

VENDOR CONTRACT

Between _____ and
(Company Name)

THE INTERLOCAL PURCHASING SYSTEM (TIPS)

For

Email Archive Systems W/Backup And Disaster Recovery

CONTRACT NUMBER 1022516

General Information

The vendor contract shall include the contract, the terms and conditions, special terms and conditions, any agreed upon amendments, as well as all of the sections of the solicitation and the awarded vendor's proposal. Once signed, if an awarded vendor's proposal varies or is unclear in any way from the TIPS contract, TIPS, at its sole discretion, will decide which provision will prevail. Other documents to be included are the awarded vendor's proposals, task orders, purchase orders and any adjustments which have been issued.

The following pages will constitute the contract between the successful vendors(s) and TIPS. Bidders shall state, in a separate writing, and include with their proposal response, any required exceptions or deviations from these terms, conditions, and specifications. If agreed to by TIPS, they will be incorporated into the final contract.

The Vendor Contract ("Contract") made and entered into by and between The Interlocal Purchasing System (hereinafter referred to as "TIPS" respectfully) a government cooperative purchasing program authorized by the Region VIII Education Service Center, having its principal place of business at 4845 US Hwy 271 North, Pittsburg, Texas 75686. This contract consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

Definitions

PURCHASE ORDER is the TIPS member's approval providing the authority to proceed with the negotiated delivery order under the contract. Special terms and conditions as agreed to between the vendor and TIPS member will be added as addendums to the PO. Items such as certificate of insurance, bonding requirements, small or disadvantaged business goals are some of the addendums possible.

PREMIUM HOURS are defined as those hours not included in regular hours or recognized holidays. Premium hours are to be approved by the TIPS member for each delivery order and noted in the delivery order proposal as a line item during negotiations.

REGULAR HOURS are defined as those hours between the hours of 7 AM and 6 PM Monday thru Friday.

Terms and Conditions

Freight

All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

Warranty Conditions

All supplies equipment and services shall include manufacturer's minimum standard warranty unless otherwise agreed to in writing. Vendor shall be an authorized dealer, distributor or manufacturer for all products. All equipment proposed shall be new unless clearly stated in writing.

Customer Support

The Vendor shall provide timely and accurate customer support to TIPS members. Vendors shall respond to such requests within one (1) working day after receipt of the request. Vendor shall provide training regarding products and services supplied by the Vendor unless otherwise clearly stated in writing at the time of purchase. (Unless training is a line item sold or packaged and must be purchased with product.)

Contracts

All contracts and agreements between Vendors and TIPS Members shall strictly adhere to the statutes that are set forth in the Uniform Commercial Code as most recently revised.

Contracts for purchase will normally be put into effect by means of a purchase order(s) executed by authorized agents of the participating government entities.

Davis Bacon Act requirements will be met when Federal Funds are used for construction and/or repair of buildings.

Tax exempt status

A taxable item sold, leased, rented to, stored, used, or consumed by any of the following governmental entities is exempted from the taxes imposed by this chapter: (1) the United States; (2) an unincorporated instrumentality of the United States; (3) a corporation that is an agency or instrumentality of the United States and is wholly owned by the United States or by another corporation wholly owned by the United States; (4) the State of Texas; (5) a Texas county, city, special district, or other political subdivision; or (6) a state, or a governmental unit of a state that borders Texas, but only to the extent that the other state or governmental unit

exempts or does not impose a tax on similar sales of items to this state or a political subdivision of this state. Texas Tax Code § 151.309.

Assignments of contracts

No assignment of contract may be made without the prior written approval of TIPS. Payment can only be made to the awarded Vendor or vendor assigned dealer.

Disclosures

1. Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.
2. Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in the TIPS program.
3. The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

Renewal of Contracts

The contract is for one (1) year with an option for renewal for 2 consecutive years. Total term of contract can be up to 3 years if sales are reported through the contract and both parties agree.

Shipments

The Vendor shall ship ordered products within five (5) working days after the receipt of the order. If a product cannot be shipped within that time, the Vendor shall notify TIPS and the requesting entity as to why the product has not shipped and shall provide an estimated shipping date, if applicable. TIPS or the requesting entity may cancel the order if estimated shipping time is not acceptable.

Invoices

The Vendor or vendor assigned dealer shall submit invoices, to the TIPS participant. Each invoice shall include the TIPS participant's purchase order number. The shipment tracking number or pertinent information for verification of TIPS participant receipt shall be made available upon request. The Vendor or vendor assigned dealer shall not invoice for partial shipments unless agreed to in writing in advance by TIPS and the TIPS participant.

Payments

The TIPS participant will make payments directly to the Vendor or vendor assigned dealer at net 30 days after receiving invoice.

Pricing

The Vendor contracts to provide pricing to TIPS and its participating governmental entities that is the lowest pricing available to like cooperative purchasing customers and the pricing shall remain so throughout the duration of the contract.

The Vendor agrees to promptly lower the cost of any product purchased through TIPS following a reduction in the manufacturer or publisher's direct cost to the Vendor. Price increases will be honored. However, the Vendor shall honor previous prices for thirty (30) days after written notification to TIPS of an increase.

All pricing submitted to TIPS shall include the participation fee to be remitted to TIPS by the Vendor. Vendor will not show adding the fee to the invoice presented to customer. The normal fee is 2%, but can be negotiated with the Vendor.

Participation Fees

Vendor or vendor assigned dealer contracts to pay the participation fee for all contract sales to TIPS on a monthly scheduled report. Vendor must login to the TIPS database and use the "Submission Report" section to report sales. The Vendor or vendor assigned dealers are responsible for keeping record of all sales that go through the TIPS contract. Failure to pay the participation fee will result in termination of contract. Please contact TIPS at tips@tips-usa.com or call (866) 839-8477 if you have questions about paying fees.

Indemnity

1. **Indemnity for Personality Contracts.** Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS member(s), officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's performance of this contract, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, invitees, whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS, TIPS member(s), officers, employees, or agents.
2. **Indemnity for Performance Contracts.** The Vendor agrees to indemnify and hold harmless and defend TIPS, TIPS member(s), officers and employees from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and attorney's fees, arising out of, or resulting from, Vendor's work under this contract, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, or invitees. Vendor further agrees to indemnify and

hold harmless and defend TIPS, TIPS member(s), officers and employees, from and against all claims and suits for injuries (including death) to an officer, employee, agent, subcontractor, supplier or equipment lessee of the Vendor, arising out of, or resulting from, Vendor's work under this contract whether or not such claims are based in whole or in part upon the negligent acts or omissions of the TIPS, TIPS member(s), officers, employees, or agents.

Attorney's Fees--Texas Local Government Code § 271.159 is expressly referenced.

Pursuant to §271.159, TEXAS LOC. GOV'T CODE, in the event that any one of the Parties is required to obtain the services of an attorney to enforce this Agreement, the prevailing party, in addition to other remedies available, shall be entitled to recover reasonable attorney's fees and costs of court.

Multiple Vendor Awards

TIPS reserves the right to award multiple vendor contracts for categories when deemed in the best interest of the TIPS membership. Bidders scoring 80% or above will be considered for an award. Categories are established at the discretion of TIPS.

State of Texas Franchise Tax

By signature hereon, the bidder hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

Miscellaneous

The Vendor acknowledges and agrees that continued participation in TIPS is subject to TIPS sole discretion and that any Vendor may be removed from the participation in the Program at any time with or without cause. Nothing in the contract or in any other communication between TIPS and the Vendor may be construed as a guarantee that TIPS participants will submit any orders at any time. TIPS reserves the right to request additional proposals for items already on contract at any time.

Purchase Order Pricing/Product Deviation

If a deviation of pricing/product on a purchase order occurs, TIPS is to be notified within 24 hours of receipt of order.

Cancellation for non-performance or contract deficiency

TIPS may terminate any contract if TIPS Members have not used the contract, or if purchase volume is determined to be "low volume" in any 12-month period. TIPS reserves the right to cancel the whole or any part of this contract due to failure by awarded vendor to carry out any obligation, term or condition of the contract. TIPS may issue a written deficiency notice to awarded vendor for acting or failing to act in any of the following:

- Providing material that does not meet the specifications of the contract;

- Providing work and/or material that was not awarded under the contract;
- Failing to adequately perform the services set forth in the scope of work and specifications;
- Failing to complete required work or furnish required materials within a reasonable amount of time;
- Failing to make progress in performance of the contract and/or giving TIPS reason to believe that awarded vendor will not or cannot perform the requirements of the contract; and/or
- Performing work or providing services under the contract prior to receiving a TIPS reviewed purchase order for such work.

Upon receipt of the written deficiency, awarded vendor shall have ten (10) days to provide a satisfactory response to TIPS. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by awarded vendor under this contract shall become the property of the TIPS Member on demand.

TIPS Member Purchasing Procedures

Purchase orders are issued by participating TIPS member to the awarded vendor indicating on the PO "Contract Number". Purchase Order is emailed to TIPS at tipspo@tips-usa.com.

- Awarded vendor delivers goods/services directly to the participating member.
- Awarded vendor invoices the participating TIPS member directly.
- Awarded vendor receives payment directly from the participating member.
- Awarded vendor reports sales monthly to TIPS (unless prior arrangements have been made with TIPS to report monthly).

Form of Contract

The form of contract for this solicitation shall be the Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposals. If a vendor submitting an offer requires TIPS and/or TIPS Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal.

Vendor contract documents: TIPS will review proposed vendor contract documents. Vendor's contract document shall not become part of TIPS's contract with vendor unless and until an authorized representative of TIPS reviews and approves it.

Licenses

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. TIPS reserves the right to stop

work and/or cancel contract of any awarded vendor whose license(s) expire, lapse, are suspended or terminated.

Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. TIPS reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of awarded vendor.

Site Requirements (when applicable to service or job)

Cleanup: Awarded vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by TIPS Member. Upon completion of work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

Preparation: Awarded vendor shall not begin a project for which TIPS Member has not prepared the site, unless awarded vendor does the preparation work at no cost, or until TIPS Member includes the cost of site preparation in a purchase order.

Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

Registered sex offender restrictions: For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or reasonably expected to be present. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the TIPS Member's discretion.

Awarded vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

Safety measures: Awarded vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Awarded vendor shall post warning signs against all hazards created by the operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

Smoking

Persons working under contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

Invoices

The awarded vendor shall submit invoices to the participating entity clearly stating "Per TIPS Contract". The shipment tracking number or pertinent information for verification shall be made available upon request.

Marketing

Awarded vendor agrees to allow TIPS to use their name and logo within website, marketing materials and advertisement. Any use of TIPS name and logo or any form of publicity, inclusive of press release, regarding this contract by awarded vendor must have prior approval from TIPS.

Supplemental agreements

The entity participating in the TIPS contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor. TIPS, its agents, TIPS members and employees shall not be made party to any claim for breach of such agreement.

Legal obligations

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this RFP and any awarded contract thereof. Applicable laws and regulations must be followed even if not specifically identified herein.

Audit rights

Awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by TIPS Member that utilizes this Contract. TIPS and Region 8 ESC each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of one (1) year from the effective date of termination. TIPS shall have authority to conduct random audits of Awarded Vendor's pricing that is offered to TIPS Members. Notwithstanding the foregoing, in the event that TIPS is made aware of any pricing being offered to eligible entities that is materially inconsistent with the pricing under this agreement, TIPS shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 8 ESC or TIPS.

Force Majeure

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and fully particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

Services

When applicable, performance bonds will be required on construction or labor required jobs over \$100,000 and payment bonds on jobs over \$25,000 or awarded vendor will meet the TIPS member's local and state purchasing requirements. Awarded vendors may need to provide additional capacity as jobs increase. Bonds will not require that a fee be paid to TIPS. The actual cost of the bond will be a pass through to the TIPS member and added to the purchase order.

Scope of Services

The specific scope of work for each job shall be determined in advance and in writing between TIPS Member and Awarded vendor. It is okay if the TIPS member provides a general scope, but the awarded vendor should provide a written scope of work to the TIPS member as part of the proposal. Once the scope of the job is agreed to, the TIPS member will issue a PO with the estimate referenced as an attachment along with bond and any other special provisions agreed to for the TIPS member. If special terms and conditions other than those covered within this solicitation and awarded contracts are required, they will be attached to the PO and shall take precedence over those in the base contract.

Project Delivery Order Procedures

The TIPS member having approved and signed an interlocal agreement, or other TIPS membership document, may make a request of the awarded vendor under this contract when the TIPS member has services that need to be undertaken. Notification may occur via phone, the web, email, fax, or in person.

Upon notification of a pending request, the awarded vendor shall make contact with the TIPS member as soon as possible, but must make contact with the TIPS member within two working days.

Scheduling of Projects

Scheduling of projects (if applicable) will be accomplished when the TIPS member issues a purchase order that will serve as "the notice to proceed". The period for the delivery order will include the mobilization, materials purchase, installation and delivery, design, weather, and site cleanup and inspection. No additional claims may be made for delays as a result of these items. When the tasks have been completed the awarded vendor shall notify the client and have the TIPS member inspect the work for acceptance under the scope and terms in the PO. The TIPS member will issue in writing any corrective actions that are required. Upon completion of these items, the TIPS member will issue a completion notice and final payment will be issued.

Support Requirements

If there is a dispute between the awarded vendor and TIPS member, TIPS or its representatives will assist in conflict resolution or third party (mandatory mediation), if requested by either party. TIPS, or its representatives, reserves the right to inspect any project and audit the awarded vendors TIPS project files, documentation and correspondence.

Special Terms and Conditions

It is the intent of TIPS to contract with a reliable, high performance vendor to supply products and services to government and educational agencies. It is the experience of TIPS that the following procedures provide TIPS, the Vendor, and the participating agency the necessary support to facilitate a mutually beneficial relationship. The specific procedures will be negotiated with the successful vendor.

- **Contracts:** All vendor purchase orders must be emailed to TIPS at tipspo@tips-usa.com. Should an agency send an order direct to vendor, it is the vendor's responsibility to forward the order to TIPS at the email above within 24 business hours and confirm its receipt with TIPS.
 - **Promotion of Contract:** It is agreed that Vendor will encourage all eligible entities to purchase from the TIPS Program. Encouraging entities to purchase directly from the Vendor and not through TIPS contract is not acceptable to the terms and conditions of this contract and will result in removal of Vendor from Program. Vendor is expected to use marketing funds for the marketing and promotion of this contract.
 - **Daily Order Confirmation:** All contract purchase orders will be approved daily by TIPS and sent to vendor. The vendor must confirm receipt of orders to the TIPS member (customer) within 24 business hours.
 - **Vendor custom website for TIPS:** If Vendor is hosting a custom TIPS website, then updated pricing must be posted by 1st of each month.
 - **Back Ordered Products:** If product is not expected to ship within 3 business days, customer is to be notified within 24 hours and appropriate action taken based on customer request.
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Check one of the following responses to the General Terms and Special Terms and Conditions:

() We take no exceptions/deviations to the general and/or special terms and conditions.

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)

() We take the following exceptions/deviations to the general and/or special terms and conditions. All exceptions/deviations must be clearly explained. Reference the corresponding general or special terms and conditions that you are taking exceptions/deviations to. The proposer must clearly state if you are adding additional terms and conditions to the general or special terms and conditions. Provide details on your exceptions/deviations below:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

The Interlocal Purchasing System (TIPS Cooperative) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Kim Thompson Coordinator of Office Operations	Address	Region VIII Education Service Center 4845 US Highway 271 North Pittsburg, TX 75686	Address
Email	Kim.Thompson@tips-usa.com			Contact
Phone	(903) 575-2608			
Fax	(866) 929-4402	Contact	Kim Thompson, TIPS Office Manager	Department Building
Bid Number	1022516			
Title	Email Archive Systems w/backup and Disaster Recovery	Department Building		Floor/Room Telephone Fax Email
Bid Type	RFP	Floor/Room		
Issue Date	12/02/2015	Telephone	+1 (866) 839-8477	
Close Date	1/15/2016 3:00:00 PM CT	Fax	+1 (866) 839-8472	
Need by Date		Email	bids@tips-usa.com	

Supplier Information

Company USACI
 Address PO Box 940128

 Plano, TX 75094
 Contact Jessica Hartley
 Department
 Building
 Floor/Room
 Telephone 1 (972) 6730333 111
 Fax 1 (972) 6730222
 Email jhartley@usaci.com
 Submitted 1/14/2016 11:20:53 AM CT
 Total \$0.00

Signature Tara Geiger

Email tara.geiger@usaci.com

Supplier Notes

Bid Notes

Bid Activities

Bid Messages

Please review the following and respond where necessary

#	Name	Note	Response
1	Yes - No	Disadvantaged/Minority/Women Business Enterprise - D/M/WBE (Required by some participating governmental entities) Vendor certifies that their firm is a D/M/WBE? Vendor must upload proof of certification to the "Response Attachments" D/M/WBE CERTIFICATES section.	Yes
2	Yes - No	Highly Underutilized Business - HUB (Required by some participating governmental entities) Vendor certifies that their firm is a HUB? Vendor must upload proof of certification to the "Response Attachments" HUB CERTIFICATES section.	Yes
3	Yes - No	The Vendor can provide services and/or products to all 50 US States?	Yes
4	States Served:	If answer is NO to question #3, please list which states can be served. (Example: AR, OK, TX)	
5	Company and/or Product Description:	This information will appear on the TIPS website in the company profile section, if awarded a TIPS contract. (Limit 750 characters.)	USACI has been helping businesses, governmental agencies and educational institutions solve their IT challenges for over 20 years. Leveraging the latest technology from Best in the Business partners, USACI delivers superior solutions backed by a customer care center focused on service.
6	Primary Contact Name	Primary Contact Name	Jessica Hartley
7	Primary Contact Title	Primary Contact Title	CEO
8	Primary Contact Email	Primary Contact Email	jhartley@usaci.com
9	Primary Contact Phone	Enter 10 digit phone number. (No dashes or extensions)	9726730333
10	Primary Contact Fax	Enter 10 digit phone number. (No dashes or extensions)	9726730222
11	Primary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions)	
12	Secondary Contact Name	Secondary Contact Name	Tara Geiger
13	Secondary Contact Title	Secondary Contact Title	Sales Support
14	Secondary Contact Email	Secondary Contact Email	tara.geiger@usaci.com
15	Secondary Contact Phone	Enter 10 digit phone number. (No dashes or extensions)	9726730333
16	Secondary Contact Fax	Enter 10 digit phone number. (No dashes or extensions)	
17	Secondary Contact Mobile	Enter 10 digit phone number. (No dashes or extensions)	
18	Admin Fee Contact Name	Admin Fee Contact Name. This person is responsible for paying the admin fee to TIPS.	Jessica Hartley
19	Admin Fee Contact Email	Admin Fee Contact Email	jhartley@usaci.com
20	Admin Fee Contact Phone	Enter 10 digit phone number. (No dashes or extensions)	9726730333
21	Purchase Order Contact Name	Purchase Order Contact Name. This person is responsible for receiving Purchase Orders from TIPS.	Jessica Hartley
22	Purchase Order Contact Email	Purchase Order Contact Email	jhartley@usaci.com

23	Purchase Order Contact Phone	Enter 10 digit phone number. (No dashes or extensions)	9726730333
24	Company Website	Company Website (Format - www.company.com)	www.usaci.com
25	Federal ID Number:	Federal ID Number also known as the Employer Identification Number. (Format - 12-3456789)	75-2425449
26	Primary Address	Primary Address	PO Box 940128
27	Primary Address City	Primary Address City	Plano
28	Primary Address State	Primary Address State (2 Digit Abbreviation)	Texas
29	Primary Address Zip	Primary Address Zip	75094
30	Search Words:	Please list search words to be posted in the TIPS database about your company that TIPS website users might search. Words may be product names, manufacturers, or other words associated with the category of award. YOU MAY NOT LIST NON-CATEGORY ITEMS. (Limit 500 words) (Format: product, paper, construction, manufacturer name, etc.)	archiving, back-up, disaster recovery, BDR, Storagecraft, server back-up, cloud storage, cloud recovery
31	Yes - No	Do you wish to be eligible to participate in a TIPS contract in which a TIPS member utilizes federal funds on contracts exceeding \$100,000? (Non-Construction) (If YES, vendor should download the Federal Regulations for Contracts document from the Attachments section, fill out the form and submit the document in the "Response Attachments" FEDERAL FUNDS section.) (Vendor must also download the Suspension or Debarment Certificate document from the Attachments section, fill out the form and submit the document in the "Response Attachments" SUSPENSION OR DEBARMENT section.)	Yes
32	Yes - No	Certification of Residency (Required by the State of Texas) Company submitting bid is a Texas resident bidder?	Yes
33	Company Residence (City)	Vendor's principal place of business is in the city of?	Plano
34	Company Residence (State)	Vendor's principal place of business is in the state of?	Texas
35	Felony Conviction Notice:	(Required by the State of Texas) My firm is, as outlined on PAGE 5 in the Instructions to Bidders document: (Questions 36 - 37)	(No Response Required)
36	Yes - No	A publicly held corporation; therefore, this reporting requirement is not applicable?	No
37	Yes - No	Is owned or operated by individual(s) who has/have been convicted of a felony? If answer is YES, a detailed explanation of the name(s) and conviction(s) must be uploaded to the "Response Attachments" FELONY CONVICTION section.	No
38	Pricing Information:	Pricing information section. (Questions 39 - 42)	(No Response Required)
39	Yes - No	In addition to the typical unit pricing furnished herein, the Vendor agrees to furnish all current and future products at prices that are proportionate to Dealer Pricing. If answer is NO, include a statement detailing how pricing for TIPS participants would be calculated in the PRICING document that is uploaded to the "Response Attachments" PRICING section.	Yes
40	Yes - No	Pricing submitted includes the TIPS administration fee?	Yes

41	Yes - No	Vendor agrees to remit to TIPS the required administration fee?	Yes
42	Yes - No	Additional discounts to TIPS members for bulk quantities or scope of work?	No
43	Start Time	Average start time after receipt of customer order is ____ working days?	7
44	Years Experience	Company years experience in this category?	20
45	Resellers:	Does the vendor have resellers that it will name under this contract? (If applicable, vendor should download the Reseller/Dealers spreadsheet from the Attachments section, fill out the form and submit the document in the "Response Attachments" RESELLERS section.	Yes
46	Prices are guaranteed for?	(___ Month(s), ___ Year(s), or Term of Contract) (Standard term is "Term of Contract")	Term of Contract

Line Items		
Response Total:		\$0.00

CONTRACT Signature Form

The undersigned hereby proposes and agrees to furnish goods and/or services in compliance with the terms, specifications and conditions at the prices quoted unless noted in writing. The undersigned further certifies that he or she is an authorized agent of the company and has authority to negotiate and contract for the company named below.

Company Name: USACI Corp

Mailing Address: PO Box 940128

City: Plano

State: TX

Zip: 75094

Telephone Number: (972) 673-0333

Fax Number: (972) 673-0222

Email Address: jhartley@usaci.com

Authorized Signature: *Jessica Hartley*

Printed Name: Jessica Hartley

Position: CEO

This contract is for a total TERM of one year with the option of two additional years. Vendors shall honor the participation fee for any sales made based on the TIPS contract. Failure to pay the fee will be grounds for termination of contract and will affect the award of future contracts.

Blende Mc Natt *2/25/16*
TIPS Authorized Signature Date

David Wayne Fith *2/25/16*
Approved by Region VIII ESCO Date

References

**** Must have at least 3 References. References must be School, City, County, University, State Agency or Other Government.**

Organization	City	State	Contact Name	Contact Phone
LA Dept of Agriculture and Forestry	Baton Rouge	LA	Shawn Sellars	(225)922-1234
Gonzales ISD	Gonzales	TX	Jeff Messinger	(832)672-9551
Tim Truman Ch 13 Trustee	Ft. Worth	TX	Chris Putnam	(817)770-8500

STORAGECRAFT® SUPPORT

RELIABLE SUPPORT OPTIONS THAT ENSURE BUSINESS CONTINUITY

KEEP YOUR CUSTOMERS UP AND RUNNING

STORAGECRAFT® SHADOWPROTECT® OFFERS USERS TOTAL CONTROL of their backup and disaster recovery. Make sure they are getting the most out of StorageCraft by including StorageCraft Support, which ensures that US-based experts are ready to assist users when they need it the most. If your disaster recovery plan includes after business-hour needs, make sure you're ready in advance.

OPTIONS THAT FIT YOUR NEEDS

StorageCraft offers a variety of support options designed to meet your unique needs.

STANDARD SUPPORT (MAINTENANCE)

StorageCraft products* come with a Maintenance Agreement that includes one year of Standard Support. With Standard Support, users can rest assured they'll receive a response within two business hours or less when an emergency-level support case is submitted Monday through Friday, between 7AM and 7PM in partner's local time zone, excluding U.S. holidays. Additionally, during the maintenance period, users have free access to all software updates and upgrades. Standard Support can be renewed annually.

PREMIUM SUPPORT

As an add-on to active Standard Support, Premium Support features 24x7 service and

ensures a telephone response within one hour for any emergency-level support case submitted. Plus, our technicians will work with users over the phone and online. Subscribers to the StorageCraft Academy get 24x7 emergency support with membership. Please note: Premium Support is not available on ShadowProtect IT Edition or MSP licenses.

INCIDENT SUPPORT

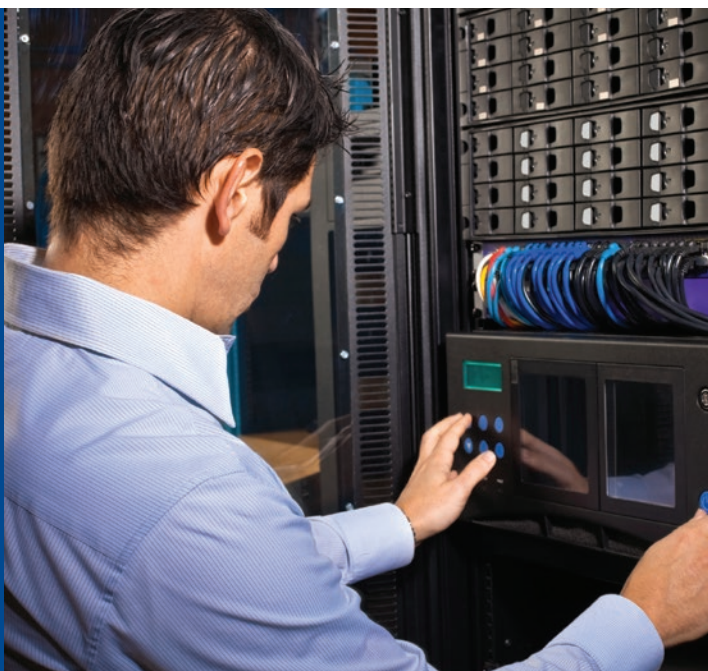
Ideal for Managed Service Providers and anyone that needs support after hours, Incident Support provides single issue support when you need it most. Available in single or multipacks, this option allows you to arrange for support only when you need it. Just like Premium Support, Incident Support features 24x7 service, and ensures a telephone response within one hour or less when an emergency-level support case is submitted. Incident Support can be used whether or not there is an active Standard Support Maintenance Agreement in place.

	Standard Support	Premium Support (add-on)	Incident Support
Free Access to Software Updates and Upgrades	✓	✓	
Standard Business Hour Coverage	✓	✓	✓
24x7 Coverage for Emergency Cases		✓	✓
Emergency Case Response Timing	Within 2 hours, M-F, 7AM-7PM partner's local time zone	Within 1 hour, 24x7	Within 1 hour, 24x7
Active Maintenance Agreement Required	Yes	Yes	No

STORAGECRAFT SUPPORT FAST RESPONSE

“ I just want to share my tech support experiences with you from Saturday and today. I opened a case on Saturday not expecting a response until Monday and received a reply within an hour. I opened another case this morning and my response time was only 15 minutes. This is fantastic. The technician was very helpful and explained best practices and procedures clearly. ”

Steven P. Kleis, Total Networx
October 2011



GET EMERGENCY 24X7 SUPPORT WITH TRAINING

The StorageCraft Academy provides StorageCraft partners with the education they need to offer disaster recovery solutions based on the end-to-end StorageCraft Recover-Ability solution. Now with membership in StorageCraft Academy, participants receive complimentary 24x7 Support for emergency-level cases, because even partners in training need a little support from time to time.

LOCAL, RELIABLE EXPERTS

StorageCraft backup and disaster recovery software is backed by an internal team of highly trained and experienced technical support experts. Based in the US, our experts are closely tied to StorageCraft product developers, ensuring they have access to all the resources they need to assist users with a full range of technical issues. These factors

allow StorageCraft to provide fast, efficient support every time.

If you want to be ready for any disaster, make sure you include the right StorageCraft Support option with your purchase of ShadowProtect.

MORE INFORMATION

For additional details on StorageCraft Support, contact us today:

Tel — 1.801.545.4700

Email — Sales@StorageCraft.com or
ContactUs@StorageCraft.com

Fax — 1.801.545.4705

Or visit www.StorageCraft.com

*MSP subscriptions include Standard Support while the MSP subscription is in effect.

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END-USER LICENSE AGREEMENT FOR STORAGECRAFT® PRODUCTS

This license agreement (the “**Agreement**”) is a legal and enforceable contract between you and StorageCraft Technology Corporation (“**StorageCraft**”) and contains the terms, conditions, rights, and limitations associated with your use of StorageCraft Products, as that term is defined below. Each Software product is separately licensed. By installing or using the Software, even if through a manual, silent, unattended or push installation, you are accepting and agreeing to the terms of this Agreement. Acceptance of this Agreement for a particular Software product constitutes acceptance of this Agreement for all Software that you install using that product, such as through a push installation. StorageCraft is willing to license a StorageCraft Product to you as the individual, organization, or legal entity that will be using the particular StorageCraft Product (“**you**” or “**Licensee**” or “**End User**”), but only on the condition that you accept all terms of this Agreement. This Agreement becomes effective and you accept it and agree to its terms if you open a package containing a Software product, break the seal on a Software product, click the “I Agree” button, or otherwise indicate assent to the terms of this Agreement by using the Software product (e.g., by installing, loading, running, executing, displaying, deploying or retaining the Software product). If you do not agree to these terms and conditions, do not open the packaging, break the seal, click the “I Agree” button, install, or otherwise use the Software. If you install or otherwise use the Software under any trial, evaluation, or purchase transaction, your conduct constitutes acceptance of this Agreement and you will be bound by all of its terms and conditions. You may access, download, and/or print a copy of this Agreement from the StorageCraft website at www.storagecraft.com/legal/. PLEASE READ THIS AGREEMENT AND PRINT A COPY FOR YOUR RECORDS.

Section 1 Definitions.

- 1.1. “**Activation**” (and its variants “activate”, “activated”, and the like) means a process in which the Software’s Product Key and certain machine related information is provided to StorageCraft, converting it from a Trial License into a fully-activated version of the Software. An “active” license or “active” Seat is a Seat of Software for which the foregoing process has been completed and which has not been deactivated.
- 1.2. “**Archival Use**” means the creation and confidential storage of a single copy of an activated Seat of the Software for use by you only in the event that the Original Copy fails to function properly. Archival Use does not include simultaneous use of the Original Copy and the archival copy.
- 1.3. “**Deactivation**” (and its variants “deactivate”, “deactivated”, and the like) means a process that is the inverse of Activation, the result of which includes suspension of the ability to take backup images and/or otherwise use the Software.
- 1.4. “**Designated Technician**” means the natural person you designate to use ShadowProtect IT Edition or ShadowProtect IT Edition Professional and to maintain exclusive custody of such Software. If you are an entity and not an individual, the Designated Technician must be your employee. If you are an individual, then you must be the Designated Technician.
- 1.5. “**Desktop Operating System**” means any broadly released Microsoft® operating system intended for desktop computers. For a list of Desktop Operating Systems with which Software is compatible, please consult a StorageCraft customer service representative.
- 1.6. “**Documentation**” means all on-line help files or written instruction manuals and user guides addressing the installation and use of the StorageCraft Products.
- 1.7. “**End User**” means the person, organization, or entity who accepts this Agreement. In the case of MSP Software, the End User is the MSP or an Enterprise User.
- 1.8. “**Enterprise User**” means an organizational End User that is not a natural person, which End User uses MSP Software for its Internal Use.
- 1.9. “**HeadStart Restore**”® HeadStart Restore, U.S. Patent No. 8,190,574, is Software employing an advanced license feature for use with ImageManager, and which is licensed on a per-Job basis. One HeadStart Restore Job permits ImageManager, by an automated process, to restore from a single computer one ShadowProtect image file (or a set of ShadowProtect image files) to a Virtual Machine on a VMDK, ESX, or Hyper-V platform. Additional Jobs must be purchased separately. HeadStart Restore may be licensed on a perpetual or subscription basis.
- 1.10. “**ImageReady**” is a StorageCraft Utility that extends and automates the functionality of the ShadowProtect native Mount Tools. Once configured by the End User, ImageReady will mount designated ShadowProtect image files for the purpose of running custom, user defined scripts. ImageReady installs as a subset of the ShadowProtect installation and does not require a separate license.
- 1.11. “**Intellectual Property Rights**” means all of StorageCraft’s ownership rights associated with intellectual property and the StorageCraft Products, including but not limited to patents, copyrights, trademarks, trade secrets, know how, and any and all rights to exclude existing from time to time in a specified jurisdiction under patent law, copyright law, moral rights law, trade-secret law, trademark law, unfair competition law, or other similar law.
- 1.12. “**intelligentFTP**”® is Software employing file transfer technology for use with ImageManager and which is licensed on a per-Job basis. One intelligentFTP Job permits ImageManager to transfer a ShadowProtect image file (or a set of ShadowProtect image files) from a single computer to a remote computer through an FTP server or LAN/WAN connection. intelligentFTP includes only the FTP client. intelligentFTP may be licensed on a perpetual or subscription basis. Additional Jobs must be purchased separately.
- 1.13. “**Internal Use**” means use of the Software for your internal business purposes only on a computer that you own and use as part of the operation of your business. The following uses DO NOT constitute Internal Use: the sale, lease, distribution or other transfer of the Software or the benefits of its use to a third party, including without limitation your customers or clients; use of the Software by someone other than you, including your customers or clients; use of the Software in a service bureau arrangement; copying of the Software except as expressly permitted by this Agreement or applicable law; and/or use of the Software to generate service revenue, manage someone else’s data, or provide services to third parties, including your customers or clients.
- 1.14. “**ISO Tool**” means a stand-alone StorageCraft Utility that is bundled with ShadowProtect and permits users to burn, rip, mount and author ISO files.
- 1.15. “**IT Edition Renewal Subscription**” or “**Renewal Subscription**” means one or more extension terms to the IT Edition Subscription Period granted by StorageCraft to you based on your payment of the applicable renewal IT Edition Subscription Fee during the term of a prior IT Edition Subscription Period. A Renewal Subscription commences immediately upon the expiration of the prior IT Edition Subscription Period.

and provides you with all the rights and benefits of the initial IT Edition Subscription Period, but for the term of the IT Edition Renewal Subscription.

- 1.16. **"IT Edition Subscription Fee"** means the fee you paid to StorageCraft or its authorized reseller or distributor in exchange for a license to use IT Edition during the IT Edition Subscription Period.
- 1.17. **"IT Edition Subscription Period"** means the term of the license granted by StorageCraft to you during which your Designated Technician may use IT Edition. An IT Edition Subscription Period commences the day you either activate the IT Edition or create a Three-Day ISO. The duration of the IT Edition Subscription Period may be as follows: A **"Two Week Subscription"** means a license granted by StorageCraft to you with an IT Edition Subscription Period of fourteen (14) calendar days. A **"One Month Subscription"** means a license granted by StorageCraft to you with an IT Edition Subscription Period of thirty (30) calendar days. A **"Three Month Subscription"** means a license granted by StorageCraft to you with an IT Edition Subscription Period of ninety (90) calendar days. An **"Annual Subscription"** means a license granted by StorageCraft to you with an IT Edition Subscription Period of three-hundred sixty-five (365) calendar days.
- 1.18. **"Job(s)"** means intelligentFTP Jobs, HeadStart Restore Jobs, and/or ShadowStream Jobs.
- 1.19. **"License Fee"** means the fee you paid to StorageCraft or its authorized distributor or reseller in exchange for a license to use the Software in accordance with the limitations established in this Agreement.
- 1.20. **"Maintenance"** means, for the specific Software to which you are licensed in accordance with this Agreement, a time-limited right to (i) all Updates and Upgrades to the Software that StorageCraft releases during the period that Maintenance is in effect, subject to the terms and conditions imposed by this Agreement, and (ii) Standard Support. Maintenance is provided on a per-Product Key or per-Seat basis and expressly excludes any other StorageCraft Products, Updates to other StorageCraft Products, and separately licensed add-on modules, or features included in other StorageCraft Products. Updates, Upgrades, and additional features of StorageCraft Products will be released, added, or created at StorageCraft's sole and complete discretion, and StorageCraft makes no warranty, promise, or commitment to make any such offering.
- 1.21. **"Mount Tools"** means the Software components necessary to mount a backup image file chain as a system resource, using either standard Windows® drive letters or a mount point.
- 1.22. **"MSP"** means managed service provider.
- 1.23. **"MSP Portal"** means a password-protected area on a StorageCraft Internet website that, at the sole discretion of StorageCraft, will permit an MSP to access certain functionality and information concerning the MSP's account with StorageCraft or an authorized third-party.
- 1.24. **"MSP Software"** means any of the following Software licensed on a subscription basis: ShadowProtect Desktop, ShadowProtect Server, ShadowProtect for Small Business, ShadowProtect Virtual, ShadowProtect SPX Server, ShadowProtect SPX Virtual, ShadowProtect SPX for Small Business, ShadowProtect SPX Desktop, StorageCraft ImageManager, ShadowProtect GRE, HeadStart Restore, intelligentFTP, and ShadowStream.
- 1.25. **"MSP Subscription Fees"** means monthly fees paid by an MSP or an Enterprise User for the right to use MSP Software during a particular month. MSP Subscription Fees are not included in the definition of License Fee.
- 1.26. **"Object Code"** means the output of a compiler after it processes the Software source code in the form of an executable, dll, or library file.
- 1.27. **"Original Copy"** means the single copy of the Seat of activated Software which is licensed and provided to you under this Agreement. An Original Copy of IT Edition may be provided on USB flash media.
- 1.28. **"Party"** means you or StorageCraft under this Agreement. **"Parties"** means you and StorageCraft.
- 1.29. **"Perpetual Software"** means any of the following Software licensed on a perpetual basis: ShadowProtect Server, ShadowProtect for Small Business, ShadowProtect Desktop, ShadowProtect Virtual, ShadowProtect SPX Server, ShadowProtect SPX Virtual, ShadowProtect SPX for Small Business, ShadowProtect SPX Desktop, StorageCraft ImageManager, StorageCraft ShadowControl, ShadowProtect GRE, StorageCraft GRE, HeadStart Restore, intelligentFTP, and ShadowStream.
- 1.30. **"Physical System"** means a tangible computer hardware device supported by an installed operating system.
- 1.31. **"Product Key"** means a unique identifier associated with a Seat of Software that is required to activate each Seat of Software and which StorageCraft uses to determine the number of active licenses of Software. Solely at its discretion, StorageCraft may elect to permit a single Product Key to activate a designated number of Seats of Software.
- 1.32. **"Product Support"** means Standard Support or Paid Support for a Support Issue associated with the Software. **"Standard Support"** includes on-line and telephone support for Emergency Level Support Issues during StorageCraft's regular business hours; StorageCraft's on-line support system; the StorageCraft-moderated user forum; and the StorageCraft knowledge base, which is a question and answer resource that includes frequently asked questions. Standard Support is only available for the current and immediately preceding version of the Software. **"Paid Support"** means Premium Support and Incident Support. **"Premium Support"** means Standard Support plus one year of technical support that is purchased in addition to the Software, which support includes 24-hour on-line and telephone support for Emergency Level Support Issues. **"Incident Support"** entitles you to Premium Support for a single Support Issue. Incident Support is sold singly or in packs. At StorageCraft's sole discretion, Product Support may be provided by StorageCraft, a StorageCraft affiliate, or an agent of StorageCraft or its affiliate. For additional information concerning Product Support, visit http://www.storagecraft.com/documents/StorageCraft_Technical_Support_Guide.pdf.
- 1.33. **"Professional Services Automation Integration Service" or "PSAI Service" or "PSAI"** is a StorageCraft Utility that allows an MSP to synchronize certain MSP customer information contained in the MSP Portal with certain customer information in the MSP's Professional Services Automation Tool ("PSA"). If you use the PSAI Service, you understand that in order to push data from the MSP Portal to a PSA, StorageCraft will require you to provide your PSA credentials. By using the PSAI Service, you consent to the use of your credentials for this purpose. Your PSA credentials will be maintained by StorageCraft in an encrypted form.
- 1.34. **"Seat"** means one license to a Software product which has been activated or for which Activation is available to the End User.
- 1.35. **"Server Operating System"** means any broadly released Microsoft or Linux operating system intended for server computers. For a list of Server Operating Systems with which Software is compatible, please consult a StorageCraft customer service representative.
- 1.36. **"ShadowProtect"** means the ShadowProtect® line of Software comprised of ShadowProtect Desktop, ShadowProtect Server, ShadowProtect for Small Business, ShadowProtect Virtual, ShadowProtect SPX, and ShadowProtect for MSP. ShadowProtect includes the executable program installed on the computer, the StorageCraft Recovery Environment, the StorageCraft Recovery Environment Builder and the

following components: Mount Tools, VirtualBoot, ISO Tool, ImageReady, ShadowProtect Console, and ShadowProtect Agent. ShadowProtect may be licensed on a perpetual basis or on a subscription basis as ShadowProtect for MSP or ShadowProtect SPX for MSP. ShadowProtect does not include separately licensed, fee-bearing products, services, or add-on modules. Each Seat of ShadowProtect Desktop, ShadowProtect Server, and ShadowProtect for Small Business is licensed for use on either a Physical System or a Virtual Machine, but not both. ShadowProtect Virtual is licensed only for use on a Virtual Machine.

- 1.37. “ShadowProtect Agent”** means a component of ShadowProtect or ShadowProtect SPX that runs as a Windows or Linux service and manages ShadowProtect operations on a particular system.
- 1.38. “ShadowProtect Console”** means the user interface for ShadowProtect and ShadowProtect SPX.
- 1.39. “ShadowProtect for Managed Service Providers” or “ShadowProtect for MSP”** is subscription-based Software which, upon installation, reports to StorageCraft the operating system of the computer on which the Software is installed, and based on that information, is activated as a subscription-based version of ShadowProtect Desktop, ShadowProtect for Small Business, ShadowProtect Server or ShadowProtect Virtual. ShadowProtect for MSP functions only while you have a valid subscription to the MSP Software. Seats of ShadowProtect for MSP must have an operating Internet connection permitting the Software to periodically communicate with StorageCraft’s activation server. If the Software is repeatedly unable to communicate with StorageCraft’s activation server, the Software will deactivate. ShadowProtect for MSP does not include separately licensed products, services, or add-on modules.
- 1.40. “ShadowProtect GRE”** means ShadowProtect Granular Recovery for Exchange, which is Software that works with licensed Microsoft Exchange Server database (“EDB”) files to permit, among other things, the recovery of mailbox items and the searching of email messages and attachments. ShadowProtect GRE will only work with mounted ShadowProtect image files that include the specified EDB file. ShadowProtect GRE may be licensed on a perpetual, subscription or fixed-term project basis. An MSP license for ShadowProtect GRE requires an initial one-year subscription and is not portable to an EDB file containing a new server name or a new Microsoft Exchange 2013 license key, as applicable. ShadowProtect GRE requires Microsoft Exchange Server files, which must be copied from a licensed and installed Exchange Server folder to the ShadowProtect GRE install folder or the IT Edition Professional GRE folder, as applicable. This Agreement does not grant a license to Microsoft Exchange Server. By using ShadowProtect GRE, you affirm that you have a valid license to use Microsoft Exchange Server.
- 1.41. “ShadowProtect IT Edition”** is subscription-based Software that is delivered on USB flash media and is intended to provide IT professionals with a bootable recovery environment to create and restore compressed and encrypted ShadowProtect image files. ShadowProtect IT Edition does not include separately licensed products or add-on modules. ShadowProtect IT Edition includes the ability to demonstrate ShadowProtect GRE in a trial mode, but does not allow you to use the restore or search capabilities of the licensed version of ShadowProtect GRE.
- 1.42. “ShadowProtect IT Edition Professional”** is subscription-based Software that is delivered on USB flash media and is intended to provide IT professionals with a bootable recovery environment to create and restore compressed and encrypted ShadowProtect image files. ShadowProtect IT Edition Professional includes a licensed copy of ShadowProtect GRE. With the exception of ShadowProtect GRE, ShadowProtect IT Edition Professional does not include separately licensed products or add-on modules.
- 1.43. “ShadowProtect SPX”** means the ShadowProtect SPX line of Software comprised of ShadowProtect SPX Desktop, ShadowProtect SPX Server, ShadowProtect SPX for Small Business, ShadowProtect SPX Virtual, and ShadowProtect SPX for MSP. ShadowProtect SPX Server and ShadowProtect SPX Virtual support both Windows and Linux operating systems. ShadowProtect SPX includes the executable program installed on the computer, the StorageCraft Recovery Environment, the StorageCraft Recovery Environment Builder and the following components: Mount Tools, VirtualBoot, ISO Tool, ShadowProtect Console, and ShadowProtect Agent. ShadowProtect SPX may be licensed on a perpetual basis or on a subscription basis, as ShadowProtect SPX for MSP. ShadowProtect SPX does not include separately licensed, fee-bearing products, services, or add-on modules. Each Seat of ShadowProtect SPX Desktop, ShadowProtect SPX Server, and ShadowProtect SPX for Small Business is licensed for use on either a Physical System or a Virtual Machine, but not both. ShadowProtect SPX Virtual is licensed only for use on a Virtual Machine.
- 1.44. “ShadowProtect SPX for Managed Service Providers” or “ShadowProtect SPX for MSP”** is subscription-based Software which, upon installation, reports to StorageCraft the operating system of the computer on which the Software is installed. If the operating system is a Windows operating system, in accordance with the type of Windows operating system, the Software will be activated as a subscription-based version of ShadowProtect SPX Desktop, ShadowProtect SPX for Small Business, ShadowProtect SPX Server, or ShadowProtect SPX Virtual. If the operating system is a Linux Server Operating System, in accordance with the type of Linux operating system, the Software will be activated as a subscription-based version of ShadowProtect SPX Server or ShadowProtect SPX Virtual. ShadowProtect SPX for MSP functions only while you have a valid subscription to the MSP Software. Seats of ShadowProtect SPX for MSP must have an operating Internet connection permitting the Software to periodically communicate with StorageCraft’s activation server. If the Software is repeatedly unable to communicate with StorageCraft’s activation server, the Software will deactivate. ShadowProtect SPX for MSP does not include separately licensed products, services, or add-on modules.
- 1.45. “ShadowStream”®** is Software employing an advanced file transfer technology for use with StorageCraft ImageManager. ShadowStream is licensed on a per-Job basis. One ShadowStream Job permits StorageCraft ImageManager to transfer a ShadowProtect image file (or a set of ShadowProtect image files) from a single computer to a remote computer over a high-latency link. It includes ShadowStream Server, which must be installed on the remote or receiving computer. ShadowStream may be licensed on a perpetual or subscription basis. Additional Jobs must be purchased separately.
- 1.46. “Small Business Server Operating System”** means the Microsoft operating systems that are compatible with ShadowProtect for Small Business and ShadowProtect SPX for Small Business. For a list of Small Business Server Operating Systems with which the Software is compatible, please consult either the StorageCraft website or a StorageCraft customer service representative.
- 1.47. “Software”** means any of the following: Perpetual Software, MSP Software, ShadowProtect IT Edition, ShadowProtect IT Edition Professional, and the StorageCraft Utilities to which you are licensed in accordance with this Agreement.
- 1.48. “StorageCraft Diagnostics”** is a StorageCraft Utility used to collect diagnostic information about a Physical System or Virtual Machine in order to facilitate the use of Software on the Physical System or Virtual Machine.

- 1.49. **"StorageCraft GRE"** means StorageCraft Granular Recovery for Exchange, which is Software that works with licensed EDB files to permit, among other things, the recovery of mailbox items and the searching of email messages and attachments. StorageCraft GRE may be licensed on a perpetual or fixed-term project basis. StorageCraft GRE requires Microsoft Exchange Server files, which must be copied from a licensed and installed Exchange Server folder to the StorageCraft GRE install folder. This Agreement does not grant a license to Microsoft Exchange Server. By using StorageCraft GRE, you affirm that you have lawfully licensed use of Microsoft Exchange Server.
- 1.50. **"StorageCraft ImageManager"** means Software that is an executable program used for the scheduled verification, retention, consolidation, monitoring, and management of ShadowProtect image files and includes the ImageManager Service and ImageManager Client. ImageManager can only be used in conjunction with Seats of ShadowProtect, and may be used with the advanced license features of HeadStart Restore, intelligentFTP, and ShadowStream, all of which are separately licensed on a per-job basis.
- 1.51. **"StorageCraft Product(s)"** means any of the following: Software and Paid Support.
- 1.52. **"StorageCraft Recovery Environment"** means StorageCraft Recovery Environment CrossPlatform and StorageCraft Recovery Environment for Windows, which are StorageCraft Utilities that provide a bootable operating system environment that runs ShadowProtect. This Agreement does not grant you a license to an operating system and/or application capable of being restored with the StorageCraft Recovery Environment. By using the StorageCraft Recovery Environment, you affirm that you have a valid license to use the underlying operating system and/or application in the restore process.
- 1.53. **"StorageCraft Recovery Environment Builder"** means a stand-alone StorageCraft Utility used to create an instance of the StorageCraft Recovery Environment for Windows.
- 1.54. **"StorageCraft ShadowControl"® or "ShadowControl"** is Software that is used to remotely monitor and/or manage Software installed on Physical Systems and/or Virtual Machines. ShadowControl includes two components: an agent that is installed on a Physical System or Virtual Machine and a software appliance created by a pre-configured ISO file that is installed on a dedicated Physical System or Virtual Machine. In addition, ShadowControl includes plug-in modules for VMWare Vsphere and Microsoft System Center. Certain functionality of ShadowControl works only in conjunction with a ShadowProtect and/or StorageCraft ImageManager installation. ShadowControl does not include separately licensed products or services.
- 1.55. **"StorageCraft Utility(ies)"** means any of the following: ImageReady, ISO Tool, StorageCraft Diagnostics, StorageCraft Recovery Environment, StorageCraft Recovery Environment Builder, PSAI, and/or Virtual Boot.
- 1.56. **"Support Issue"** means a technical question or issue associated with the Software, which StorageCraft ranks or categorizes according to severity level as a Low Level, Medium Level, High Level or Emergency Level Support Issue. **"Emergency Level"** severity means a Support Issue that arises notwithstanding proper installation and use of the Software and in which one or more of the following mission critical production issues is occurring: (i) a mission critical production server is not functioning and cannot be restored with the Software, or (ii) a mission critical production server is disabled when used with the Software. **"High Level"** severity means a Support Issue has occurred notwithstanding proper installation and use of the Software, but your operations can continue in a restricted fashion, although long-term productivity may be adversely affected. **"Medium Level"** severity means a Support Issue has occurred notwithstanding proper installation and use of the Software, but a problem has occurred with a limited adverse effect on your business operations. **"Low Level"** Support Issue includes all issues related to education, enhancement, Activation, licensing, information, general questions, or errors with little or no effect on critical production environments.
- 1.57. **"Three-Day ISO"** means a downloadable ISO file that permits you to create a temporary, bootable CD version of ShadowProtect IT Edition or ShadowProtect IT Edition Professional for use in situations in which (a) the USB flash media version of the Software is not capable of running on the target computer, and (b) the use of the StorageCraft license server is not a suitable solution. The Three-Day ISO version of ShadowProtect IT Edition and ShadowProtect IT Edition Professional expires and ceases to function seventy-two (72) hours after it is downloaded from StorageCraft's website. The Three-Day ISO is intended and licensed for use only in exceptional and extraordinary circumstances. StorageCraft, in its sole discretion, may impose additional conditions on the use or download of the Three-Day ISO. If StorageCraft, in its sole discretion, determines that you have abused any right to use the Three-Day ISO or otherwise violated the terms of the EULA, StorageCraft may suspend or terminate your ability to access or download the Three-Day ISO.
- 1.58. **"Update"** means the process in which StorageCraft makes available patches, issue corrections, and bug fixes to existing users of Software. StorageCraft makes no warranty, promise, or commitment to create or release any Updates.
- 1.59. **"Upgrade"** means StorageCraft's release to the public of a version of a Software product that replaces the prior version of such Software product on StorageCraft's price lists pursuant to StorageCraft's then-current Upgrade policies. Any Upgrades of a Software obtained pursuant to a Volume License Certificate may only be obtained in a quantity equal to the number of Seats licensed pursuant to the Volume License Certificate. StorageCraft makes no warranty, promise, or commitment to create or release any Upgrades.
- 1.60. **"Use"** means the ability to run, execute, load, deploy, or display the Software in its Object Code form as it was provided to you by StorageCraft or its authorized distributor or reseller, but only in accordance with the terms of this Agreement.
- 1.61. **"VirtualBoot"** is a StorageCraft Utility that uses the Oracle® open source VirtualBox Hypervisor to convert a ShadowProtect image file into a fully functional VirtualBox virtual machine. VirtualBoot functionality is included with ShadowProtect. StorageCraft does not distribute the Oracle VirtualBox Hypervisor, therefore, you are required to provide your own VirtualBox instance and agree to an Oracle license agreement specific to your VirtualBox product.
- 1.62. **"Virtual Machine"** means a software emulation of a computer hardware device with an operating system. VMware® and Virtual PC are examples of software that create virtual machines. **"Desktop Virtual Machine"** means a Virtual Machine employing a Desktop Operating System (e.g., VMware running the Microsoft Windows 7 operating system). **"Server Virtual Machine"** means a Virtual Machine employing a Server Operating System (e.g., VMware running the Microsoft Windows Server 2012 operating system).
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1. **Terms and Conditions.** The following Terms and Conditions apply to StorageCraft MSP Software (the "Software") and/or to the owner of a computer on which the Software is installed (hereafter "MSP Customer"). MSP Customer's right to benefit from the Software is subject to their written agreement with a licensed managed service provider (the "MSP") and to these Terms and Conditions.

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3. **Internet Connectivity.** The Software must have an operating Internet connection permitting it to periodically communicate with StorageCraft's activation server to verify the validity of the Software license. If the Software is repeatedly unable to communicate with StorageCraft's activation server, the Software will deactivate.

4. **Termination and Suspension.** Without prejudice to any other rights, the MSP may suspend or terminate the MSP Customer's rights to benefit from the Software if the MSP Customer fails to comply with these Terms and Conditions. The MSP Customer understands that the functionality of the Software may cease, the Software may deactivate, and/or the MSP Customer may be required to deactivate the Software and destroy all copies of the Software in the event of a suspension, termination or cancellation of either their agreement with the MSP or the MSP's agreement with StorageCraft or other third party from which the MSP sourced the Software

5. **No Warranty.** STORAGECRAFT SOFTWARE IS PROVIDED "AS IS" AND WITH ALL FAULTS. STORAGECRAFT MAKES NO WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, WRITTEN OR ORAL, REGARDING THE SOFTWARE OR ANY SERVICES PROVIDED BY AN MSP IN CONNECTION WITH OR IN RELATION TO THE SOFTWARE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, STORAGECRAFT DISCLAIMS ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY (IF ANY) WARRANTIES OR CONDITIONS OF OR RELATED TO: MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, NONINFRINGEMENT, WORKMANLIKE EFFORT, AND LACK OF NEGLIGENCE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THERE IS NO WARRANTY, DUTY, OR CONDITION OF TITLE OR CORRESPONDENCE TO DESCRIPTION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE MSP CUSTOMER DISCLAIMS ANY LIABILITY BY STORAGECRAFT OR ITS LICENSORS FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR POSSESSION OF THE SOFTWARE OR ARISING FROM THE AGREEMENT OR RELATIONSHIP BETWEEN THE MSP AND MSP CUSTOMER.

6. **Product Support.** StorageCraft has no obligation to provide Product Support directly to the MSP Customer.

7. **No Fault Tolerance.** THE MSP CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT STORAGECRAFT SOFTWARE CONTAINS TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

8. **Export Restrictions.** The Software is of U.S. origin for purposes of U.S. export control laws and MSP Customer agrees that it will comply with those laws, together with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions imposed by the U.S. and other governments.

Section 13 Government Use.

- 13.1 Application.** This Section 13 applies if you are an agency or instrumentality of the U.S. Federal Government (“**Government End User**”), or a prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the U.S. Federal Government. In such case, the terms and conditions of this Section shall pertain to the Government End User’s use and disclosure of the Software and Documentation, and shall supersede any conflicting terms or conditions.
- 13.2 Acceptance.** If you are a Government End User purchasing a StorageCraft Product pursuant to a United States General Services Administration Schedule Contract or other applicable United States Government contract (“**U.S. Government Contract**”), you accept the terms of this Agreement by placing an order for the StorageCraft Product under the applicable U.S. Government Contract, effective as of the date of such order.
- 13.3 Disputes.** Notwithstanding any language in this Agreement to the contrary, disputes with the U.S. Federal Government shall be subject to resolution pursuant to the Contract Disputes Act of 1978, as amended. This Agreement does not limit or disclaim any of the warranties specified in a valid Government Contract under Federal Acquisition Regulation 52.212-4(o). In the event of a breach of warranty, the U.S. Federal Government reserves all rights and remedies under the: (i) Government Contract under which it placed an order for the Software, (ii) Federal Acquisition Regulations, and (iii) Contract Disputes Act, 41 USC 7101-7109.
- 13.4 United States Government Restricted Rights. RESTRICTED RIGHTS LEGEND.** All Software and Documentation are commercial in nature. The Software and Documentation are “Commercial Items”, as that term is defined in 48 C.F.R. § 2.101, consisting of “Commercial Computer Software” and “Commercial Computer Software Documentation”, as such terms are defined in 48 C.F.R. § 252.227-7014(a)(1), (4)-(5), and used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. §§ 12.212, 252.227-7015, 227.7202-1-4, and 52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable, the Software and Documentation are licensed to United States Government end users (a) only as Commercial Items, and (b) with only those rights that are granted to all other end users of the Software, according to the terms and conditions contained in this Agreement.
- 13.5 Sections Not Applicable.** Sections 8, 12, 17.4, 17.11, 17.12 of this Agreement shall not apply to Government End Users but shall continue to apply to prime contractors and subcontractors of the U.S. Federal Government. All other provisions of this Agreement remain in effect as written.
- 13.6 Intellectual Property Indemnification.** Notwithstanding any language in this Agreement to the contrary, StorageCraft will indemnify a Government End User and hold a Government End User harmless against costs, expenses and liabilities upon any claim that the Software infringes or violates any U.S. or foreign patent, copyright, trademark, or trade secret rights, provided that: (a) a Government End User notifies StorageCraft promptly in writing of any notice of any such claim; (b) a Government End User cooperates with StorageCraft in all reasonable respects in connection with the investigation and defense of any such claim; and (c) should the Software become, or in StorageCraft’s opinion be likely to become, the subject of a claim of infringement or trade secret misappropriation, a Government End User will permit StorageCraft, at StorageCraft’s option and expense, either to: (i) procure for a Government End User the right to continue using the Software; (ii) replace or modify the same so that it becomes non-infringing; or (iii) terminate this Agreement, accept the return of the Software, and refund to a Government End User the amount it paid for the Software, subject to the United States Government’s statutory right to require continued performance. Notwithstanding anything herein to the contrary, however, StorageCraft shall have no obligation or liability to a Government End User under any provision of this Section if any infringement or trade secret misappropriation claim is based upon use of the Software in a manner other than that for which it was furnished by StorageCraft, or its authorized reseller, distributor or authorized representative, or upon any Software which has been modified by or for a Government End User in such a way as to cause it to become infringing.

Section 14 Compliance with Export Law. StorageCraft, its employees and its agents are subject to U.S. export control laws that prohibit or restrict: (i) transactions with certain parties, and (ii) the type and level of technologies and services that may be exported. These laws include without limitation, the Export Administration Act, the Arms Export Control Act, the International Economic Emergency Powers Act, and regulations issued pursuant to these and other applicable export laws (the “**Export Laws**”). You will comply fully with all Export Laws to assure that neither the Software, nor any direct products thereof are: (1) exported, directly or indirectly, in violation of the Export Laws, or (2) used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation. None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) Cuba, North Korea, Iran, Sudan, Syria or any other country subject to U.S. sanctions applicable to the export or re-export of goods; or (ii) to anyone on the U.S. Treasury Department’s List of Specially Designated Nationals and Blocked Persons List and Foreign Sanctions Evaders List, or the U.S. Commerce Department’s Denied Persons List, Unverified List, Entity List, or the Department of State’s Nonproliferation Sanctions list. You acknowledge that you can contact the U.S. Departments of Commerce and Treasury for guidance as to applicable export licensing requirements, sanctioned programs and other restrictions. By downloading or using the Software, or, if you are a Government End User, by accepting the terms of this Agreement by placing an order for the StorageCraft Product under an applicable United States Government contract, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list, and that you acknowledge you are responsible to obtain any necessary U.S. Government authorization to ensure compliance with U.S. law.

Section 15 Notices. All notices required or permitted to be given or served under this Agreement shall be in writing and: (a) personally delivered to the Party to be notified, in which instance notice shall be deemed to have been given and received upon actual delivery; (b) sent by a reputable international overnight commercial courier service (such as FedEx or DHL) addressed to the Party to be notified, in which instance notice shall be deemed to have been given one (1) business day after deposit with such courier service for delivery; (c) sent by email or facsimile, in which instance notice shall be deemed to have been given and received upon actual delivery; or (d) delivered to the Party to be notified by any other means where

it can be established that the Party to be notified received such notice, in which instance notice shall be deemed to have been given and received upon the date of receipt. The point of contact of the Parties for notice by any of the foregoing means shall be as follows. If to StorageCraft: StorageCraft Technology Corporation, Attn: Legal; 380 Data Drive, Suite 300, Draper, UT 84020; email: legal@storagecraft.com; facsimile: (801) 545-4705; with a copy to: StorageCraft Technology Corporation, Attn: Notice to StorageCraft, P.O. Box 1149, Riverton, UT 84065; email: notices@storagecraft.com; facsimile: (801) 545-4705. If to you: to the address, facsimile, and/or email address provided by you to StorageCraft. Either Party may change its contact information for notice purposes by giving ten (10) days' prior written notice to the other Party in the manner described above.

Section 16 Passwords. If you employ any password-protection or encryption functionality of the Software, you understand that loss of your password will result in the loss of access to your data and/or access to image files created by the Software. You understand and acknowledge that StorageCraft does not keep, maintain, or monitor any password you create, StorageCraft has no liability associated with loss of your password, and it will not assist in its recovery. BY CREATING A PASSWORD OR ENCRYPTING YOUR DATA, YOU ASSUME ALL RISK ASSOCIATED WITH LOSS OF THAT PASSWORD AND THE ASSOCIATED DATA. KEEP YOUR PASSWORD SAFE AND SECURE AND DO NOT LOSE IT.

Section 17 Miscellaneous.

- 17.1. Activation.** The Documentation describes the process of activating the Software, which involves recognition of each Seat of Software by StorageCraft's activation server. The records of StorageCraft's activation server are determinative in any question concerning whether a Seat of Software has been activated.
- 17.2. Documentation Review.** You agree that you will review the Documentation relating to the StorageCraft Products, including but not limited to on-line user guides outlining proper installation and use of the StorageCraft Products.
- 17.3. Severability.** If any provision of this Agreement is unenforceable or invalid pursuant to any applicable law, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole, and such unenforceable or invalid provision will be changed and interpreted so as to best accomplish the objectives of such provision within the limits of applicable law.
- 17.4. Entire Agreement.** Unless you have entered into a separate, written and signed agreement that expressly modifies this Agreement (including without limitation an MSP agreement), this Agreement is the complete and exclusive statement of the agreement between you and StorageCraft concerning the StorageCraft Products and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties.
- 17.5. Waiver or Modification.** This Agreement may not be modified except by a written and express amendment or addendum issued by a duly authorized representative of StorageCraft. You understand and agree that StorageCraft, in its sole discretion, may amend or modify this Agreement at any time. You acknowledge, understand, and agree that your receipt of future releases of the Software, including Updates and Upgrades, will require your acceptance of a new End User License Agreement which may alter, amend, or replace all or part of this Agreement and affect the Parties' obligations concerning the StorageCraft Products. No delay or failure to take action represents a waiver of the rights inherent to, retained by, or granted to StorageCraft under this Agreement.
- 17.6. No Third Party Beneficiary.** No third party is or shall be a beneficiary of this Agreement and no third party shall have the right to enforce this Agreement. This includes, without limitation, the beneficiaries of services provided by MSPs.
- 17.7. Assignment.** This Agreement is personal to you and you may not assign it (including by operation of law) except as provided in Section 5. A change of control of Licensee shall constitute an assignment. Any other attempt by you to transfer the rights or obligations under this Agreement will be null and void and will constitute a material breach of this Agreement.
- 17.8. Compliance.** For Software licensed for business or commercial purposes, during the period this Agreement remains in effect, and for one year thereafter, subject to reasonable notice, StorageCraft may verify your compliance with this Agreement on your premises during its normal business hours and in a manner that minimizes disruption to your business. StorageCraft may use an independent auditor for this purpose.
- 17.9. Headings and Captions.** The headings and captions used in this Agreement are for convenience or reference only and shall not modify, expand, limit, or describe the scope or intent of this Agreement or in any other way affect the terms or conditions of this Agreement.
- 17.10. Force Majeure.** No delay, failure or default in performance of any obligation of StorageCraft hereunder shall constitute a breach of the Agreement to the extent caused by fire, flood, explosion, war, terrorism, embargo, labor strike, government requirement, civil, or military authority, act of God, act or omission of carriers, or other similar causes beyond its control.
- 17.11. Applicable Law.** This Agreement shall be governed and construed exclusively in accordance with the laws of the State of Utah, U.S.A., without application of any choice-of-law or conflict-of-law principles, rules, or provision that would result in the application of the laws of any jurisdiction other than Utah. The Parties irrevocably submit to the personal jurisdiction of the state or federal courts of Utah. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action for provisional relief concerning this Agreement or the Parties' relationship hereunder, including but not limited to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure, shall be brought exclusively in Salt Lake County, State of Utah, U.S.A. The Parties consent and submit to the exclusive jurisdiction of the state or federal courts in Salt Lake County, State of Utah, U.S.A., for purposes of any action for such provisional remedy or interim or conservatory measure.
- 17.12. Dispute Resolution.** At the election of either Party to this Agreement, any dispute, controversy, or claim arising out of, relating to, or in connection with the following shall be submitted for final resolution by arbitration administered by the American Arbitration Association (the "AAA") or the International Centre for Dispute Resolution ("ICDR"): the Software's performance, including without limitation any alleged deficiency or defect; the existence or breach of a contractual, statutory, or common-law warranty associated with this Agreement or the StorageCraft Products; the terms and obligations of this Agreement as they pertain to the foregoing; and the performance, termination, rescission, or alleged breach of this Agreement as they pertain to the foregoing (collectively, "Arbitral Dispute"). In the event arbitration is elected, both Parties expressly waive any right to a trial by jury for any claim constituting an Arbitral Dispute. The AAA and ICDR are referred to as "Arbitral Bodies". Any claim by StorageCraft for infringement or violation of copyright, trademark, or Intellectual Property Rights is not an Arbitral Dispute, but shall be brought exclusively before a court of competent jurisdiction in Salt Lake County,

State of Utah, U.S.A. In the event of an Arbitral Dispute, the election to arbitrate must be made in writing by a Party on or before the last day to answer and/or respond to a summons and/or complaint brought by the other Party. If you are a U.S. resident or maintain a place of business in the U.S., the arbitration shall be conducted in accordance with the AAA Commercial Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to class arbitrations. If you are not a U.S. resident or do not maintain a place of business in the U.S., the arbitration shall be conducted in accordance with the ICDR International Arbitration Rules in effect at the time of the arbitration, excepting any rules pertaining to class arbitrations. (The Commercial Arbitration Rules and International Arbitration Rules are collectively referred to as the “**Rules**”. Copies of the Rules can be obtained, free of charge, at <http://www.adr.org/>.) The Parties shall be entitled to conduct discovery by interrogatory, request for production of documents, subpoena to third parties, and oral deposition. The Parties intend that any arbitration between them shall involve only the claims between the Parties and not any claims by a Party against a third party. No other dispute between a Party and a third party shall be included in the arbitration. Class arbitration shall not be permitted. The arbitration shall be conducted by a single arbitrator selected in accordance with the Rules. Filing fees, arbitrator fees, and other fees imposed by the Arbitral Bodies shall be paid initially by StorageCraft. In the event of an arbitration conducted under the International Arbitration Rules, the arbitrator must also have experience in international software licensing transactions. The place of arbitration shall be Salt Lake County, State of Utah, U.S.A. and shall be conducted in the English language, unless the Parties agree otherwise in writing. Any arbitral award must be a reasoned award that: fully sets forth findings of fact from the evidence presented; applies the findings of fact to the law of the case; fully sets forth conclusions of law based upon the Parties’ respective legal theories; explains which legal theories were followed and why; and, if damages, costs, and/or fees are awarded, specifies the calculations of the types of damages, costs, and/or fees awarded as to each Party. Any award is final and binding on the Parties and may be challenged in a court of competent jurisdiction only upon those grounds allowed under the Utah Uniform Arbitration Act, Utah Code Ann. §78B-11-101 et seq. In the absence of challenge, judgment on the award may be entered in any court of competent jurisdiction. Without otherwise limiting the authority conferred on the arbitrator by this Agreement and the Rules, the arbitrator shall not have the authority to exercise equitable principles or award equitable remedies. By agreeing to Arbitration, the Parties do not intend to deprive any court of competent jurisdiction in Salt Lake County, State of Utah, U.S.A., of its ability to hear disputes that are not Arbitral Disputes or to issue any form of provisional remedy, including but not limited to a temporary restraining order, preliminary injunction, attachment in aid of arbitration, or order for any interim or conservatory measure. A request for such provisional remedy or interim or conservatory measure by a Party to a court shall not be deemed a waiver of an agreement to arbitrate. In the event that StorageCraft is the prevailing party in any Arbitral Dispute, the Arbitral Body shall award StorageCraft its costs incurred in the proceeding, including without limitation filing fees, arbitrator fees, and other fees imposed by the Arbitral Body.

- 17.13. CDDL.** The Software’s executable, VBoxHDDXSP.dll, includes unmodified files containing VirtualBox Open Source Edition source code, which is licensed under the Common Development and Distribution License Version 1.0 (“**CDDL**”). StorageCraft made no “modifications” to the CDDL-licensed files and StorageCraft is not a “contributor” as those terms are defined in the CDDL. Irrespective of the CDDL, the Software is licensed and distributed solely in accordance with the terms and conditions of this Agreement and the CDDL gives you no right, title or interest in or to the Software. Please refer to the README.RTF file included with the Software for links to the CDDL and all referenced CDDL-licensed source code.
- 17.14. No Fault Tolerance.** THE SOFTWARE CONTAINS TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.
- 17.15. Survival.** The provisions of this Agreement relating to payment of any fees or other amounts owed, warranties, limitation of liability, dispute resolution, matters of construction or interpretation, and other provisions that by their nature survive termination, shall survive any termination or expiration of this Agreement.
- 17.16. Electronic Transaction.** The Parties agree that this Agreement may be formed, executed, and/or delivered by electronic means, including the use of electronic signatures and/or electronic agents in accordance with the Utah Uniform Electronic Transactions Act, Utah Code Ann. §46-4-101 et seq.
- 17.17. Electronic Communications.** You acknowledge and agree that StorageCraft may communicate with you regarding your account or StorageCraft Products via email or other electronic communications. You hereby consent to these communications and others regarding the latest StorageCraft developments, including new product releases, upgrades, special offers and other information that StorageCraft believes may be relevant to your use of StorageCraft Products.
- 17.18. Personal Information and Privacy.** You understand and agree that when you activate the Software, StorageCraft collects the IP address and machine or computer name of the computer on which the activation is performed, a user name provided by you, and an organization name provided by you. StorageCraft collects this information to assist in providing Maintenance and Product Support and to comply with applicable export control laws. You also understand and agree that certain information you may provide to the party from whom you purchase or acquire the StorageCraft Product, such as a StorageCraft subsidiary, reseller, distributor, or authorized representative, may be shared with StorageCraft and its corporate affiliates and/or the StorageCraft distributor involved in your purchase or acquisition of the Software. This information is shared for purposes of reporting and delivery of Maintenance and Product Support, as well as user or customer account management. This information may include the following: your company name and company address, together with the name(s), telephone number(s), and email address(es) of any representative(s) you identify as contact persons for account, support or technical purposes relating to StorageCraft Products or their purchase or licensure. IF YOU PROVIDE INFORMATION TO STORAGECRAFT OR ITS SUBSIDIARY, A CORPORATE AFFILIATE, OR AUTHORIZED RESELLER, DISTRIBUTOR, OR REPRESENTATIVE, CONCERNING A THIRD PARTY, INCLUDING WITHOUT LIMITATION PERSONALLY IDENTIFIABLE INFORMATION, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO PROVIDE SUCH INFORMATION OR YOU HAVE OBTAINED ANY NECESSARY CONSENT TO PROVIDE SUCH INFORMATION, INCLUDING APPROPRIATE CONSENT UNDER APPLICABLE DATA PRIVACY LAWS. StorageCraft and its corporate affiliates will use commercially reasonable safeguards to deter unauthorized use or disclosure of information provided to us. StorageCraft and its corporate affiliates will not access or use such information or disclose such information to third parties other than as permitted or required by law or this Agreement, or as necessary to deliver the StorageCraft Products and services pursuant to this Agreement or any other agreement

pertaining to the StorageCraft Products that you may have entered into with a third party. StorageCraft and its subsidiaries and corporate affiliates will never sell the information you provide to us. Please visit StorageCraft's website to review our Privacy Policy.

17.19. Customer Contact. If you have any questions concerning this Agreement, you may contact StorageCraft as follows: website - www.storagecraft.com; telephone – 801-545-4700; fax - 801-545-4705; mail – StorageCraft Technology Corporation, 380 Data Drive, Suite 300, Draper, Utah 84020, U.S.A.

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Vers. 03.06.15



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

Texas Historically Underutilized Business (HUB) Certificate



1752425449100
81532
02-DEC-2015
30-NOV-2016

USA CONSULTING, INC.

Paul A. Gibson

Paul Gibson, Statewide HUB Program Manager
Texas Procurement and Support Services



hereby grants

National Women's Business Enterprise Certification
to
USA Consulting, Inc.
dba
USACI Corp.

who has successfully met WBENC's standards as a Women's Business Enterprise (WBE).
This certification affirms the business is woman-owned, operated and controlled; and is valid through the date herein.

Expiration Date: 11/30/2016
WBENC National Certificate Number: 2005109468

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

Authorized by Debbie Hurst, President,
Women's Business Council – Southwest



NAICS Codes: 454390, 541511, 541512, 541513

UNSPSC Codes: 43211502, 81110000, 43211501, 43211506, 81112300, 43211512, 81111812, 83121603, 81111600, 43232202



Federal Requirements for Procurement and Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

If the TIPS member anticipate possibly using federal funds for procurement under this potential award and is required to obtain the following compliance assurance.

1. Will you be subcontracting any of your work under this award if you are successful?

(Check one)

____ YES or ____ NO

2. If yes, do you agree to comply with the following federal requirements? (Check one)

____ YES or ____ NO

2 CFR §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce ; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Company Name _____

Name of authorized representative _____

Signature of authorized representative _____ *Jemina A. Hardy* _____

Date _____

SUSPENSION OR DEBARMENT CERTIFICATE

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$25,000.00. Contractors receiving individual awards for \$25,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, this bidder:

Certifies that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the EDGAR, §200.212 Suspension and debarment.

Vendor Name: _____

Vendor Address: _____

Vendor E-mail Address: _____

Vendor Telephone: _____

Authorized Company Official's Name: _____

Signature of Company Official: 

Date: _____

Provisions for purchase with federal funds for contracts exceeding \$100,000
These forms are for non-construction contracts

Many TIPS members (grantees and sub-grantees) purchase goods and services with federal funds. When a member engages a contract exceeding \$100,000 and paid with federal funds, provisions are triggered by various Code of Federal Regulations requirements. Primarily 34 CFR 80.36 from the Department of Education and 7 CFR 3015 & 3016 from the Department of Agriculture for School Lunch Program. There may be other Federal programs from time to time that are not enumerated above that may fund certain projects using outside vendors. These are not optional for the contracting entity and in order to spend the federal funds certain provision and certifications must be in place to ensure legal compliance.

If your company wishes to be eligible to participate in a TIPS contract in which a member utilizes federal funds on contracts exceeding \$100,000, you must complete the following forms and provide the certifications as required on the subsequent pages.

Do you wish to be eligible to participate in a TIPS contract in which a member utilizes federal funds on contracts exceeding \$100,000?

Check your response?

YES NO

Jemin A. Hardley
Signature of Authorized Company Official Date

Printed Name of Authorized Company Official

Company Name _____

Attach to this page a current W-9 form

Please complete the forms below

Legal Compliance

It is the proposing company’s duty and responsibility to have knowledge of and be responsible for the compliance with all applicable laws, rules and regulations as they apply to this procurement process and any subsequent award. The vendor agrees to comply, in all relevant respects, with all Federal, State, and Local laws, rules and regulations related to the performance of services or supply of goods to TIPS or TIPS members?

Does vendor agree? YES _____ Initial of Authorized Company Official

Non-Collusive Bidding Certificate

By submitting a proposal in response to a Request for Proposals or other procurement device containing this clause, you certify that you are authorized to certify to the following:

- 1) This bid or proposal has been independently arrived at without collusion with any other Bidder or with any Competitor;
- 2) This bid or proposal has not been knowingly disclosed and will not be knowingly disclosed, prior to the opening of bids, or proposals for this project, to any other Bidder, Competitor or potential competitor;
- 3) No attempt has been or will be made to induce any other person, partnership or corporation to submit or not to submit a bid or proposal;
- 4) The person signing this bid or proposal certifies that he has fully informed himself regarding the accuracy of the statements contained in this certification, and under the penalties being applicable to the Bidder as well as to the person signing in its behalf.

The vendor complied with #1 through 4 above? YES _____ Initial of Authorized Company Official

SUSPENSION OR DEBARMENT CERTIFICATE

Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00. Contractors receiving individual awards for \$25,000.00 or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred.

You certify that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, common rules

The vendor has not been debarred? YES _____ Initial of Authorized Company Official

Certification Regarding Lobbying

**Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding
\$100,000 in Federal Funds**

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than

\$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

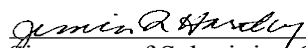
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbing," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Name of Organization

Address of Organization

Name / Title of Submitting Official



Signature of Submitting Official

Signature Date

Provisions for purchase with federal funds for contracts exceeding \$100,000

Federal Rule (1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

Notice: Pursuant to Federal Rule (1) above, when federal funds are expended by TIPS Member, TIPS Member reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (2) above, when federal funds are expended by TIPS Member, TIPS Member reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. TIPS Member reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. Any award under this procurement process is not exclusive and the District reserves the right to purchase goods and services from other vendors when it is in the best interest of the District.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (7) Notice of awarding agency requirements and regulations pertaining to reporting.

Pursuant to Federal Rule (7) above, when federal funds are expended by TIPS Member, TIPS Member requires that the proposer certify that during the term of an award by the TIPS Member resulting from this procurement process the vendor will provide reports and documentation required by all applicable law and state and federal regulations upon request by the TIPS Member or any relevant state or federal agency.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

Provisions for purchase with federal funds for contracts exceeding \$100,000

Pursuant to Federal Rule (8) above, when federal funds are expended by TIPS Member, TIPS Member shall address any requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract in the contract document and absent language to the contrary or if the contract silent on the subject, the District retains all rights thereto.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

Pursuant to Federal Rule (9) above, when federal funds are expended by TIPS Member, TIPS Member requires the proposer certify that during the term of an award by the TIPS Member resulting for this procurement process the vendor will surrender upon request any copyrighted materials owned by the TIPS Member but used in the awarded contract performance unless otherwise agreed in a written document by the parties. TIPS Member reserves the rights to all data created or provided to the vendor for the purpose of contract performance resulting for this procurement process and the vendor will surrender such data upon request unless otherwise agreed in a written document by the parties. If the contract is silent or not dispositive on the subject matter data or copyrights TIPS Member retains all rights in the data developed or gathered during the contract term.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Pursuant to Federal Rule (9) above, when federal funds are expended by TIPS Member, TIPS Member requires the proposer certify that during the term and after the awarded term of an award by the TIPS Member resulting for this procurement process the vendor will grant access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

Does vendor agree? YES _____ Initial of Authorized Company Official

Provisions for purchase with federal funds for contracts exceeding \$100,000

Federal Rule (11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

Pursuant to Federal Rule (11) above, when federal funds are expended by TIPS Member, TIPS Member requires the proposer certify that the awarded vendor retain of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

Pursuant to Federal Rule (12) above, when federal funds are expended by TIPS Member, TIPS Member requires the proposer certify that in performance of the contracts, subcontracts, and subgrants of amounts in excess of \$100,000, the vendor will be in compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Pursuant to Federal Rule (13) above, when federal funds are expended by TIPS Member, TIPS Member requires proposer certify that during the term of an award by the TIPS Member resulting for this procurement process the vendor will be in compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Does vendor agree? YES _____ Initial of Authorized Company Official

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

Print or type See Specific Instructions on page 2.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. USA Consulting, Inc.	
	2 Business name/disregarded entity name, if different from above USACI Corp	
	3 Check appropriate box for federal tax classification; check only one of the following seven boxes: <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input checked="" type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____ Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner. <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) PO Box 940128	Requester's name and address (optional)
	6 City, state, and ZIP code Plano, TX 75094	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number								
			-			-		
or								
Employer identification number								
7	5	-	2	4	2	5	4	9

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

Sign Here	Signature of U.S. person ▶ <i>Jessie R. Harding</i>	Date ▶ 1/1/2016
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)

- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting?* on page 2 for further information.

2 CFR PART 200 Contract Provisions

Required Federal contract provisions of Federal Regulations for Contracts

The following provisions are required to be in place and agreed if the procurement is funded with federal funds. TIPS or its members are the subgrantee or subrecipient by definition in most cases. Not all provisions herein apply to all contracts. Compliance is required as it applies to the individual purchase contract.

Appendix II to Part 200

Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

2 CFR PART 200

These contract provisions are incorporated by reference or attachment into all contracts with your company when TIPS or its members purchase is with federal funds if you respond to a TIPS competitive procurement request for proposals or bid..

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

Federal Rule (1) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Notice: Pursuant to Federal Rule (1) above, when federal funds are expended by TIPS or its members, TIPS or its members reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (2) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for cause after giving the vendor an appropriate opportunity and up to 30 days, to cure the causal breach of terms and conditions. TIPS OR ITS MEMBERS reserves the right to terminate any agreement in excess of \$10,000 resulting from this procurement process for convenience with 30 days notice in writing to the awarded vendor. The vendor would be compensated for work performed and goods procured as of the termination date if for convenience of the TIPS OR ITS MEMBERS. Any award under this procurement process is not exclusive and the District reserves the right to purchase goods and services from other vendors when it is in the best interest of the District.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2 CFR PART 200 Contract Provisions

Pursuant to Federal Rule (3) above, when federal funds are expended by TIPS OR ITS MEMBERS, for all construction contracts awarded by grantees and their contractors or subgrantees, the proposer certifies that during the term of an award, when federal funds are expended, by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor will be in compliance with Equal Opportunity Employment laws specifically Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (4) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (4) above, when federal funds are expended by TIPS OR ITS MEMBERS, during the term of an award for all contracts and subgrants for construction or repair, when Federal Funds are expended, by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor will be in compliance with all provisions listed or referenced therein.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (5) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (5) above, when federal funds are expended by TIPS OR ITS MEMBERS, the proposer certifies that during the term of an award by the TIPS OR ITS MEMBERS resulting from this procurement process for construction contracts awarded by grantees and subgrantees the proposer agrees to be in compliance with all requirements listed or referenced therein.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (6) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a

2 CFR PART 200 Contract Provisions

small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (6) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires that the proposer certify that during the term of an award by the TIPS OR ITS MEMBERS resulting from this procurement process the vendor agrees to the terms listed and referenced therein.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (7) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (7) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires that the proposer certify that during the term of an award by the TIPS OR ITS MEMBERS resulting from this procurement process the vendor agrees to the terms listed and referenced therein.

Does vendor agree? YES _____ Initial of Authorized Company Official

Federal Rule (8) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award \$25,000 or greater (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (8) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires the proposer certify that during the term of an award by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor certifies that they are not debarred from receiving a contract from the federal government as provided therein.

Does vendor agree they are not debarred as specified above ? YES _____ Initial of Authorized Company Official

Federal Rule (9) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (9) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires the proposer certify that during the term and after the awarded term of an award by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor certifies to the terms included or referenced in Federal Rule 9 above.

2 CFR PART 200 Contract Provisions

Does vendor certify to the provisions in Federal Rule (9) above? YES _____ Initial of Authorized Company Official

Federal Rule (10) 2 CFR 200.233 Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

Pursuant to Federal Rule (10) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires the proposer certify that the awarded vendor retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

Does vendor agree? YES _____ Initial of Authorized Company Official

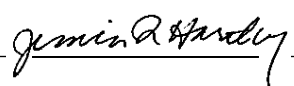
Federal Rule (11) 2 CFR §200.322 Procurement of recovered materials. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. [78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

Pursuant to Federal Rule (11) above, when federal funds are expended by TIPS OR ITS MEMBERS, TIPS OR ITS MEMBERS requires proposer certify that during the term of an award by the TIPS OR ITS MEMBERS resulting for this procurement process the vendor will be in compliance with mandatory standards and policies relating to Procurement of recovered materials which are listed above.

Does vendor agree they will comply? YES _____ Initial of Authorized Company Official

Company Name _____

Print name of authorized representative _____

Signature of authorized representative _____  _____

Date _____

Signature above acknowledges all provisions in this four page document and the vendor/proposer/bidder responses herein to the 11 rules.