STATE OF UTAH "BEST VALUE" COOPERATIVE CONTRACT

CONTRACT NUMBER: PA390

July 05, 2015

Revision number: Purchasing Agent: Nikki Sanchez
Phone #: (801)538-3342
Email: nsanchez@utah.gov

Item: STORAGE SERVICES, VAULT STORAGE FOR CD'S AND TAPES INCLUDING PICKUP AND DELIVERY SERVICE.

Vendor: 01589A PERPETUAL STORAGE, INC.
6279 East Little Cottonwood Canyon
Sandy, UT. 84092

Internet Homepage: www.perpetualstorage.com

General Contact: James Nowa
Telephone: 801-942-1950
Fax number: 801-942-1952
Email: jnowa@perpetualstorage.com

Usage Report Contact: Same

Brand/trade name: N/A

Price: See Attachment
Terms: Net 30 days
Effective dates: 07/05/2015 through 07/04/2020

Potential renewal options remaining: 2 Year

Price guarantee period: 2 Year
Minimum order: 1
Min shipment without charges: See Pricing Sheet

Other conditions:

NOTE: This is a new Contract with the same vendor.

Solicitation #: NSSS15034

Administrative Fee: The administrative fee for this contract is 0.40% and is already included in the contract price.

This contract covers only those items listed in the price schedule. It is the responsibility of the agency to ensure that other items purchased are invoiced separately. State agencies will place orders directly with the vendor creating a PRC in Finet. Agencies will return to the vendor any invoice which reflects incorrect pricing.

No Agency, Department, City, County, School District etc. can utilize this State Cooperative contract with Perpetual Storage if you have an existing contract with the company until the term of your existing contract has been completed.

All entities using the State Cooperative Contract must fill out a Record Storage Agreement with James Nowa the representative from Perpetual Storage, Inc. before the service can be initiated.
STATE OF UTAH "BEST VALUE" COOPERATIVE CONTRACT
CONTRACT NUMBER: PA390

July 05, 2015

STORAGE AND SERVICE AGREEMENT

This Storage and Service Agreement ("Agreement") is entered into effective as of __________________ (the "Effective Date") by and between Perpetual Storage, Inc., a Utah corporation qualified to do and doing business in the State of Utah with its principal place of business at 6279 East Little Cottonwood Canyon Road, Sandy, Utah 84092, and with its email address and facsimile number as psi@perpetualstorage.com, (801) 942-1952 (the "Company") and _________________________________________________, with its principal office at ________________________________________________, and with its email address and facsimile number as _______________________________________________________ ("Client"). The Company and Client are collectively referred to herein as the "Parties" and may sometimes singly be referred to herein as a "Party."

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. DEFINITIONS. The following terms, when used in this Agreement, shall have the following meanings:

1.1 "Access Authorization Form" means the Company's form to be signed by Client which, among other things, designates those persons authorized by Client to deposit into and receive from storage with the Company Stored Material (as defined below) and the level of access granted to those persons. The Access Authorization Form as the same may be amended from time to time is incorporated into and made a part of this Agreement by this reference.

1.2 "Authorized Representative" means those representatives of the Client, designated in writing from time-to-time by the Client as having authority to deposit into and receive from storage, at the Client designated level of access, Stored Material pursuant to the most current Access Authorization Form provided by the Company and signed by an authorized representative of Client. The Client may change its Authorized Representative(s) and the level of access granted from time-to-time at Client’s discretion by signing and delivery to the Company a new Access Authorization Form.

1.3 "Confidential Information" means any information identified by the Client as "confidential" or "proprietary," unless it is subsequently made public by the Client or by a third party having a legal right to make such disclosure.

1.4 "Records" mean any document, data, intellectual property, software, intangibles, or information of any type or description preserved on Storage Media (as defined below).

1.5 "Storage Facility" means the Company's constant temperature storage facility located in Little Cottonwood Canyon, Salt Lake County, Utah.

1.6 "Storage Media" means the physical medium(s) on which the Client's Records are stored, including, but not limited to computer tapes, microfilm, microfiche, hard drives, CD’s and optical disks or other storage media of any kind or type now existing or hereafter developed. Storage Media does not include the Records stored thereon or anything else stored on the Storage Media.

1.7 "Stored Material" means the Records, Storage Media, and other material and containers that the Client places with Perpetual Storage for storage in the Storage Facility.

1.8 "Warehouse Receipt" means a receipt used by Perpetual Storage, Inc. employees. It is used when any Records are picked up or delivered and is the client’s receipt of said transaction.

2. STORAGE. The Company hereby agrees to accept for storage and to service under its management system such Stored Material as Client places for storage with Company from time to time in the Storage Facility and that is serviced by Company pursuant to all terms and conditions herein, including those incorporated as attachments hereto. From and after the Effective Date and as long as Client has Stored
Material with Company, the Company shall store and service the Stored Material in accordance with the terms and conditions of this Agreement. Any additional Stored Material hereafter delivered by Client to Company shall be subject to this Agreement. Tendering the Stored Material for storage and/or other services by the Client constitutes acceptance by Client of the terms, conditions and fees set forth in this Agreement.

3. SERVICES. In consideration of the payment of the fees for storage as set forth on the most current Schedule "A" which is attached hereto, which Schedule "A" is incorporated herein by this reference as though fully set forth herein, the Company shall provide the following services (the "Services") under this Agreement:

3.1 All Stored Material shall be kept in the maximum security area of the Storage Facility.
3.2 All Stored Material shall be kept under constant temperature and controlled humidity levels while inside the vault proper located in the Storage Facility.
3.3 The Company shall provide a 24-hour security system for the vault in which the Stored Material is stored.
3.4 Stored Material shall be placed on designated shelves or other storage locations and will not be co-mingled in containers with Stored Material of other depositors. All Stored Material will, however, be stored within the same vault located in the Storage Facility.
3.5 The Company shall adhere to strict admission and retrieval procedures concerning access to the Storage Facility as set forth on Client’s most current Access Authorization Form.

4. ADDITIONAL SERVICES. If requested by Client, as evidenced by Client’s representative’s initials on Schedule "A" attached hereto, the Company shall provide the following additional services (“Additional Services”) subject to an additional charge for such Additional Services as set forth on Schedule “A”:

4.1 Company provided courier service for the Stored Materials as provided in Section 10.1 below.
4.2 Receipt and handling of damaged Stored Material.
4.3 Labor and materials for special packaging or unpackaging.
4.4 Special handling and special storage.
4.5 File referencing and inventories, interfiling, or special indexing.
4.6 Other services as agreed.

Upon termination of this Agreement, the delivery of the Stored Material as directed by Client shall be subject to payment of delivery charges and any balance due for Services and Additional Services rendered which shall be paid in advance of such delivery. The Additional Services requested by Client may be amended from time-to-time by mutual agreement of the Parties evidenced by a newly signed and dated Schedule “A.”

5. FEES, CHARGES AND PAYMENTS. Client agrees to pay Company the fees and charges for its Services and Additional Services in connection with the storage and handling of the Stored Material according to the then current Schedule of Fees for such services as set forth on attached and incorporated herein Schedule “A,” as the same may be amended from time-to-time. The initial Schedule of Fees for Services and Additional Services is effective for one (1) year from the Effective Date of this Agreement. Thereafter at any time, and from time-to-time, the Company may change its Schedule of Fees for Services and Additional Services by written notification thereof sent to Client at least thirty (30) days prior to the effective date of the change. In the event Client does not approve of any such change, Client may terminate this Agreement at any time prior to the effective date of the change in fees or renegotiate fees with the Company. In the event Client does not terminate this Agreement prior to the effective date of the change in fees, such change in fees shall conclusively be deemed to be agreed to and accepted by Client. All fees for Services and Additional Services shall be billed in advance and paid in accordance with the terms set forth on the attached and incorporated herein Schedule “A.” Fees for the Services shall be paid in advance. Fees for Services and Additional Services shall be billed and paid on an annual or monthly basis as set forth on the most current Schedule “A.” Storage Material added for storage during a billing cycle shall be prorated for the balance of that cycle; however, for Stored Material received during a month or stored for a portion of a month, charges will be assessed for a full month.
Transportation surcharges may apply and change monthly without notice in accordance with the Company's fuel surcharge policy, a copy of which will be furnished to Client upon request. Unless otherwise agreed in writing by Company and Client, Company shall be entitled to utilize a third party to provide some or all of the Additional Services hereunder.

6. TERM. Intentionally Deleted.

7. TITLE WARRANTY. The Client warrants that it is the legal owner or legal custodian of the Stored Material, and has clear title thereto, free and clear of all liens and encumbrances. The Client further warrants that it has full authority to store the Stored Material in accordance with the terms of this Agreement. If the Company is made a party to any litigation in connection with the title to the Stored Material, or any portion thereof, the Client shall indemnify the Company against any and all costs and expenses it incurs as a result thereof including the Company's attorneys' fees and costs.

8. INSPECTION. The Client acknowledges it has selected the Company for storing the Stored Material, has had ample opportunity to inspect the Storage Facility, and has determined that the Storage Facility is suitable for the storage of Client’s Stored Material. The Company has not examined the Records and does not know what constitutes the Records. The Company does not have equipment to read and does not read the Storage Media or the Records. The Company does not electronically store or transfer the Records. The Company does not know what, if anything, is contained on the Storage Media or the Records, does not independently know the value of the Stored Material including to the Client, does not know the consequences to the Client of the loss of the Stored Material, and expressly makes no representation that any Records within or on the Stored Material is of the type or content represented by the Client.

9. RESTRICTED MATERIALS. The Client shall not, at any time, store with the Company: (a) any narcotics, controlled substances or illegal drugs, or substances; (b) materials considered to be highly flammable, explosive, toxic or radioactive; (c) any organic material which may attract vermin or insects or which may cause harm or damage to any other items stored with the Company or to the Storage Facility or to the Company's personnel; (d) other materials which are illegal, dangerous, or unsafe to store or handle in the Storage Facility or to transport to or from the Storage Facility or any matter regulated by federal or state law or by any regulation relating to the environment or hazardous materials; or (e) bullion, currency, jewelry, gems, check stock, ticket stock or other items, which have material intrinsic market value (collectively "Restricted Material"). The Company reserves the right to inspect any and all of the Stored Material at any time if it has reason to believe any Restricted Material has been, is, or will be stored by the Client. The Company at its sole discretion may refuse to accept any Stored Material for storage for any reason whatsoever, including but not limited to reasons that the Company believes may compromise the integrity of the Storage Facility, its operations, other stored items or its personnel. If the Company is made a party to any litigation in connection with any portion of the Stored Material being Restricted Material, the Client shall indemnify the Company against any and all costs and expenses it incurs as a result thereof including the Company's attorneys' fees and costs.

Client represents and warrants to Company that none of the Stored Material constitute federal government classified or high classified documents, data or information or require protection from access by foreign persons because they contain technical information regarding defense articles or defense services within the meaning of the International Traffic in Arms Regulations (22 CFR 120) or technical data within the meaning of the Export Administration Regulations (15 CFR 730-774). If any Stored Materials do contain such information, Client shall notify Company of the specific Stored Materials that contain such information and acknowledges that special storage and service rates shall apply thereto.

10. DELIVERY OF STORED MATERIALS.

10.1. If the Client requests the Company’s courier service, Stored Material will be picked up from and delivered to a location in Client’s building or office or such other alternate location designated by Client and agreed upon by the Company in the case of a disaster as set forth on the Access Authorization Form and only on receipt by the Company of complete instructions properly signed by Client or its Authorized Representative. The Access Authorization Form provides for three levels of authority of Client’s Authorized Representative(s). If the Client appoints an Authorized Representative, the Client represents that such Authorized Representative has full authority to act for Client at the applicable level.
of authority as set forth on the Access Authorization Form. Orders by Client or an Authorized Representative must be given electronically, by fax or in writing and are valid only upon actual receipt by the Company.

10.2 Company shall pick up and deliver Stored Material at the place or places referenced on the applicable Access Authorization Form, unless otherwise expressly designated in writing by Client. Multiple stops at the same street address shall be considered separate trips unless otherwise agreed upon herein. Unless Company is contracted by Client to do so, Company shall not be required to inventory or pack for transportation any Stored Material, or to unpack any Stored Material upon delivery to Client’s site. Client agrees to maintain at all times an unobstructed access route into its facilities and a legal, cost-free parking area for Client. Unless Client instructs Company otherwise in writing, Client specifically instructs Company when performing deliveries to leave Stored Materials with the Client representative who meets the Company courier, which Client representative may not be an Authorized Representative.

10.3 The Company has the right to refuse pick up from or delivery of any Stored Material to any person when in doubt about that person’s authority, ownership or entitlement to the Stored Material or if the Company believes the Stored Material contains Restricted Material. This refusal will continue until the dispute is resolved, either by the Company and Client or by final determination of a court of competent jurisdiction. In addition, in the event of such a dispute, the Company shall have the right, but not the obligation, to petition the court for a determination as to entitlement of any person or legal entity to receipt and/or possession of any Stored Material. Any action by the Company to pick up or deliver Stored Material pursuant to this Section 10.3 or any seeking of a court determination shall be without liability on the part of the Company, and the Client shall indemnify and hold the Company harmless from any and all fees and costs, including reasonable attorneys’ fees, incurred in connection with such dispute regarding authority, ownership or entitlement.

10.4 When any Stored Material is requested from the Storage Facility, a reasonable time shall be given to the Company to carry out the instructions for delivery. If the Company is unable to deliver within such time, or to provide any other service herein contemplated within the time agreed upon, or if the Stored Material is lost, damaged, or destroyed (in whole or in part) or becomes unavailable, due to acts of God or public enemy, seizure or legal process, strikes, lockouts, acts of terrorism, riots and civil commotions, operation of law, court order, or other reason beyond the Company’s reasonable control, or because of any other excuse provided by law, the Company shall not be liable. The Client’s Stored Material remaining in storage shall continue to be subject to regular storage charges as set forth in Section 5 of this Agreement.

10.5 The Company reserves the right to deny access to or delivery of Stored Material until such time as Client has cured any default as set forth in this Agreement.

10.6 An Authorized Representative of Client or a person designated in writing by Client or by an Authorized Representative of the Client shall have the right at reasonable times and upon reasonable advance notice to audit the Client’s Stored Material.

11. WAREHOUSE RECEIPTS. All warehouse receipts shall be non-negotiable and shall be in the form prescribed by the Company. Failure to return any warehouse receipt for correction within seven (7) days after receipt thereof by Client shall be presumptive evidence that such receipt is correct and that delivery will be made only in accordance with the terms thereof and this Agreement.

12. CONFIDENTIALITY. The Company and its employees shall hold confidential all Confidential Information obtained by it with respect to Client’s Stored Material. The Company shall exercise that degree of care in safeguarding Confidential Information and the Stored Material which a reasonable and careful company would exercise in like circumstances, provided, however, that the Company’s liability to Client shall be limited as set forth below. If the Company receives a subpoena, court order, or other legal process requiring disclosure of
Confidential Information, it shall promptly give notice to Client, including a copy of such subpoena, court order, or process, and shall thereafter comply with the subpoena, court order, or process and in such event shall not be deemed in breach of this Agreement. Client shall pay all of the Company’s costs and expenses incurred including its reasonable attorneys’ fees in complying with any legal process pertaining to the Client’s Stored Material within ten (10) days of Client’s receipt of an invoice for the same.

13. CLIENT’S RESPONSIBILITIES. Client shall be solely and exclusively responsible for providing: (a) proper user names, passwords, credentials, keys, encryptions, and other protections pertaining to the Records consisting of or containing electronically stored data and/or information; (b) backup of the Records; (c) the containers (which may, but are not required to be purchased from the Company), and locks for the same for the Stored Material including the Records and any and all packaging; (d) compliance with all laws, regulations and ordinances pertaining to the Stored Material; (e) insurance in such types and amounts as Client determines necessary or appropriate covering the loss, damage and/or destruction of the Stored Material; and (e) for Records consisting of or containing electronically stored data and/or information, proper and valid encryption, with the use of valid encryption processes, for all Records containing protected health information and/or consumer information (including social security numbers, credit card numbers and other consumer financial information) placed with Perpetual Storage for transit and/or storage so as to render such Records unusable, unreadable or indecipherable to unauthorized individuals. If the Records contain protected health information, such encryption shall be “valid” encryption under the then applicable provisions of HIPAA, the HIPAA Security Rule and the HITECH Act, as any of the same may be amended from time to time, and shall be of the type and nature described in the Rules and Regulations of the Department of Health and Human Services, as the same may be amended, modified and/or updated from time-to-time, and any such other applicable federal or state statutes. All encryption shall be accomplished by means consistent with the then applicable valid encryption standards, requirements and processes established from time-to-time by the National Institute of Standards and Technology or such recognized successor agency, and/or entity or such governmental agency having jurisdiction. The Company does not insure the Records, the Stored Material or the Storage Medium. The Company provides its own insurance covering, among other things, its own property, actions and omissions. Client is strongly encouraged to provide such insurance as it determines necessary or appropriate. The Company shall have no responsibility or obligation to the Client or to any third persons or legal entities for any claim, damage or loss that could have been prevented by Client’s failure to properly encrypt the Records as set forth above, or for or arising out of or resulting from any failure on the part of Client to perform its responsibilities as set forth in this paragraph 13. Notwithstanding anything in this Agreement to the Contrary, Client shall indemnify and hold harmless the Company from any such claim, damage or loss that could have been prevented by Client’s failure to properly encrypt the Records as set forth above.

14. LIMITATIONS OF LIABILITY

14.1 THE COMPANY SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, THEFT OR DAMAGE TO STORED MATERIAL OR IN CONNECTION WITH THE PERFORMANCE OF ANY SERVICES OR ADDITIONAL SERVICES HEREUNDER OF ANY KIND OR NATURE, HOWEVER CAUSED, AND UNDER ANY AND EVERY LEGAL THEORY INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BAILMENT, BREACH OF WARRANTY, STATUTE OR NEGLIGENCE, AND WHETHER THE STORED MATERIAL IS IN STORAGE AT THE STORAGE FACILITY OR IN TRANSIT TO OR FROM THE STORAGE FACILITY, UNLESS SUCH LOSS, INJURY, THEFT OR DAMAGE RESULTED FROM THE FAILURE BY THE COMPANY TO EXERCISE SUCH CARE IN REGARD THERETO AS A REASONABLY CAREFUL COMPANY WOULD EXERCISE IN LIKE CIRCUMSTANCES. THE COMPANY’S LIABILITY AND DAMAGES UNDER ANY AND EVERY LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, BAILMENT, STATUTE, BREACH OF WARRANTY OR NEGLIGENCE), FROM ANY CAUSE, AND WHETHER THE STORED MATERIAL IS IN STORAGE AT THE STORAGE FACILITY OR IN TRANSIT TO OR FROM THE STORAGE FACILITY SHALL BE LIMITED TO THE HIGHER OF (A) CLIENT’S DECLARED VALUE OF THE STORAGE MEDIA ON WHICH CLIENT’S RECORDS ARE STORED AS SET FORTH ON SCHEDULE “A” ATTACHED HERETO, OR (B) THE AMOUNT THE COMPANY’S INSURANCE CARRIER IN FACT PAYS ON THE APPLICABLE CLAIM. CLIENT MAY INCREASE THE
DECLARED VALUE OF CLIENT’S STORAGE MEDIA, IN WHICH EVENT, CLIENT SHALL PAY INCREASED FEES AS THEN AGREED UPON BETWEEN THE COMPANY AND THE CLIENT. THE COMPANY SHALL HAVE NO LIABILITY FOR THE DETERIORATION OF ANY STORAGE MEDIA OR ANY RECORDS STORED THEREON. THE COMPANY SHALL NOT BE LIABLE FOR LOSS OR DAMAGE TO ANY STORED MATERIALS RESULTING FROM ACTS OF GOD OR PUBLIC ENEMY, SEIZURE OR LEGAL PROCESS, ACTS OF TERRORISM, RIOTS, CIVIL COMMOTIONS, OR OTHER CAUSES BEYOND THE COMPANY’S REASONABLE CONTROL. COMPANY IS NOT RESPONSIBLE FOR THE REPAIR, REPLACEMENT OR RESTORATION OF LOST OR DAMAGED RECORDS, SUBJECT TO THE CONDITIONS AND LIMITATIONS IMPOSED BY THIS AGREEMENT. COMPANY SHALL NOT BE LIABLE FOR ANY LOSS OF PROFIT OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF USE, DATA/INFORMATION BREACH NOTIFICATION REQUIREMENTS TO THIRD PARTIES UNDER STATE AND/OR FEDERAL LAW, LOST DATA/INFORMATION, AND RECONSTRUCTION, REGARDLESS OF THE FORM OF THE CLAIM AND REGARDLESS OF WHETHER ANY SUCH DAMAGES WERE FORESEEABLE. CLIENT SHALL CAUSE ITS INSURERS OF STORED MATERIAL TO WAIVE ANY RIGHT OF SUBROGATION AGAINST COMPANY.

Claims by Client for loss, damage, or destruction must be presented in writing to Company within a reasonable time and in no event longer than sixty (60) days after Client is notified by Company or otherwise receives notice that such loss, damage or destruction has occurred, whichever time is shorter. No action or suit may be maintained by Client or others against Company, unless a timely written claim has been submitted by Client to Company, and unless such action or suit is commenced either within nine (9) months after delivery or return by Company of the applicable Stored Material, or within nine (9) months after Client is notified or otherwise receives notice of the events that give rise to Client’s claim, whichever is shorter.

15. SOLE REMEDY AND ALLOCATION OF RISK. CLIENT’S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM FOR LOSS, DAMAGE, DESTRUCTION, OR THEFT OF ANY OF THE STORED MATERIAL AND THE COMPANY’S SOLE AND EXCLUSIVE LIABILITY IS SET FORTH IN THIS AGREEMENT. This Agreement defines a mutually agreed-upon allocation of risk. Each of the parties acknowledge that the provisions of this Agreement were negotiated to reflect a mutually informed, voluntary allocation between them of all risks (both known and unknown) associated with the storage of the Stored Material in the Storage Facility. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability and are separately intended to limit the forms of relief available.

16. DEFAULT

16.1 The occurrence of any one or more of the following events shall constitute a default:
   a. Failure to pay any sum due hereunder when due; or
   b. Breach of any provisions of this Agreement; or
   c. Client becomes insolvent or files, or has filed against it, any proceeding in federal or state court seeking relief as a debtor; or
   d. Client fails to cooperate with Company in a manner that substantially hinders the Company from providing its services under this Agreement.

16.2 Upon the occurrence of default, Company, at its sole option, may exercise any or all of the following remedies which are cumulative with or without terminating the Agreement:
   a. Demand payment in advance by certified check, cashier’s check, money order, or wire transfer prior to the performance of any services on behalf of the client;
   b. Demand in writing that Client pick up the Stored Material;
   c. Deliver the Stored Material to the Delivery Address; or if none specified, to the Client’s
Address;

e. If this Agreement has not been terminated, Client shall continue to pay all sums due under this Agreement up to and including the date of delivery of the Stored Material as provided in (b) above;
f. Terminate this Agreement with immediate effect, whereupon Company shall recover all damages suffered by reason of such termination, including cost, expenses and reasonable attorneys’ fees; and/or
g. Retain the Stored Material until payment is made of all Storage Fees, Additional Fees and any and all other fees, costs and expenses.

16.3 In the event Company takes any action or does not take any action pursuant to this Section 15, it shall have no liability to Client or anyone claiming through Client arising from such action or inaction. The exercise by Company of any one or more of the remedies provided in this Agreement shall not prevent the subsequent exercise by Company of any one or more of the other remedies herein provided. All remedies provided for in this Agreement are cumulative and may, at the election of Company, be exercised alternatively, successively or in any other manner, and are in addition to any of the rights provided by law. Company shall be entitled to include all reasonable attorneys’ fees and costs incurred in connection with the enforcement of this Agreement.

17. FORCE MAJEURE. Neither the Company nor the Client shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, acts of terrorism, epidemics, quarantine restrictions, strikes, freight embargos and unusually severe weather.

18. LIEN. Intentionally Deleted.

19. MISCELLANEOUS. Intentionally Deleted.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective date set forth in the introductory paragraph of this Agreement.

CLIENT:
By: ______________________________
   (authorized signature)
   (printed name)

COMPANY:
By: _____________________________
   (authorized signature)

SCHEDULE “A”
Schedule of Fees for Services and Additional Services, and Declared Value

Client agrees to the Storage Fees and Additional Fees set forth below. Client declares the value of each of the categories of items of Storage Media submitted by Client to the Company for transit and storage during the Term and each Renewal Term of this Agreement as set forth below (“Declared Value”). Client agrees that the Company’s liability in case of loss or damage under any and every legal theory (including, without limitation, contract, tort, bailment, breach of warranty or negligence) and from any cause, while such Stored Material is in its possession, either during transit or storage, shall not exceed the total Declared Value as stated below. Client may state a higher Declared Value for the Stored Materials by setting forth a new
Declared Value and paying the Company's fee for such increase in Declared Value. Each new Schedule “A” must be dated and signed by Client and approved and signed by the Company to be valid and binding on the Parties. Client is encouraged to provide its own insurance. This Schedule A is incorporated into and made a part of the Storage and Service Agreement.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>DECLARED VALUE</th>
<th>NO. OF ITEMS</th>
<th>STORAGE FEES PER YEAR</th>
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<tbody>
<tr>
<td><strong>A. STORAGE FEES</strong></td>
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<tr>
<td>ROLL MICROFILM:</td>
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<tr>
<td>Silver 16mm x 100'</td>
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<td>HARD DRIVES</td>
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<tr>
<td>MAGNETIC COMPUTER TAPE</td>
<td>Purchase Price</td>
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<tr>
<td>GOBOX</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>MISCELLANEOUS</td>
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<tr>
<td>2 DM 9400 tape transport containers at $69.00 each + tax.</td>
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<td><strong>TOTAL DECLARED VALUE AND LIMITATION OF LIABILITY:</strong></td>
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**B. ADDITIONAL FEES.**

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<tr>
<td>4.6 Other services as agreed</td>
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</table>

**TOTAL ANNUAL FEES FOR ADDITIONAL SERVICES**

**TOTAL STORAGE FEES AND ADDITIONAL FEES**

CLIENT ACKNOWLEDGES THAT IT HAS BEEN AFFORDED THE OPPORTUNITY, BUT HAS DECLINED, TO DECLARE A HIGHER VALUATION, FOR WHICH A HIGHER VALUATION FEE WOULD HAVE BEEN CHARGED.

Client: ___________________________  The Company: Perpetual Storage, Inc.

By: ___________________________  By: ___________________________

(authorized signature)  (authorized signature)

Dated: ___________________________  Dated: ___________________________
STATE OF UTAH "BEST VALUE" COOPERATIVE CONTRACT
CONTRACT NUMBER: PA390
July 05, 2015

VAULT STORAGE INVESTMENT

All storage prices are for one year. Payment is due at the beginning of the storage year and is non-refundable. Clients may request a monthly invoice cycle. Additions during the yearly contract period will be invoiced on a pro-rated basis. All prices are subject to change with notice.

MAGNETIC COMPUTER TAPES, OPTICAL DISCS AND CD’S

<table>
<thead>
<tr>
<th>Quantity Range</th>
<th>Price per Year</th>
<th>Price per Month</th>
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<tbody>
<tr>
<td>1 thru 30</td>
<td>$15.43 tape/yr</td>
<td></td>
</tr>
<tr>
<td>31 thru 100</td>
<td>$14.42 tape/yr</td>
<td></td>
</tr>
<tr>
<td>101 thru 2000</td>
<td>$13.39 tape/yr</td>
<td></td>
</tr>
<tr>
<td>2001 thru 10,000</td>
<td>$7.73 tape/yr</td>
<td></td>
</tr>
<tr>
<td>1,001 thru 5,000</td>
<td>$11.33 tape/yr</td>
<td></td>
</tr>
<tr>
<td>5,001 thru 10,000</td>
<td>$6.70 tape/yr</td>
<td></td>
</tr>
<tr>
<td>101 thru 2,500</td>
<td>$10.30 tape/yr</td>
<td></td>
</tr>
<tr>
<td>2,501 thru 5,000</td>
<td>$9.27 tape/yr</td>
<td></td>
</tr>
<tr>
<td>5,001 thru 7,500</td>
<td>$7.21 tape/yr</td>
<td></td>
</tr>
<tr>
<td>7,501 thru 10,000</td>
<td>$8.24 tape/yr</td>
<td></td>
</tr>
<tr>
<td>10,001 thru 20,000</td>
<td>$7.73 tape/yr</td>
<td></td>
</tr>
<tr>
<td>20,001 thru 50,000</td>
<td>$7.21 tape/yr</td>
<td></td>
</tr>
<tr>
<td>50,001 thru 100,000</td>
<td>$6.70 tape/yr</td>
<td></td>
</tr>
<tr>
<td>100,001+</td>
<td>$6.18 tape/yr</td>
<td></td>
</tr>
</tbody>
</table>

HARD DRIVES

<table>
<thead>
<tr>
<th>Quantity Range</th>
<th>Price per Year</th>
<th>Price per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 thru 10</td>
<td>$98.88/yr. or $8.24/month</td>
<td></td>
</tr>
<tr>
<td>11 thru 25</td>
<td>$86.52/yr. or $7.21/month</td>
<td></td>
</tr>
<tr>
<td>26 thru 100</td>
<td>$74.16/yr. or $6.18/month</td>
<td></td>
</tr>
<tr>
<td>101+</td>
<td>$61.80 or $5.15/month</td>
<td></td>
</tr>
</tbody>
</table>

MICROFILM DRAWER

<table>
<thead>
<tr>
<th>Quantity Range</th>
<th>Price per Drawer per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 thru 10</td>
<td>$154.50 each/yr.</td>
</tr>
<tr>
<td>11 thru 25</td>
<td>$133.90</td>
</tr>
<tr>
<td>26 thru 100</td>
<td>$113.30 each/yr.</td>
</tr>
</tbody>
</table>

MICROFICHE DRAWER

<table>
<thead>
<tr>
<th>Quantity Range</th>
<th>Price per Drawer per Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 to 10</td>
<td>$154.50 per drawer per year</td>
</tr>
<tr>
<td>11 to 25</td>
<td>$133.90 per drawer per year</td>
</tr>
<tr>
<td>26 to 100</td>
<td>$113.30 per drawer per year</td>
</tr>
</tbody>
</table>

QUOTES WILL BE GIVEN FOR QUANTITIES NOT LISTED ON THIS PRINTED SHEET.

SPECIAL QUOTES MUST BE APPROVED AND ISSUED BY MANAGEMENT. COMPUTER TAPE, HARD DRIVE, CD AND OPTICAL DISC TRANSPORT CONTAINERS ARE AVAILABLE FOR PURCHASE FROM PERPETUAL STORAGE.
COURIER SERVICES – INVOICED MONTHLY
Special needs and longer distances will require additional charges. A gas surcharge may be applied if gasoline is over $3.00 a gallon.

A. Daily Service (Monday through Friday) $20.39 per round trip
B. Once A Week Service $30.59 per round trip
C. Semi-Weekly (2 or 3/week) $25.24 per round trip
D. Bi-Weekly $36.31 per round trip
E. Monthly /Will Call $39.45 per round trip
F. Weekend and Holidays $57.50 per round trip

Courier service includes rotation of 50 tape kits going in or out of the vault per month at no additional handling charge. It also included 500 tapes going into or out of the vault per month at no additional handling charge. Quantities above these have a handling charge at the following rates:

Tape kits over the maximum: $0.50 each in or out of the vault
Tapes Over The Maximum: $0.025 per tape in or out of the vault

EMERGENCY DELIVERIES
Salt Lake County
During Regular Business Hours - $100.00 - After Regular Business Hours - $125.00
Utah, Davis and Weber Counties
During Regular Business Hours - $125.00 - After Regular Business Hours - $150.00

LIBRARIANS TIME
$50.00 an hour with a ½ hour minimum
Special requests will be quoted by your sales representative
ATTACHMENT A: STANDARD TERMS AND CONDITIONS FOR SERVICES
STATE OF UTAH COOPERATIVE CONTRACT

The following Sections have been modified: 1(a), 5, 24, 27, and 46.

This is a State of Utah Cooperative Contract ("State Cooperative Contract") for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor. This State Cooperative Contract is the result of a cooperative procurement for the benefit of Eligible Users and may be used by Eligible Users without the Eligible Users signing a participating addendum.

1. DEFINITIONS: The following terms shall have the meanings set forth below:

a) "Confidential Information" means information that is deemed as confidential under applicable state and federal laws, including personal information. It is the responsibility of the Eligible Users to encrypt Confidential Information. The Eligible Users shall have the right to identify, during and after this Contract, additional types of categories of information that must be kept confidential under federal and state laws by Contractor.

b) "Contract" means either: (i) the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference, or (ii) the Solicitation and the Proposal when accepted and signed by the Division. The format of the Contract, as described in the prior sentence, will be at the sole option of the Division. Additionally, the term "Contract" may include any purchase orders issued by the Division that result from this Contract.

c) "Contract Signature Page(s)" means the State of Utah cover page(s) that the Division and Contractor sign.

d) "Contractor" means the individual or entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor’s agents, officers, employees, and partners.

e) "Division" means the State of Utah Division of Purchasing.

f) "Eligible User(s)" means the State of Utah’s government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.

g) "End User Agreement" means any agreement, including an end user agreement, customer agreement, memorandum of understanding, statement of work, lease agreement, service level agreement, or any other named separate agreement in which the Eligible Users are required to sign in order to participate in this Contract.

h) "Services" means the furnishing of labor, time, or effort by Contractor pursuant to this Contract. Services shall include, but not limited to, all of the deliverable(s) that result from Contractor performing the Services pursuant to this Contract. Services include those professional services identified in Section 63G-6a-103 of the Utah Procurement Code.

i) "Proposal" means Contractor’s response to the Division’s Solicitation.

j) "Solicitation" means the documents used by the Division to obtain Contractor’s Proposal.

k) "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.

l) "Subcontractors" means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor’s manufacturers, distributors, and suppliers.

2. GOVERNING LAW AND VENUE: This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.

3. LAWS AND REGULATIONS: At all times during this Contract, Contractor and all Services performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
4. RECORDS ADMINISTRATION: Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor’s performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah and federal auditors, and Eligible User staff, access to all such records.

5. CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM": INTENTIONALLY DELETED

6. CONFLICT OF INTEREST: Contractor represents that none of its officers or employees are officers or employees of the Division or of the State of Utah, unless disclosure has been made to the Division.

7. INDEPENDENT CONTRACTOR: Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State Entity or the State of Utah.

8. INDEMNITY: Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor’s performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Division, Eligible Users, or the State of Utah. The parties agree that if there are any limitations of the Contractor’s liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.

9. EMPLOYMENT PRACTICES: Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah’s Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor’s employees.

10. AMENDMENTS: This Contract may only be amended by the mutual written agreement of the Division and Contractor, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.

11. DEBARMENT: Contractor certifies that it is not presently nor has it ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the State Entity within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.

12. TERMINATION: Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) days written termination notice being given to the other party. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for Services properly performed prior to date of termination.

13. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW: Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division, if the Division reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the Divisions or the Eligible User’s ability to pay Contractor. A change of available funds as
used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered, the Eligible User will reimburse Contractor for the Services properly performed until the effective date of said notice. The Division, the Eligible User, and the State of Utah will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the Eligible User’s funds and may be used in the exercise of the Eligible User’s essential functions. Upon request, the Eligible User will provide Contractor with its sales tax exemption number. It is Contractor’s responsibility to request the Eligible User’s sales tax exemption number. It also is Contractor’s sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

15. **INSURANCE:** Contractor shall at all times during the term of this Contract, without interruption, carry and maintain commercial general liability insurance from an insurance company authorized to do business in the State of Utah. The limits of this insurance will be no less than one million dollars ($1,000,000.00) per occurrence and three million dollars ($3,000,000.00) aggregate. Contractor also agrees to maintain any other insurance policies required in the Solicitation. Contractor shall provide proof of the required insurance policies to the Division within thirty (30) days of contract award. Contractor must add the State of Utah as an additional insured with notice of cancellation. Failure to provide proof of insurance, as required, will be deemed a material breach of this Contract. Contractor shall not cancel or allow the insurance policy to expire unless written notice has been given to the Division at least thirty (30) days prior to the cancelation or expiration. Contractor’s failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

16. **WORKERS COMPENSATION INSURANCE:** Contractor shall maintain during the term of this Contract, workers’ compensation insurance for all its employees as well as any Subcontractor employees related to this Contract. Worker’s compensation insurance shall cover full liability under the worker’s compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor must submit proof of certificate of insurance that meets the above requirements.

17. **END USER AGREEMENT:** If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract. The term of the End User Agreement shall not exceed the term of this Contract, and the End User Agreement will automatically terminate upon the completion or termination of this Contract. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.

18. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.

19. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Services based upon the same terms, conditions and prices of this Contract.

20. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Services from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.

21. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.

22. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the State of Utah’s Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, related purchase orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing and expressly approved by the Division, all of which must be in accordance with GRAMA, Contractor also agrees that the Contractor’s Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The Division, the Eligible Users, and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, and invoices.

23. **DELIVERY:** Time is of the essence for all deliveries made under this Contract. All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability
for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Eligible User, except as to latent defects or fraud. Contractor’s failure to provide the Services by the required delivery date is deemed a material breach of this Contract. Contractor shall be responsible for the customary industry standard in packing and shipping the Services.

24. REPORTS AND FEES:

1. Administrative Fee: Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the “State of Utah Division of Purchasing” and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be the .4% will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.

2. Quarterly Reports: Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.

3. Report Schedule: Quarterly utilization reports shall be made in accordance with the following schedule:

<table>
<thead>
<tr>
<th>Period End</th>
<th>Reports Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 31</td>
<td>April 30</td>
</tr>
<tr>
<td>June 30</td>
<td>July 31</td>
</tr>
<tr>
<td>September 30</td>
<td>October 31</td>
</tr>
<tr>
<td>December 31</td>
<td>January 31</td>
</tr>
</tbody>
</table>

4. Fee Payment: After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

5. Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

25. ORDERING: Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

26. ACCEPTANCE AND REJECTION: The Eligible User shall have thirty (30) days after delivery of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the Eligible User.

If Contractor delivers nonconforming Services, the State Entity may, at its option and at Contractor’s expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

27. INVOICING: Contractor will submit invoices as determined by the Contractor and the Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

28. PAYMENT: Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail, electronic funds transfer, or by a Purchasing Card (major credit card). If payment has not been made after sixty (60) days from the date a correct invoice is received by the Eligible User, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the Eligible User within ten (10) business days of receipt of final payment, shall release the Division, the Eligible User, and the State of Utah from all claims and all liability to the Contractor. The Eligible User’s payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the Division, Eligible User, or the State of Utah may have against Contractor.

29. TIME IS OF THE ESSENCE: Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the Eligible User and the State of Utah, and anyone for whom the State of Utah may be liable, as a result of Contractor’s failure to timely perform the Services required under this Contract.

30. CHANGES IN SCOPE: Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
31. PERFORMANCE EVALUATION: The Eligible User may conduct a performance evaluation of Contractor’s Services, including Contractor’s Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor’s request.

32. STANDARD OF CARE: The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the Eligible User and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third party claims (i.e. another Contractor’s claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.

33. REVIEWS: The Division and Eligible Users reserve the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.

34. INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY: INTENTIONALLY DELETED.

35. OWNERSHIP IN INTELLECTUAL PROPERTY: The Division, the Eligible User, and Contractor each recognizes that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing. All Services, documents, records, programs, data, articles, memoranda, and other materials not developed or licensed by Contractor prior to the execution of this Contract, but specifically manufactured under this Contract shall be considered work made for hire, and Contractor shall transfer any ownership claim to the Eligible User.

36. ASSIGNMENT: Contractor may not assign, sell, transfer, sublease or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the Division.

37. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (i) Contractor’s non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor’s material breach of any term or condition of this Contract. The Division may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor’s liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the Division or the State of Utah; or (v) demand a full refund of any payment that an Eligible User has made to Contractor under this Contract for Services that do not conform to this Contract.

38. FORCE MAJEURE: Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, and/or war which is beyond that party’s reasonable control. The Division may terminate this Contract after determining such delay will prevent successful performance of this Contract.

39. CONFIDENTIALITY: If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the Division and the relevant Eligible User of any potential or actual misuse or misappropriation of Confidential Information. Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the Division, the Eligible User, and the State of Utah, including anyone for whom the Division, the Eligible User, or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the Eligible User or certify, in writing, that the Confidential Information has been destroyed. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

40. PUBLICITY: Contractor shall submit to the Eligible User for written approval all advertising and publicity matters relating to this Contract. It is within the Eligible User’s sole discretion whether to provide approval, which must be done in writing.

41. CONTRACT INFORMATION: During the duration of this Contract the State of Utah Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor’s job vacancies.

42. PROCUREMENT ETHICS: Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a
procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.

43. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

44. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees, incurred in connection with such action.

45. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The Division, after consultation with the Eligible User and Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the Division appoints such an expert or panel, the Eligible User and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.

46. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) Contractor's Service Level Agreement; and (iv) Access Control Form. Any provision attempting to limit the liability of Contractor or limits the rights of the Division, Eligible Users, or the State of Utah must be in writing and attached to this Contract or it is rendered null and void. Contractor's terms and conditions on its Sales Orders, Invoices, website, etc., will not apply to this Contract.

47. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the Division's or the Eligible User's right to enforce this Contract with respect to any default of this Contract or defect in the Services that has not been cured.

48. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.

49. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.

(Revision date: 1 April 2015)

FINET COMMODITY CODE(S):
96295000000 – Warehousing and storage services (not storage space rental)
00000000000 – Generic Commodity Code