returned. Notice of any Equipment defects shall be given to Lessor within thirty (30) days of delivery, unless not discovered at that time by reasonable efforts.

Lessor agrees to pay the invoices for the accepted Equipment within seven (7) days of receipt of the Equipment Acceptance Certificate, but shall not be liable for the specific performance of the Lease or for damages, if for any reason, the supplier delays or fails to fill the order. Any delay in such delivery shall not affect the validity of this Lease.

In the event any portion of the Equipment is not accepted or the cost of the Equipment is less than the funding under this Lease, then the amount of the funding remaining shall be applied as a partial prepayment.

5. **Term:** The term of this Lease shall commence on the date of execution of this Lease and shall terminate upon the first to occur:
 - (a) The payment of the purchase option price;
 - (b) The payment of all lease payments;
 - (c) An event of non-appropriation;
 - (d) An event of default; or
 - (e) Cancellation at the option of the Lessee pursuant to Section 19.
6. **Event of Non-Appropriation:** An event of non-appropriation shall be deemed to have occurred if:
 - (a) Sufficient funds are not appropriated for lease payments in any fiscal year; and
 - (b) Lessee shall have at such time no funds duly authorized or otherwise available for the lease payments.

Upon the occurrence of an event of non-appropriation, this Lease shall terminate without penalty at the end of the then current fiscal year and the lease and other payments shall be canceled. Lessee agrees to return the Equipment to

Lessor, together with a release of Lessee's title and interest therein. It is the intention of the parties that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee agrees, nevertheless, to execute and deliver any such instruments as Lessor may reasonably request to evidence such transfer. Lessee agrees to provide written notice of an event of non-appropriation to Lessor as soon as Lessee determines that such an event exists.

7. Warranties/Guarantees: Lessee acknowledges that it has selected the Equipment financed under this Lease and that Lessor is not the manufacturer or dealer in the Equipment herein leased. As Lessor is not the manufacturer or dealer in the Equipment, Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of warranties by the vendor of any item(s) of Equipment. Lessor hereby assigns to each Lessee for and during the lease term all manufacturers' warranties or guarantees, expressed or implied, issued on or applicable to the Equipment acquired by that Lessee, if any.

LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY OTHER WARRANTY WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS LEASE OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEES' USE OF ANY ITEM(S) OF EQUIPMENT PROVIDED IN THIS LEASE. HOWEVER, LESSOR AGREES TO BE LIABLE FOR ANY LOSS TO PERSONAL PROPERTY OR INJURY TO PERSONS CAUSED BY THE NEGLIGENCE OF LESSOR.

8. Lease Payments: Lessee agrees to pay to Lessor lease payments, comprised of the principal and interest, in the amounts set forth in the payment schedule attached hereto as Exhibit B.

All payments shall be made in arrears for the preceding period, and shall be absolute and unconditional in all events, without abatement, diminution, deduction, set-off or defense, for any reason, including without limitation any failure of the Equipment to be delivered or installed, any defects, malfunctions, breakdowns or infirmities in the Equipment or any accident, condemnation or unforeseen circumstances, except as expressly provided in Section 6 of this Lease, provided with respect to any item of Equipment Lessor has provided the funds to finance such item of Equipment and no payment with respect to such item of Equipment has been withheld from a vendor. Lessor shall provide invoices to Lessee in a timely manner.

The obligation of Lessee to pay lease payments hereunder constitutes a special obligation of the State of West Virginia. The obligation may be met from any funds legally available to the Lessee and shall be cancelable at the option of the Lessee at the end of any fiscal year. The obligation, or any assignment or securitization of the obligation, never constitutes an indebtedness of the State of West Virginia or any department, agency or political subdivision of the state, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision of the state.

Lessee reasonably believes that sufficient funds can be obtained to make all lease payments during the term of this Lease and hereby covenants that it will use its best efforts to obtain, maintain and properly request funds from which the lease payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved. Lessee intends to make lease payments for the full term of this Lease and represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to their proper, efficient and economic operation.

9. Use and Maintenance: Lessee agrees to comply with all federal, state and local laws, ordinances, and regulations applicable to the possession, use or maintenance of the Equipment.

Lessee will not use, operate or maintain the Equipment improperly, carelessly, or in violation of any applicable law. Lessee will, at its expense, maintain, preserve and keep the Equipment in good repair, working order and condition.

Material alterations, modifications, additions or attachments to the Equipment must have the written approval of the Lessor, which consent shall not be unreasonably withheld or delayed, and such action shall be performed at the sole expense of Lessee. All alterations, modifications, additions or attachments shall not reduce the value or usefulness of the Equipment.

During the term of this Lease, Lessor and its officers, employees or agents shall have the right at all reasonable times during business hours of Lessee to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

10. Insurance and Loss of Equipment: Lessee is insured through the West Virginia Board of Risk and Insurance Management and will protect the interests of the Lessor and Lessee against Equipment losses or damage. Lessee is also insured against liability related to the Equipment. In the event of any loss, damage, injury or accident involving the Equipment, Lessee shall promptly provide Lessor with written notice thereof and make available to Lessor all information and documentation thereof.

If any Equipment or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or if title to, or the temporary use of, the Equipment or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the net proceeds of any insurance claim or condemnation award to be applied either to the prompt repair, restoration, modification or replacement of the Equipment or, at Lessee's option, to the payment of the appropriate portion of the purchase option price.

Any balance of the net proceeds remaining after such work or purchase has been completed shall be paid to the Lessee. Net proceeds shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses incurred in the collection of such claims or award. If the net proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee shall either (a) complete the work and pay any cost in excess of the amount of net proceeds, or (b) Lessee shall pay to Lessor the purchase option price. The amount of the net proceeds in excess of the then applicable purchase option price, if any, may be retained by Lessee.

In the event the purchase option payment for any item(s) of Equipment is paid in accordance with this section, Lessor agrees to release any security interest on that item(s) of Equipment.

11. Title to Leased Equipment: During the term of this Lease, title to the Equipment shall vest in the Lessee so long as Lessee shall not be in default or this Lease shall not have been terminated as to such Equipment. To secure all obligations hereunder, Lessee hereby grants to Lessor a security interest in any and all right, title and interest of Lessee in the Equipment. Lessee shall promptly discharge any mechanics', materialmen's or other liens placed on the Equipment.

Lessor shall convey all of the Lessor's right and interest in and to the Equipment to Lessee upon payment of all the lease payments required in accordance with the payment schedule through the maximum lease term for such Equipment or the purchase option price set forth in the payment schedule, if the Lessee is not on such date in default as to any terms of this Lease.

12. Taxes and Other Charges: Lessee represents that it is exempt from federal, state and local taxation, and as such, shall not be liable or responsible for the payment or reimbursement of any tax of any type incurred in connection with this Lease, nor will it file any tax returns or reports on behalf of Lessor or its assignees.

As title to the Equipment shall vest in the Lessee during the term of this Lease, the Equipment is exempt from personal property tax pursuant to West Virginia Code § 11-3-9(a)(27). Lessee also represents that, to the best of its knowledge, no licensing or titling fees based upon the use, possession or acquisition of the Equipment are due under the current laws of West Virginia.

Pursuant to West Virginia Code § 18B-19-11(f), the interest component of any lease-purchase obligation is exempt from all taxation of the State of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the West Virginia Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of the lease payments made under this Lease be and remain exempt from the gross income of the Lessor for purposes of federal income taxation.

Lessee covenants that it will take any and all action reasonably necessary to maintain the exemption from federal income taxation of the interest portion of the lease payments, and that it will not perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating or denying the exemption from federal income taxation of the interest portion of the lease payments,

including, without limitation, leasing all or any portion of the Equipment or contracting with a third party for the use or operation of all or any portion of the Equipment if entering into such lease or contract would have such effect.

13. Assignment: This Lease, and the obligation of Lessee to make payments hereunder, may be sold, assigned or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees or sub-assignees by Lessor only upon the written consent of Lessee. Upon any sale, disposition, assignment or reassignment, Lessee shall be provided with an executed, duplicate original counterpart of the document(s) by which the same is made and shall be informed of the effective date of and modifications to such sale, disposition, assignment or reassignment. Any assignment document(s) or other instruments of sale must also be approved as to form by the Attorney General.

Lessee agrees to make all payments to the assignee designated in the assignment, notwithstanding any claim, defense, set-off or counterclaim whatsoever, whether arising from a breach of this Lease or otherwise (except a breach by Lessor), that Lessee may from time to time have against Lessor or any provider of the Equipment. Lessee agrees to execute all documents, including notices of assignment, chattel mortgages or financing statements, which may be reasonably requested by Lessor or assignee to protect its interests in the Equipment and in this Lease.

Lessor hereby covenants not to sell or offer to sell this Lease through, nor shall this Lease be sold through, (1) a certificate of participation program, whereby two or more interests are created in the Lease, the Equipment or the lease payments; or (2) other similar instruments, agreements, securitizations and obligations through a pool, trust, limited partnership, or other entity, without the express written consent of Lessee and approval of the agreement as to form by the Attorney General.

Lessor shall be the initial registrar and, as such, shall maintain the books for the registration and transfer of this Lease. Each transferee of Lessor, by acceptance of this Lease, agrees to act as the successor registrar if so appointed in writing by the Lessee. The transfer of this Lease may be registered, upon presentation and surrender of this Lease at the office of the registrar designated for such purpose, together with the assignment. The registrar shall maintain a book-entry system by which a record of the names and addresses of all holders of this Lease, or interests therein, is kept. The Lessee or the registrar may require the person requesting any transfer to reimburse it for any tax or other governmental charge payable in connection therewith.

This Lease and the interest of the Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor, except that Lessee shall have the right to assign or lease the Equipment, in whole or in part, to other agencies of the State of West Virginia for governmental use only.

During the term of this Lease, Lessee shall keep a complete and accurate record of all assignments and other transfers in form and substance necessary to comply with Section 149(a) of the Internal Revenue Code of 1986, as amended. Prior to assignment of Lessor's interest herein, Lessor will cause written notice of such requested assignment to be sent to the Lessee, requesting approval. Upon receipt of an approved notice of assignment, Lessee shall (i) acknowledge the same in writing to Lessor, and (ii) record the assignment in Lessee's book entry system as that term is defined in the Internal Revenue Code of 1986, as amended. Upon assignment of Lessee's interest herein, Lessee will cause written notice of such assignment to be sent to Lessor disclosing the name and address of assignee. Lessee shall initiate any required change order to effectuate an approved assignment.

14. Indemnification: The laws and Constitution of West Virginia prohibit Lessee from protecting, holding harmless or indemnifying Lessor from and against any liability, obligations, losses, claims, or damages whatsoever. Therefore, Lessee only agrees to be responsible for its own actions under this Lease.
15. Personal Property: The Equipment is and shall at all times during the lease term be and remain, personal property.

16. Option to Purchase: Lessee shall be entitled to purchase the Equipment as follows:

- (a) Upon payment of all lease and other payments required under this Lease; or
- (b) Upon written notice delivered to Lessor by Lessee at least thirty (30) days before the proposed date for payment, and upon the payment on such date of the purchase option price.

As used herein, purchase option price means the amount equal to the outstanding principal, as set forth in the payment schedule, plus any unpaid interest that has accrued on such principal to the date of payment of the purchase option price, provided that any other sum due under this Lease has or is being paid, payable at the option of Lessee for the purpose of purchasing the Equipment.

Lessee may, at Lessee's option, make partial prepayments of a portion of the purchase option price upon written notice delivered at least thirty (30) days in advance of the proposed date for payment and upon payment on such date of the partial prepayment, being an amount equal to a portion of the outstanding principal set forth in the payment schedule and any unpaid interest that has accrued on such portion of the outstanding principal to the date of payment of the partial prepayment. As provided herein, if any portion of the Equipment is not accepted or the cost of the Equipment is less than the funding under this Lease, then the amount of the funding remaining shall be applied as a partial prepayment.

A revised payment schedule reflecting all partial prepayments, consistent with the financing structure contemplated herein, to reflect such partial prepayment shall be attached to this Lease as a change order. Partial prepayments shall entitle Lessee to a release of any security interest on the item(s) of Equipment prepaid in full.

17. Event of Default: The following constitute an "Event of Default" under this Lease:

- (a) Failure by Lessee to pay any lease payment or other payment required to be paid within sixty (60) days of when due; or
- (b) Failure by Lessee to maintain insurance on the Equipment in accordance with this Lease; or
- (c) Failure by Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of thirty (30) days after written notice is given to the Lessee by Lessor, specifying such failure and requesting that it be remedied, provided that if the failure stated in such notice cannot be corrected within such thirty (30) day period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected; or
- (d) Initiation by or against Lessee of a proceeding under any federal or state bankruptcy or insolvency laws.

An event of non-appropriation shall not be deemed an event of default.

18. Remedies on Default: Upon the occurrence of an event of default as specified in this Lease, Lessor shall provide written notification of default which Lessee must remedy within thirty (30) days from the date of notice of default, or Lessor shall have the right, at its option, without any further demand or notice, to pursue any one or more of the following remedial steps:

- (a) Terminate this agreement and retake possession of the Equipment and sell, lease, sublease or make other disposition of the Equipment in a reasonable and commercial manner.
- (b) Declare an amount equal to all payments due during the fiscal year in which the default occurred to be immediately due and payable, whereupon the same shall become immediately due and payable; or
- (c) Proceed by appropriate court action to enforce performance by Lessee of the applicable covenants of this Lease or to recover for the breach thereof.

All of Lessee's right, title and interest in any Equipment the possession of which is retaken by Lessor upon the occurrence of an event of default shall terminate immediately upon such repossession. Lessee agrees to return the Equipment to Lessor, together with a release of all Lessee's title and interest therein. It is the intent of the parties hereto that any transfer of title to Lessor shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessee agrees, nevertheless, to execute and deliver any such instruments as Lessor may reasonably request to evidence such transfer.

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now hereafter existing at law or in equity.

19. Cancellation of Lease. Pursuant to West Virginia Code § 18B-19-11(d), this Lease shall be cancelable at the option of the Lessee at the end of any fiscal year. In such event, the Lessee shall redeliver possession of the Equipment to Lessor, and upon such redelivery shall be relieved from any further obligations hereunder. Cancellation of the Lease pursuant to this section shall not be deemed an event of default.
20. Force Majeure: If by reason of force majeure, Lessor or Lessee is unable, in whole or in part, to carry out its obligations under this Lease, Lessor or Lessee, as the case may be, shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: Acts of God; strikes; lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or the State of West Virginia or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.
21. Escrow Agent: Lessor shall have the right to designate an entity to act as the Escrow Agent for the purpose of holding and administering special trust funds designated as Acquisition Funds for the benefit of Lessor and Lessee. The appointment of _____ as Escrow Agent is hereby acknowledged.

Lessor shall deposit the amount specified in this Lease in a separate Acquisition Fund. Moneys held by the Escrow Agent hereunder shall be invested and reinvested by the Escrow Agent upon order of a representative of the Lessee in Qualified Investments, as hereinafter defined, maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. Such investments shall be held by the Escrow Agent in the Acquisition Fund, and any interest earned on such investments shall be deposited in that Acquisition Fund. The Escrow Agent may act as purchaser or agent in the making or disposing of any investment.

Qualified Investments means (a) direct general obligations of the United States of America; (b) obligations the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America; or (c) certificates of deposit, time deposits or demand deposits with any bank or savings institution including the Escrow Agent or any affiliate thereof, provided that such is insured by the Federal Deposit Insurance Corporation.

Moneys in each Acquisition Fund shall be used to pay for the cost of acquisition of the Equipment specified in this Lease. Payment shall be made from the Acquisition Fund for the cost of acquiring part or all of the Equipment upon presentation to the Escrow Agent of one or more Payment Request and Acceptance Certificates, properly executed by the Lessee and approved by Lessor, together with an invoice for the cost of the acquisition of the Equipment.

The Acquisition Fund shall terminate upon the occurrence of the earlier of (a) the presentation of a proper Payment Request and Acceptance Certificate designated "Final Acceptance Certificate" properly executed by the Lessee or a properly executed notice by the Lessee that no additional funds will be needed from the Acquisition Fund, or (b) the presentation of written notification by Lessor, or an assignee or subassignee of all of Lessor's interest in this Agreement or an Agent on their behalf, that an Event of Default or Non-appropriation has occurred with respect to the Lease or that Lessee has terminated the Lease. Upon termination as described in clause (a) of this paragraph, any amount remaining in the Acquisition Fund shall be used to prepay the principal component of Rental Payments listed in this Lease, unless otherwise directed by Lessor and Lessee, and the Payment Schedule shall be revised accordingly. Upon termination as described in clause (b) of this paragraph, any amount remaining in the Acquisition Fund shall be immediately paid to Lessor or, pro rata, to any assignee or subassignees of Lessor.

The Escrow Agent may resign by giving at least 30 days' written notice to Lessee and Lessor, but such resignation shall not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, the Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by Lessor and Lessee. In the event of any resignation or removal of the Escrow Agent, a successor Escrow Agent shall be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent shall indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent shall, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligation as Escrow Agent under this Lease, and the predecessor Escrow Agent shall deliver all moneys and securities held by it under this Lease to such successor Escrow Agent. The Escrow Agent shall incur no liability to make any disbursements except from funds held in the Acquisition Fund. The Escrow Agent makes no representations or warranties as to the title to any Equipment or as to the performance of any obligations of Lessor or Lessee. In executing this Lease, the Escrow Agent agrees to be bound by the provisions of this Section 21.

- 22. Notices: All notices to be given under this Lease shall be made in writing and mailed to the other party at its address set forth in Exhibit D or at such address as the party may provide in writing from time to time. Any such notice shall be deemed to have been received five (5) days subsequent to mailing.
- 23. Binding Effect: This Lease shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.
- 24. Severability: In the event any provision of this Lease shall be held invalid, prohibited or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 25. Amendments: All amendments, modifications, alterations or changes to this Lease shall be in writing and signed by both parties.
- 26. Execution in Counterparts: This Lease may be executed in several counterparts. The parties hereto agree that multiple originals of this Lease have been executed.
- 27. Section Headings: All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.
- 28. Governing Law: This Lease shall be governed by and construed in accordance with the laws of the State of West Virginia.
- 29. Delivery of Related Documents: Upon the request of one party, the other party will provide all documentation reasonably requested. In the event an Internal Revenue Service Form 8038-G or 8038-GC needs to be filed in connection with this transaction, Lessee will execute and file the form.
- 30. Entire Agreement; Waiver: This Lease, together with any request for quotation, Purchase Order(s) and other attachments hereto, and other documents or instruments executed by Lessor and Lessee in connection herewith, constitute the entire agreement between the parties with respect to the Equipment. The waiver by one party of any breach of any term, covenant or condition hereto must be in writing and shall not operate as a waiver of any subsequent breach thereof.

WITNESS THE FOLLOWING SIGNATURES:

LESSOR: _____

LESSEE: _____

BY: _____

BY: _____

TITLE: _____

TITLE: _____

APPROVED AS TO FORM THIS
_____ day of _____, 20_____

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

BY: _____
Deputy Attorney General

EXHIBIT A

EQUIPMENT

SAMPLE

EXHIBIT B
PAYMENT SCHEDULE

PAYMENT DATE	PAYMENT	INTEREST	PRINCIPAL	PURCHASE OPTION PRICE AND PRINCIPAL BALANCE
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SAMPLE

EXHIBIT C

ACCEPTANCE CERTIFICATE AND REQUEST FOR PAYMENT

NUMBER _____

The Lessee, _____, hereby accepts the Equipment described below and requests the Lessor, _____, to pay to the person or corporation designated below as Payee, the sum set forth below in payment of the acquisition and installation costs of the Equipment in accordance with the Lease between Lessor and the Lessee, dated _____, 20___. The amount shown below is due and payable under the invoice of the Payee with respect to the Equipment and has not formed the basis of any prior request for payment. This Certificate is based upon facts, circumstances, estimates and expectations of Lessee as of the date on which the Lease was executed, and to the best of my knowledge and belief, as of this date, such facts, circumstances and estimates are true and correct and such expectations are reasonable.

PAYEE:
AMOUNT: \$
DESCRIPTION OF EQUIPMENT: See Attached
DATED: _____

LESSEE:
BY: _____
NAME: _____
TITLE: _____

LESSOR:
BY: _____
NAME: _____
TITLE: _____

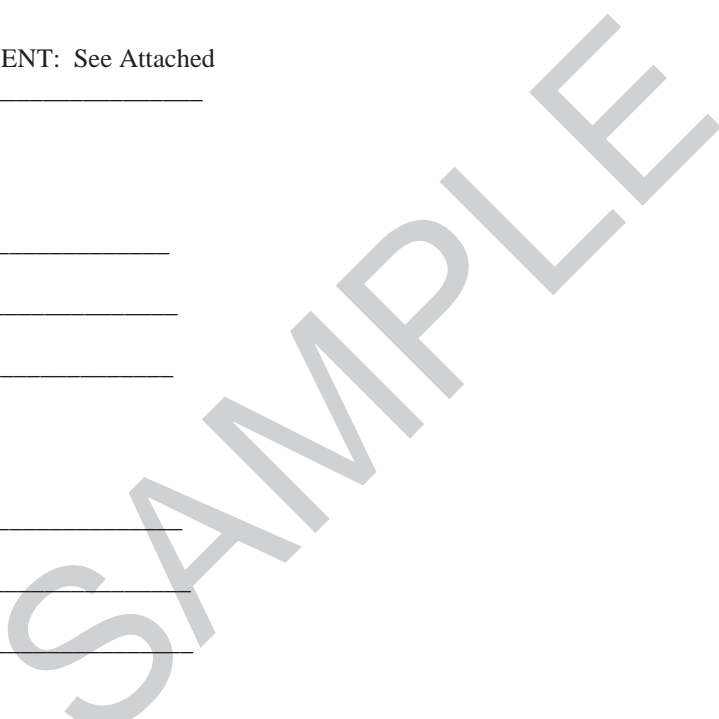


EXHIBIT D

PARTIES

LESSOR: _____

Contact Person: _____

Telephone No.: _____

FAX No.: _____

LESSEE: _____

Contact Person: _____

Telephone No.: _____

FAX No.: _____

SAMPLE

OPINION OF LESSEE'S COUNSEL

Lessor _____

RE: State College and University System of West Virginia
Lease Purchase Agreement with _____

Gentlemen:

As counsel for _____, Lessee, I have examined a duly executed original of the Lease Purchase Agreement ("Lease") dated _____, between Lessee and _____, Lessor. Based upon the examination and upon such other examination as I have deemed appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of West Virginia.
2. The Lease has been duly authorized, executed and delivered by Lessee and is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms.
3. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way affecting the validity of the Lease.
4. The signature of the official of Lessee, as it appears on the Lease, is true and genuine. I know said official and know him/her to hold the position set forth below his/her name.
5. The Equipment leased pursuant to the Lease, as shown on Exhibit A, constitutes personal property and when subjected to use by Lessee will not be or become fixtures under applicable law.
6. West Virginia is a state within the meaning of Section 103 of the Internal Revenue Code of 1986, as amended, and the related regulations and rulings.

Very truly yours,

DAWN E. WARFIELD
DEPUTY ATTORNEY GENERAL