

**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH FACILITIES
REQUEST FOR PROPOSALS FOR
MANAGEMENT AND OPERATIONAL SERVICES FOR
MILDRED MITCHELL-BATEMAN HOSPITAL
AND WILLIAM R. SHARPE, JR. HOSPITAL**

ARFP OHF27*017

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SECTION 1: GENERAL INFORMATION

The WV Office of Shared Administration (OSA) Office of Purchasing is issuing this solicitation as a request for proposal (RFP) for the State of West Virginia Department of Health Facilities (the "DHF") (where applicable, DHF and OSA, Office of Purchasing are hereinafter collectively referred to as the "Agency") to provide management and operational services for Mildred Mitchell-Bateman Hospital ("Bateman Hospital") and William R. Sharpe, Jr. Hospital ("Sharpe Hospital"). Bateman Hospital and Sharpe Hospital may be referred to collectively as the "Hospitals" and each as a "Hospital" throughout the RFP.

The RFP is a procurement method in which vendors submit proposals in response to the request for proposal published by the OSA, Office of Purchasing. It requires an award to the highest scoring vendor, rather than the lowest cost vendor, based upon a technical evaluation of the vendor's technical proposal and a cost evaluation. This is referred to as a best value procurement. Through their proposals, vendors offer a solution to the objectives, problems, or needs specified in the RFP, and define how they intend to meet (or exceed) the

RFP requirements. This RFP relates to services to be provided to both Bateman Hospital and Sharpe Hospital, but the Agency will likewise review and consider proposals for only Bateman Hospital or Sharpe Hospital.

NOTE: This request is covered in part or in whole by federal funds. All bidders will be required to acknowledge and adhere to the attached Federal Funds Addendum.

NOTE: The DoHS OSA has developed an EEOP Utilization Report, and it is available at:<https://dhhr.wv.gov/office-of-drug-control-policy/news/Documents/EEO%20Utilization%20Report%20Completed%20Form%201-29-21-final-PDF%20review%20for%20approval%20to%20submit%20%283%29.pdf>

**SECTION 2: INSTRUCTIONS TO VENDORS SUBMITTING
BIDS**

Instructions to Vendors Submitting Bids are Attached.

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INSTRUCTIONS TO VENDORS SUBMITTING BIDS

(OSA Exempt Procurements Only)

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

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

2A. PREBID MEETING: The item identified below shall apply to this Solicitation.

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

☒ A MANDATORY PRE-BID meeting will be held at the following place and time:

Virtual Pre-Bid on 10/14/2026 @1:30pm EST. Link: meet.google.com/tre-hekc-tqh

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one individual is permitted to represent more than one vendor at the pre-bid meeting. Any individual that does attempt to represent two or more vendors will be required to select one vendor to which the individual's attendance will be attributed. The vendors not selected will be deemed to have not attended the pre-bid meeting unless another individual attended on their behalf. The required attribution of attendance to a single vendor should be addressed during the pre-bid but may occur at any time deemed appropriate by the OSA Office of Purchasing.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

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

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

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at

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the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

3. BID SUBMISSION: All bids must be submitted electronically through wvOASIS or signed and delivered by the Vendor to the Agency on or before the date and time of the bid opening. Any bid received by the Agency staff is considered to be in the possession of the Agency and will not be returned for any reason.

3A. BID SUBMISSION

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

SEALED BID:	Must be delivered via mail or hand delivery-no WVOASIS submission.
BUYER:	Catherine Stephenson
SOLICITATION NO.:	ARFP OFF27*017
BID OPENING DATE:	11/9/2026
BID OPENING TIME:	1:30 pm (EST)
FAX NUMBER:	304-558-2892

4. ADDENDUM ACKNOWLEDGEMENT: Changes or revisions to this Solicitation will be made by an official addendum issued by the Agency. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

5. BID FORMATTING: Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

6. ALTERNATE MODEL OR BRAND: Unless the box below is checked, any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.

☐ This Solicitation is based upon a standardized commodity established under West Virginia Code § 5A-3-61. Vendors are expected to bid the standardized commodity identified. Failure to bid the standardized commodity will result in your firm's bid being rejected.

7. EXCEPTIONS AND CLARIFICATIONS: The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions,
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clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.

8. REGISTRATION: Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.

9. UNIT PRICE: Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

10. PREFERENCE: Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of West Virginia Code § 5A-3-37, and must include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

10A. RECIPROCAL PREFERENCE: The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, if reciprocal preference is requested by a West Virginia resident vendor, non-resident vendors receiving a preference in their home states, will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. Any request for reciprocal preference must include with the bid any information necessary to evaluate and confirm the applicability of the preference. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

11. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES: For any solicitations publicly advertised for bid, in accordance with West Virginia Code §5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.

12. ELECTRONIC FILE ACCESS RESTRICTIONS: Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the Agency staff immediately upon bid opening. The Agency will consider any file that cannot be immediately access and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and therefore unacceptable. A vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening to make a file viewable if those documents are required with the bid. A Vendor may be required to provide document passwords or removed access restrictions to allow the Agency to print or electronically save documents provided that those documents are viewable by the Agency prior to obtaining the password or removing the access restriction.

13. NON-RESPONSIBLE: The Director of the OSA Office of Purchasing reserves the right to reject the bid of any vendor as Non-Responsible when the Director determines that the vendor submitting the bid does not have the capability to fully perform, or lacks the integrity and reliability to assure good-faith performance.

14. ACCEPTANCE/REJECTION: The State may accept or reject any bid in whole, or in part.

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

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

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

MANDATORY PRE-BID MEETING:

Vendors must attend the virtual mandatory pre-bid meeting on October 14, 2026 at 1:30 p.m. EST. Please utilize the Google Meet link below to access the meeting.

meet.google.com/tre-hekc-tqh

VENDOR QUESTION DEADLINE:

Vendors may submit questions relating to this Solicitation to OSA Purchasing. Questions must be submitted in writing via email, fax, mail, or in person. All questions must be submitted on or before the date listed below and to the address listed below to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non-binding. Submitted emails should have the solicitation number in the subject line.

Question Submission Deadline: October 15, 2026, 10:30 a.m. EST

Submit Questions to:

OSA Purchasing,

300 Capitol St., Suite 700,

Charleston, WV 25301

Fax: (304) 558-2892

Email: catherine.e.stephenson@wv.gov

NON MANDATORY SITE VISITS:

Vendors may come to the following non-mandatory site visits:

Mildred Mitchell-Bateman Hospital Site Visit

Date & Time: October 22, 2026, 1:30 p.m. EST

Location: Mildred Mitchell Bateman Hospital, 1530 Norway Avenue, Huntington, WV 25705

William R. Sharpe, Jr Hospital Site Visit

Date & Time: October 23, 2026, 1:30 p.m. EST

Location: William R. Sharpe, Jr Hospital, 936 Sharpe Hospital Road, Weston, WV 26452

BID OPENING:

Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when the bid is time stamped by the official OSA Purchasing time clock. **Online bid responses and email bids are prohibited.**

Vendors must include with their bid submissions: one (1) original technical proposal, five (5) convenience copies of the technical proposal, and one (1) original cost proposal. Please ensure that your technical and cost proposals are sealed separately.

Bid Opening Date and Time: November 9, 2026, 1:30 p.m. EST

Bid Delivery Address and Fax Number:

OSA Purchasing,

300 Capitol St., Suite 700,

Charleston, WV 25301

Fax: (304) 558-2892

SECTION 3: GENERAL TERMS AND CONDITIONS

General Terms and Conditions are Attached.

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**GENERAL TERMS AND CONDITIONS:
(OSA Exempt Procurements Only)**

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Agency and approved as to form by the Attorney General's office, if required, constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

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

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

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

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

2.4. "Director" means the Director of the OSA Office of Purchasing.

2.5. "OSA Office of Purchasing" means the WV Department of Human Services, Department of Health, Department of Health Facilities, Office of Shared Administration Office of Purchasing.

2.6. "Award Document" means the document signed by the Agency that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services.

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

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

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

☒ **Term Contract**

Initial Contract Term: This Contract becomes effective on award and the initial contract term extends until five years.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor. Any request for renewal should be delivered to the Agency thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of 24 months available in all renewal years combined. Automatic renewal of this Contract is prohibited.

Alternate Renewal Term – This contract may be renewed for two successive one year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor and Agency.

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

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

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

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

☐ **Other:** See attached.

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

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

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

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

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

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

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

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

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract value. The performance bond must be received by the

Agency prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be received by the Agency prior to Contract award.

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

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

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

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

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shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☒ N/A for

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

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

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

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

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

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

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

17. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect

beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

18. CANCELLATION: The State reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Agency may also cancel any purchase or Contract upon 30 days written notice to the Vendor.

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

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

21. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances. Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances.

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

23. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor.

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

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

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

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

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

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

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

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

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

31. LICENSING: Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the OSA, Office of Purchasing Director and the Agency to verify that the Vendor is licensed and in good standing with the above entities. Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section.

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

33. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on

Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

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

35. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services,

materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

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

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

38. REPORTS: Vendor shall provide the Agency and/or the OSA, Office of Purchasing with the following reports identified by a checked box below:

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

☒ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the OSA, Office of Purchasing.

39. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

40. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the OSA, Purchasing Division no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties as used in this section:

a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment,

or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The OSA, Office of Purchasing Director may, in writing, authorize the use of foreign steel products if:

c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or

d. The Director of the OSA, Office of Purchasing determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

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

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or

offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

42. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

43. VOID CONTRACT CLAUSES – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

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

(Name, Title)

(Printed Name and Title)

(Address)

(Phone Number) / (Fax Number)

(E-mail address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

(Company)

(Authorized Signature) (Representative Name, Title)

(Printed Name and Title of Authorized Representative)

(Date)

(Phone Number) (Fax Number)

Revised 03/4/2024

ADDENDUM ACKNOWLEDGEMENT FORM

SOLICITATION NO.: ARFP OHF27*017

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification. Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|---|--|
| ☐ Addendum No. 1 | ☐ Addendum No. 6 |
| ☐ Addendum No. 2 | ☐ Addendum No. 7 |
| ☐ Addendum No. 3 | ☐ Addendum No. 8 |
| ☐ Addendum No. 4 | ☐ Addendum No. 9 |
| ☐ Addendum No. 5 | ☐ Addendum No. 10 |

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

Company

Authorized Signature

Date

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

SECTION 4 - PROJECT SPECIFICATIONS

4.1 Background and Current Operating Environment

Bateman Hospital

Mildred Mitchell-Bateman Hospital is a 110-bed acute care psychiatric hospital located in Huntington, West Virginia offering a comprehensive array of specialized inpatient and outpatient services, including, among others, psychiatric evaluation and diagnosis, inpatient mental health treatment, rehabilitation programs, medical management, and crisis intervention. The majority of the patients residing at Bateman Hospital have been admitted through the civil commitment process. Operated by the West Virginia Department of Health Facilities, it is a training site for future health care professionals attending more than 20 colleges and educational institutions in the tri-state area of southwestern West Virginia, southeastern Ohio and northeastern Kentucky. Bateman Hospital provides on-site learning experiences for educating physicians, residents, nurses, practical nurses, psychologists, counselors, health care administrators, technicians and supportive services personnel. In 1988, Bateman Hospital was initially accredited by the Joint Commission on Accreditation of Healthcare Organizations and certified by CMS (Centers for Medicare and Medicaid Services) in December 1990. Bateman Hospital has an ongoing academic relationship with Marshall University.

Bateman Hospital is under consideration for construction of new facilities and submission of proposals are required to address that consideration, as detailed more fully below. In connection with that potential design and construction project, the Agency is exploring options that prioritize patient safety, therapeutic environments, and security while maximizing efficiency. Although solicitation by the DHF for design and build services may separately follow this RFP, input and recommendations from a vendor under this RFP are requested and the vendor's experience and input regarding this aspect of Bateman's management and development shall be considered as part of the selection criteria.

Sharpe Hospital

William R. Sharpe, Jr. Hospital is a 200-bed acute care inpatient psychiatric facility located in Weston, Lewis County, West Virginia, operating under the direction of the West Virginia Department of Health Facilities. Opened in 1994, Sharpe Hospital is fully accredited by The Joint Commission on Accreditation of Healthcare Organizations ("Joint Commission").

Sharpe Hospital serves patients admitted either through civil commitment procedures under West Virginia law or, in the case of forensic patients, through court order. Forensic patient legal statuses include individuals adjudicated as Incompetent to Stand Trial ("IST") and Not Guilty by

Reason of Mental Illness ("NGMI"). Sharpe Hospital admits both civil and forensic patients and is the main forensic hospital for the State of West Virginia. The hospital works closely with West Virginia's Community Behavioral Health Centers and other community organizations to facilitate smooth transitions back to the community after discharge. Sharpe Hospital has an ongoing academic affiliation with West Virginia University's Department of Behavioral Medicine and Psychiatry, which provides professionals across multiple disciplines — including psychiatry, psychology, clinical social work, and physician assistant services — to the facility. Sharpe Hospital has become a premier center for mental health education and research in West Virginia.

The Agency seeks a qualified operator with demonstrated experience in managing accredited inpatient civil and forensic psychiatric facilities and providing high-quality, recovery-oriented behavioral health services to provide comprehensive management and operational services for the Hospitals, in compliance with applicable federal and West Virginia State laws, regulations, and Joint Commission accreditation standards and psychiatric hospital licensure. The selected vendor shall assume responsibility for day-to-day operations while ensuring continuity of and improvement to patient care, and will provide executive leadership, clinical oversight, nursing administration, ancillary services, facility operations, quality management, security coordination, environmental services, and administrative support, among other things.

4.2 Project Goals and Mandatory Requirements

The Agency's principal objectives for this procurement are to ensure that patients admitted to the Hospitals receive, in the case of civil commitment, quality, outcome driven mental health care, evaluation and therapeutic treatment, and in the case of forensic care (when applicable), competency restoration, quality risk assessment, and evidence-based treatment focused on issues pertinent to their clinical and legal status; to maintain a secure, licensed, and accredited facility that integrates treatment and security; and to operate effectively and in a fiscally responsible manner. Proposals should include a comprehensive management plan that addresses the following project goals and objectives:

4.2.1 Project Goals

- A. Deliver high-quality, recovery-oriented forensic (when applicable) and civil psychiatric care that meets or exceeds all applicable Joint Commission, state licensure, and federal standards.
- B. Achieve and maintain full Joint Commission accreditation and West Virginia psychiatric hospital licensure throughout the contract term.
- C. Provide timely competency restoration services for IST patients and evidence-based risk assessment and discharge planning for NGMI and civil commitment patients, reducing average lengths of stay consistent with established performance benchmarks.

- D. Establish and sustain productive working relationships with all components and parties involved with the West Virginia criminal justice system, community behavioral health centers, and other relevant stakeholders.
- E. Recruit, retain, and develop a qualified workforce sufficient to sustain full active treatment programming seven days per week.
- F. Reduce reliance on contract staffing and align staffing resources to census and acuity.
- G. Improve patient outcomes: improve the clinical, behavioral, and functional outcomes of patients through the delivery of timely, evidence-based, person-centered care and treatment.
- H. Ensure patient safety: maintain a safe, secure, and therapeutic environment by implementing policies, procedures, and practices designed to prevent harm, reduce risk, and protect the health and welfare of residents, staff, and visitors.
- I. Promote recovery-oriented treatment: implement and deliver services that support recovery, maximize independence, promote individual strengths, and encourage active participation by residents in treatment planning and goal achievement.
- J. Maintain regulatory compliance: ensure compliance with all applicable federal and state laws, regulations, licensing requirements, accreditation standards, and Agency policies governing the operation of the Hospitals and the delivery of services.
- K. Improve operational efficiency: optimize facility operations through effective management practices, efficient resource utilization, data-informed decision-making, and continuous process improvement while maintaining quality of care.
- L. Reduce unnecessary hospital length of stay and improve bed utilization: develop and implement policies and procedures to provide timely assessment, treatment, discharge planning, and care coordination designed to reduce unnecessary lengths of stay while ensuring residents are clinically appropriate for discharge.
- M. Improve discharge planning and community reintegration: develop and implement comprehensive discharge planning and transition services that facilitate continuity of care, access to community-based services, and successful reintegration into the community.
- N. Strengthen quality assurance and performance improvement: maintain a comprehensive quality assurance and performance improvement program that utilizes performance metrics, outcome measures, incident reviews, and continuous quality improvement initiatives to monitor and enhance service delivery.
- O. Promote fiscal responsibility and accountability: manage resources in a prudent, transparent, and accountable manner by maintaining effective financial controls, maximizing operational value and efficiency, and ensuring responsible use of public funds and actively identifying and pursuing appropriate state and federal funding opportunities, grants, reimbursements, or other funding sources that may enhance services and support the long-term financial sustainability of the Hospitals.

- P. Develop detailed financial reporting protocols and produce periodic reporting on key financial performance indicators.

All proposals should demonstrate how the vendor will assist the Agency in meeting each of these objectives. The selected vendor shall provide sufficient administrative, clinical, and operational resources to ensure uninterrupted patient care twenty-four (24) hours per day, seven (7) days per week.

4.2.2 Mandatory Project Requirements

The following mandatory requirements must be met by the vendor as part of its submitted proposal. Vendor should describe how it will comply with the mandatory requirements and include any areas where its proposed solution exceeds the mandatory requirement. Failure to commit to compliance with any mandatory requirement will lead to disqualification.

- A. The vendor must commit to maintain, at all times during the contract term, full accreditation of the Hospitals (or the Hospital for which the proposal is submitted) by the Joint Commission and licensure as a psychiatric hospital under applicable West Virginia law.
- B. As the vendor is expected to assume operational control of the Hospitals, the vendor must indicate a minimum number or percentage of staff presently employed at the Hospitals that it intends to hire in connection with its proposal. While proposals may differ as to the number of direct employees to be hired, the vendor must employ, as direct employees, a full-time Hospital Administrator, Clinical Director, Director of Nursing, and Security Director, each meeting the minimum qualifications specified in Section 4.3.2 of this RFP. Changes to these key positions require prior written approval of the Agency.
- C. The vendor must commit to comply with all applicable federal laws and regulations, West Virginia laws and regulations, including, without limitation, those governing inpatient psychiatric facilities, West Virginia civil commitment laws, the applicable West Virginia forensic statutes, and all applicable Agency policies and operating procedures.
- D. The vendor must commit to provide active treatment programming, available seven days per week to all admitted patients.
- E. The vendor must commit to comply with the Agency's no-decline admissions policy. The Agency's determination regarding admission of any individual to Sharpe Hospital and/or Bateman Hospital (as may be applicable) is final and binding on the vendor.

- F. The vendor must commit to submit all required reports on the schedules specified by the Agency, including daily census reports, monthly performance reports, and all reports required by external licensing and accreditation bodies.
- G. The vendor must develop and implement policies, operating procedures and clinical protocols consistent with best practices for civil and forensic mental health treatment in a secure setting and in compliance with licensing and accreditation organizations, state and federal laws, codes, rules, regulations and standards, and the Hospital's operating procedures. The vendor shall comply with the Hospital's operating procedures and subsequent revisions until it has developed its own procedures, which must be, at a minimum, consistent with the Hospital's existing procedures and must be approved by the Agency.
- H. The vendor shall be required and commit to update and revise its policies, procedures and protocols as new advancements occur in the mental health treatment field, particularly evidence-based practices. Additionally, the vendor will be responsible for ensuring the development of sufficient training materials and ongoing instruction for all employees. The vendor must demonstrate that it clearly understands these requirements and shall show it has developed its own policies, procedures and protocols to comply with them.
- I. The vendor shall demonstrate that it has the financial capacity to perform all services required under any contract resulting from its proposal, including, but not limited to, absorbing costs associated with hiring of employees and staff, required insurance, facility maintenance and required capital expenditures and applicable performance remedies, from sources independent of the contract payments contemplated by this RFP. The vendor agrees to provide all financial information reasonably requested by the Agency as part of this RFP process and during the term of any resulting management agreement, including without limitation financial modeling and forecasting.

4.2.3 Mandatory Service Requirements

The vendor shall be fully responsible for the operation, management, and maintenance of the Hospitals (or the designated Hospital in the proposal), including the following service categories:

- A. *Clinical and Treatment Services.* The vendor must provide a comprehensive active treatment program covering the following services:
 - (i) *Philosophy of Care.* All treatment must reflect a recovery-oriented, evidence-based model that places the patient at the center of treatment planning and service delivery. Care must address the patient's clinical and, where applicable, legal status, while maximizing patient autonomy consistent with safety and security requirements.

(ii) *Admissions.* The vendor must accept all admissions approved by the Agency. Emergency admissions must be accommodated by the vendor within two hours of notification of the Agency's approval. Admissions may occur at any hour of any day in the calendar year with reporting of census, diversion, and related data to the Agency to follow.

(iii) *Individualized Treatment Planning.* Individualized treatment plans must be developed by an interdisciplinary team including, at minimum, a psychiatrist or psychologist, nursing staff, social workers, direct care staff, and relevant therapists. Plans must be developed with patient participation and must be updated regularly to reflect patient progress.

(iv) *Competency Restoration Services (IST Patients).* For patients committed as IST, the vendor must assess competency within 30 days of admission and every 30 days thereafter or more frequently as clinically indicated or otherwise legally required. Reports to the committing court on competency status must be submitted every six months or upon restoration or determination of non-restorability, subject to other deadlines set by the court or applicable law. The vendor shall provide testimony in court as requested and shall prepare conditional release plans as required.

(v) *Risk Assessment and Discharge Planning (NGMI and Civil Commitment Patients).* For NGMI patients, the vendor must assess continuing commitment criteria at least every six months and provide vigorous discharge and conditional release planning throughout the patient's stay. Active discharge planning for all patients must begin at admission and continue until the patient is discharged.

(vi) *Psychiatric and Medical Services.* The vendor is responsible for all physical and mental health care, including dental services. At least one licensed psychiatrist and one licensed physician must be on-call 24 hours per day, seven days per week on every day of the calendar year. The vendor must arrange contracts with proximate hospitals for acute-care hospitalization of patients requiring that level of care.

(vii) *Substance Abuse Treatment.* The vendor must provide integrated mental health and substance abuse treatment using evidence-based models for patients with co-occurring disorders. Substance abuse treatment must be provided or supervised by qualified licensed professionals.

(viii) *Specialized Behavioral Programming.* Behavioral programming must be available for patients exhibiting aggressive or maladaptive behavior, developed and coordinated in consultation with a Certified Behavior Analyst.

(ix) *Psychotropic Medication Management.* The vendor must supply appropriate medications, including newer-generation antidepressant and antipsychotic agents, consistent with each patient's diagnosis and medical history. The vendor must maintain comprehensive medication management policies including prescribing, administration, informed consent, monitoring, and patient education.

(x) *Pharmacy Services.* The vendor must provide on-site pharmacy services, including formulary management, emergency drug supply, and STAT dose capability, that includes pharmacy and therapeutics committee, in compliance with applicable West Virginia pharmacy and nursing practice statutes.

(xi) *Daily Living Services.* The vendor is responsible for all patient needs associated with daily living, including individualized clothing, laundry, food service meeting minimum nutrition standards for psychiatric hospitals, canteen services, and personal care.

(xii) *Recreational and Restoration Services.* The vendor must provide recreational and restoration programs, and peer support and self-help groups.

(xiii) *Family and Community Supports.* A comprehensive program of family education, counseling, and support groups must be provided. The vendor must establish linkages with community mental health agencies, health care providers, social service agencies, courts, prosecutors, defense attorneys, and county jails.

(xiv) *Transition and Discharge Services.* Active transition and discharge planning must begin at admission. Before discharging any patient to the community, aftercare appointments must be confirmed and, where eligible, social service applications (Social Security, Medicare, Medicaid) must be submitted at least 45 days before anticipated release. A 30-day supply of medications must accompany any patient discharged to a community placement.

B. *Patient Rights and Dignity.* The vendor must ensure that patients may exercise all rights guaranteed under West Virginia law and applicable federal law. The vendor must implement a patient grievance process consistent with Agency standards and Joint Commission requirements. All administrative decisions that limit patient rights must be reported to the Agency Contract Manager before implementation, except in emergencies, which must be reported within 48 hours.

C. *Safety, Security, and Incident Management.* The vendor must implement and maintain internal and perimeter security sufficient to ensure the safety of patients, staff, and the surrounding community and to prevent unauthorized departures or entry of people and/or contraband. The vendor must implement:

- (i) A nationally recognized aggression prevention and management training program for all staff;
- (ii) A contraband control policy consistent with pre-existing Agency procedures;
- (iii) Restraint and seclusion procedures compliant with applicable Agency guideline

and Joint Commission standards, with a documented commitment to minimizing their use;

- (iv) A comprehensive suicide prevention program, including environmental risk reduction and staff training;
- (v) An abuse and neglect reporting system compliant with applicable West Virginia mandatory reporting laws and Agency procedures;
- (vi) Critical incident reporting consistent with Agency procedures; and
- (vii) A comprehensive mortality review process for all patient deaths occurring at the facility or within 30 days of discharge, and corresponding reporting protocols to the relevant West Virginia advocacy agency, including, without limitation, the West Virginia Department of Health Vital Statistics, Hospice, Office of Health Facilities Licensure and Certification, Joint Commission, and the West Virginia State Police.

D. Quality Improvement and Risk Management. The vendor must operate a comprehensive quality improvement program that includes performance monitoring, peer review participation, and a client advocate function. The Agency reserves the right to conduct unannounced inspections and to access all records, staff, and patients at any time. The vendor must cooperate fully with all Agency monitoring, performance audits, and financial audits.

E. Facility Operation, Maintenance, and Repair. The vendor is fully responsible for the operation, maintenance, and repair of the Hospitals and all related real property, physical plant and equipment, associated building systems, grounds, and utility systems. The vendor must:

- (i) Develop and implement an Annual Facilities Operating Plan;
- (ii) Maintain a computerized preventive maintenance program integrated with a work order system;
- (iii) Implement emergency management and evacuation plans developed in conjunction with the Agency and approved by applicable state regulatory authorities;
- (iv) Comply with all fire safety, building code, and environmental regulations applicable to West Virginia health care facilities;
- (v) Submit quarterly Facilities Maintenance Reports to the Agency Contract Manager;
- (vi) Maintain inventories of all tools, equipment, materials, and supplies, with a separate inventory for Agency-owned items; and
- (vii) Maintain adequate insurance, acceptable to the Agency, for all aspects of operations, including without limitation, necessary casualty and general liability insurance.

F. Procurement and Supply Management. The vendor is responsible for all procurement necessary to fulfill its obligations under any resulting contract, including medical equipment, pharmaceuticals, clinical supplies, food service, clothing, and administrative supplies. All procurement must comply with applicable West Virginia law. Subcontracts for services must be pre-approved in writing by the Agency Contract Manager. No subcontract relieves the vendor of responsibility for performance.

G. Staffing. The vendor must maintain staffing at levels sufficient to provide a safe, secure, and therapeutic environment and to deliver active treatment programming seven days per week. Staffing must include:

- (i) Clinical staff in sufficient numbers to maintain Joint Commission and licensure standards;
- (ii) Nursing staff providing 24-hour coverage at ratios consistent with the patient census and acuity;
- (iii) Direct care staff sufficient to maintain a therapeutic milieu;
- (iv) Security staff sufficient for internal and perimeter security - security personnel must be trained and certified in accordance with applicable West Virginia requirements; and
- (v) A full-time, salaried Facility Manager responsible for physical plant operations and maintenance.

All staff must undergo background screening consistent with West Virginia law and Agency standards. The vendor must maintain and expand upon existing relationships between the Agency and institutions of higher education and teaching hospitals to enhance staffing resources and training opportunities where practicable.

H. Records and Documentation. Vendor must identify and propose implementation of specific electronic health records systems, including conversion of existing records to specified systems, and confirm the proposed timeline for full conversion and implementation of such systems. All records pertaining to the operation of the Hospitals must be retained for a minimum of seven years after the date of patient discharge or death, or longer as required by applicable law. Patient records must be maintained in strict compliance with applicable confidentiality laws, including HIPAA and West Virginia privacy statutes. All records must be available to the Agency upon request. At the end of the contract term, all records become the property of the Agency. Other requirements pertaining to data collected, maintained and/or stored in relation to the Hospitals and any award from this RFP follow:

- (i) *Data Location.* For non-public data and personal data, Vendor shall provide its data center services to the public jurisdiction and its end users solely from data centers in the U.S. Storage of public jurisdiction data at rest shall be located solely

in data centers in the U.S. Vendor shall not allow its personnel or contractors to store public jurisdiction data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers.

(ii) The Vendor shall inform the public jurisdiction of any confirmed security incident or data breach.

(iii) In the event of a termination of the contract awarded in response to this RFP, the Vendor shall implement an orderly return of public jurisdiction data within the time period and format specified in the contract (or in the absence of a specified time and format, a mutually agreeable time and format) and after the data has been successfully returned, securely and permanently dispose of public jurisdiction data. The Vendor shall securely dispose of all requested data in all of its forms, such as disk, CD/ DVD, backup tape and paper, when requested by the public jurisdiction. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods.

(iv) The service provider shall conduct criminal background checks in compliance with W.Va. Code §15-2D-3.

(v) The service provider shall provide a business continuity and disaster recovery plan executive summary upon request.

I. Reporting Requirements. The vendor must submit all reports required by the Agency, including:

- (i) Daily census reports (admissions and discharges from the previous business day) by 10:00 a.m. the following business day;
- (ii) Monthly performance outcome reports by the close of business on the fifth business day of each month;
- (iii) Quarterly Facilities Maintenance Reports by the close of business on the tenth business day following an operating quarter;
- (iv) Incident reports as required by Agency procedures or applicable West Virginia law; and
- (v) Any reports required by Joint Commission, West Virginia licensing authorities, federal agencies, or required under West Virginia Code, rules or regulations.

J. Performance Measures. The vendor must demonstrate its commitment to accountability for performance outcomes. The Agency reserves the right to

establish and revise performance measures annually. The vendor's proposal should describe how the following outcome categories will be achieved and measured:

- (i) Average number of days to restore competency for IST patients;
- (ii) Percentage of NGMI patients achieving or maintaining symptom relief;
- (iii) Readmission rates;
- (iv) Percentage of patients with completed discharge plans upon discharge;
- (v) Rate of adverse events (assaults, serious injuries, escapes, suicides);
- (vi) Joint Commission accreditation standing; and
- (vii) Staff vacancy and turnover rates.

4.3.1 Qualifications and Experience

The vendor should include qualifications and experience including, but not limited to, the following:

- A. Demonstrated experience managing or operating inpatient civil and forensic psychiatric facilities of comparable size and complexity in the United States, with specific detail regarding any experience managing governmentally owned or operated psychiatric facilities;
- B. Existing university or academic medical center affiliation arrangements that enhance clinical staffing, training, and research;
- C. Demonstrated expertise in evidence-based competency restoration programming and forensic risk assessment;
- D. Established relationships with community behavioral health centers, criminal justice entities, and social service agencies in West Virginia or comparable jurisdictions; and
- E. Experience and/or expertise in analyzing, developing and implementing plans focused on the design of new psychiatric facilities, particularly focused on the delivery of civil psychiatric services.

4.3.2 Mandatory Qualification and Experience Requirements

- A. **Hospital Administrator.** A minimum of five years of management experience in a psychiatric or behavioral health facility, including at least three years at an executive level in a civil or forensic setting. Minimum educational attainment: master's degree in a mental health, health administration, or related discipline. Relevant licensure or certification as required by West Virginia law or the ability to obtain such licensure or certification prior to hire.
- B. **Clinical Director.** A valid West Virginia medical license (or eligibility therefor), board certification by the American Board of Psychiatry and Neurology, and a minimum of five years of professional experience in psychiatric service delivery, including at least two years in an administrative clinical role. A

minimum of five years of the required experience must have been in a civil, forensic or secure psychiatric setting.

- C. **Director of Nursing.** Licensed as a Registered Nurse in West Virginia, with a master's degree in nursing or a related health care field and a minimum of two years of managerial nursing experience gained in a mental health or psychiatric setting. Experience in both a civil and forensic setting is preferred.
- D. **Security Director.** A minimum of five years of experience in a correctional or secure forensic mental health facility, including at least three years in a supervisory or managerial role. Relevant certifications as required by West Virginia law.
- E. **Facility Manager.** An engineering, construction, or business-related bachelor's degree (master's preferred) and a minimum of five years of facilities management experience, including at least three years in an environment of comparable size and complexity. Experience in a health care or institutional setting is required; experience in a secure setting is preferred.

4.4.1 Oral Presentations (Agency Option)

The Agency has the option of requiring oral presentations of all vendors participating in the RFP process. If this option is exercised, points will be allocated in Section 6.2 below at the time the RFP is issued, or via addendum prior to technical bid opening. During oral presentations, vendors may not alter or add to their submitted proposal, but only clarify information. Should an oral presentation be required, the Agency shall provide a description of the materials and information it seeks oral presentation on to each vendor five days prior to oral presentation.

SECTION 5: VENDOR PROPOSAL

Vendors should submit proposals that provide a concise description of their plan to address the Project Specifications set forth in Section 4.

- 5.1 Economy of Preparation:** Proposals should be prepared simply and economically providing a concise description of the items requested in this section and Section 4. Emphasis should be placed on completeness and clarity of the content.

5.2 Incurring Cost: Neither the State nor any of its employees or officers shall be held liable for any expenses incurred by any vendor responding to this RFP, including but not limited to preparation, delivery, or travel.

5.3 Proposal Format: Vendors should provide responses in the format listed below:

- A. **Two-Part Submission:** Vendors must submit proposals in two distinct parts: technical and cost. Technical proposals must not contain any cost information relating to the project. Cost proposals must contain all cost information and must be sealed in a separate envelope from the technical proposal to facilitate a secondary cost proposal opening. The cost proposal shall provide clear, detailed information regarding the total cost to be incurred by the Agency in exchange for the management services, any costs or expenses related to operation of the Hospitals for which the vendor would not be responsible, if any, and concise explanations of all pricing methodology supporting all proposed costs and expenses.
- B. **Title Page:** State the RFP subject, number, vendor's name, business address, telephone number, fax number, name of contact person, e-mail address, and vendor signature and date.
- C. **Table of Contents:** Clearly identify the material by section and page number.
- D. **Response Reference:** Vendor's response should clearly reference how the information provided applies to the RFP request. For example, listing the RFP number and restating the RFP request as a header in the proposal would be considered a clear reference.
- E. **Proposal Submission.** All technical and cost proposals must be submitted to the OSA, Office of Purchasing prior to the date and time listed in the Instructions referenced in Section 2.

Vendor should provide one original and five convenience copies of the technical proposal along with one cost proposal in a separate sealed envelope.

SECTION 6: EVALUATION AND AWARD

6.1. Evaluation Process: Proposals will be evaluated in two parts by a committee of three (3) or more individuals. The first evaluation will be of the technical proposal and the second is an evaluation of the cost proposal. The vendor who demonstrates that it meets all of the mandatory specifications required, attains the minimum acceptable score and attains the highest overall point score of all vendors shall be awarded the contract.

6.2. Evaluation Criteria: Proposals will be evaluated based on criteria set forth in the solicitation and information contained in the proposals submitted in response to the solicitation. The technical evaluation will be based upon the point allocations designated below for a total of 80 of the 100 points. Cost represents 20 of the 100 total points.

Evaluation Point Allocation:

Project Goals and Proposed Approach (§ 4.2)

- Approach & Methodology to Goals/Objectives (§ 4.2) (15) Points Possible
- Approach & Methodology to Compliance with
Mandatory Project Requirements (§ 4.2) (25) Points Possible

Qualifications and experience (§ 4.3)

- Qualifications and Experience Generally (§ 4.3.1) (20) Points Possible
- Exceeding Mandatory Qualification/Experience
Requirements (§ 4.3.2) (10) Points Possible
- (Oral interview, if applicable) (§ 4.4.1) (10) Points Possible

Total Technical Score: 80 Points Possible

Total Cost Score: 20 Points Possible

Total Proposal Score: 100 Points Possible

6.3. Technical Bid Opening: At the technical bid opening, the OSA, Office of Purchasing will open and announce the technical proposals received prior to the bid opening deadline. Once opened, the technical proposals will be provided to the Agency evaluation committee for technical evaluation.

6.4. Technical Evaluation: The Agency evaluation committee will review the technical proposals, assign points where appropriate, and make a final written recommendation to the OSA, Office of Purchasing.

6.5. Proposal Disqualification:

6.5.1. Minimum Acceptable Score (“MAS”): Vendors must score a minimum of 70% (56 points) of the total technical points possible in order to move past the technical evaluation and have their cost proposal evaluated. All vendor proposals not attaining the MAS will be disqualified.

6.5.2. Failure to Meet Mandatory Requirement: Vendors must meet or exceed all mandatory requirements in order to move past the technical evaluation and have their cost proposals evaluated. Proposals failing to meet one or more mandatory requirements of the RFP will be disqualified.

6.6. Cost Bid Opening: The OSA, Office of Purchasing will schedule a date and time to publicly open and announce cost proposals after technical evaluation has been completed and the OSA, Office of Purchasing has approved the technical recommendation of the evaluation committee. All cost bids received will be opened. Cost bids for disqualified proposals will be opened for record keeping purposes only and will not be evaluated or considered. Once opened, the cost proposals will be provided to the Agency evaluation committee for cost evaluation.

The OSA, Office of Purchasing reserves the right to disqualify a proposal based upon deficiencies in the technical proposal even after the cost evaluation.

6.7. Cost Evaluation: The Agency evaluation committee will review the cost proposals, assign points in accordance with the cost evaluation formula contained herein and make a final recommendation to the OSA, Office of Purchasing.

Cost Evaluation Formula: Each cost proposal will have points assigned using the following formula for all vendors not disqualified during the technical evaluation. The lowest cost of all proposals is divided by the cost of the proposal being evaluated to generate a cost score percentage. That percentage is then multiplied by the points attributable to the cost proposal to determine the number of points allocated to the cost proposal being evaluated.

Step 1: $\text{Lowest Cost of All Proposals} / \text{Cost of Proposal Being Evaluated} = \text{Cost Score Percentage}$

Step 2: $\text{Cost Score Percentage} \times \text{Points Allocated to Cost Proposal} = \text{Total Cost Score}$

Example:

Proposal 1 Cost is \$1,000,000

Proposal 2 Cost is \$1,100,000

Points Allocated to Cost Proposal is 20

Proposal 1: Step 1 – $\$1,000,000 / \$1,000,000 =$ Cost Score Percentage of 1 (100%)
Step 2 – $1 \times 20 =$ Total Cost Score of 20

Proposal 2: Step 1 – $\$1,000,000 / \$1,100,000 =$ Cost Score Percentage of 0.909091
(90.9091%)

Step 2 – $0.909091 \times 20 =$ Total Cost Score of 18.18182

6.8. Availability of Information: Proposal submissions become public and are available for review immediately after opening pursuant to West Virginia Code §5A-3-11(h) and West Virginia Code of State Rules 69-16 enacted under West Virginia Code §5A-1-12. All other information associated with the RFP, including but not limited to, technical scores and reasons for disqualification, will not be available until after the contract has been awarded pursuant to West Virginia Code of State Rules §148-1-6.3.4.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

(Vendors are required to attach the following certification to their proposals)

CERTIFICATION AND SIGNATURE PAGE

By signing below, I certify that I have reviewed this Request for Proposal in its entirety; understand the requirements, terms and conditions, and other information contained herein; that I am submitting this proposal for review and consideration; that I am authorized by the vendor to execute this bid or any documents related thereto on the vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that, to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

· (Company)

· (Representative Name and Title)

· (Contact Phone / Fax Number)

· (Email Address)

· (Signature)

(Date)

William R. Sharpe Hospital				
Year	Daily Per Diem Rate	Days Per Year	Available Beds	Cost/Year
Year 1		365	200	\$0
Year 2		366	200	\$0
Year 3	0	365	200	\$0
Year 4		365	200	\$0
Year 5		365	200	\$0
Option Year 1		366	200	\$0
Option Year 2		365	200	\$0
Per Diem Cost				Total
Additional Costs				Total
Share of Cost Savings				Cost Savings Reduction
Net Cost				\$0

Mildred-Mitchell Bateman Hospital				
Year	Daily Per Diem Rate	Days Per Year	Available Beds	Cost/Year
Year 1		365	110	\$0
Year 2		366	110	\$0
Year 3		365	110	\$0
Year 4		365	110	\$0
Year 5		365	110	\$0
Option Year 1		365	110	\$0
Option Year 2		365	110	\$0
Per Diem Cost				Total
Additional Costs				Total
Share of Cost Savings				Cost Savings Reduction
Net Cost				\$0

The estimates listed on this pricing page are for bidding purposes only. The vendor will be required to provide actual quantities needed, should the quantities be more or less.

FEDERAL FUNDS ADDENDUM

2 C.F.R. §§ 200.317 – 200.327

Purpose: This addendum is intended to modify the solicitation in an attempt to make the contract compliant with the requirements of 2 C.F.R. §§ 200.317 through 200.327 relating to the expenditure of certain federal funds. This solicitation will allow the State to obtain one or more contracts that satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

Instructions: Vendors who are willing to extend their contract to procurements with federal funds and the requirements that go along with doing so, should sign the attached document identified as: “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)”

Should the awarded vendor be unwilling to extend the contract to federal funds procurement, the State reserves the right to award additional contracts to vendors that can and are willing to meet federal funds procurement requirements.

Changes to Specifications: Vendors should consider this solicitation as containing two separate solicitations, one for state level procurement and one for county/local procurement.

State Level: In the first solicitation, bid responses will be evaluated with applicable preferences identified in sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” to establish a contract for both standard state procurements and state federal funds procurements.

County Level: In the second solicitation, bid responses will be evaluated with applicable preferences identified in Sections 15, 15A, and 16 of the “Instructions to Vendors Submitting Bids” omitted to establish a contract for County/Local federal funds procurement.

Award: If the two evaluations result in the same vendor being identified as the winning bidder, the two solicitations will be combined into a single contract award. If the evaluations result in a different bidder being identified as the winning bidder, multiple contracts may be awarded. The State reserves the right to award to multiple different entities should it be required to satisfy standard state procurement, state federal funds procurement, and county/local federal funds procurement requirements.

State Government Use Caution: State agencies planning to utilize this contract for procurements subject to the above identified federal regulations should first consult with the federal agency providing the applicable funding to ensure the contract is compliant.

County/Local Government Use Caution: County and Local government entities planning to utilize this contract for procurements subject to the above identified federal regulation should first consult with the federal agency providing the applicable funding to ensure the contract is compliant. For purposes of County/Local government use, the solicitation resulting in this contract was conducted in accordance with the procurement laws, rules, and procedures governing the West Virginia Department of Administration, Purchasing Division, except that vendor preference has been omitted for County/Local use purposes and the contract terms contained in the document entitled “REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317)” have been added.

FEDERAL FUNDS ADDENDUM

REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

The State of West Virginia Department of Administration, Purchasing Division, and the Vendor awarded this Contract intend that this Contract be compliant with the requirements of the Procurement Standards contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements found in 2 C.F.R. § 200.317, et seq. for procurements conducted by a Non-Federal Entity. Accordingly, the Parties agree that the following provisions are included in the Contract.

1. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS: (2 C.F.R. § 200.321)

- a. The State confirms that it has taken all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps 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) above.
- b. Vendor confirms that if it utilizes subcontractors, it will take the same affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

2. DOMESTIC PREFERENCES: (2 C.F.R. § 200.322)

- a. The State confirms that as appropriate and to the extent consistent with law, it has, to the greatest extent practicable under a Federal award, provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United

States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.

c. Definitions: For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. BREACH OF CONTRACT REMEDIES AND PENALTIES:

(2 C.F.R. § 200.327 and Appendix II)

(a) The provisions of West Virginia Code of State Rules § 148-1-5 provide for breach of contract remedies, and penalties. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

4. TERMINATION FOR CAUSE AND CONVENIENCE:

(2 C.F.R. § 200.327 and Appendix II)

(a) The provisions of West Virginia Code of State Rules § 148-1-5 govern Contract termination. A copy of that rule is attached hereto as Exhibit A and expressly incorporated herein by reference.

5. EQUAL EMPLOYMENT OPPORTUNITY:

(2 C.F.R. § 200.327 and Appendix II)

Except as otherwise provided under 41 CFR Part 60, and if this contract meets the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3, this contract includes 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."

6. DAVIS-BACON WAGE RATES:
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this Contract includes construction, all construction work in excess of \$2,000 will be completed and paid for in 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:

- (a) 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.
- (b) pay wages not less than once a week.

A copy of the current prevailing wage determination issued by the Department of Labor is attached hereto as Exhibit B. The decision to award a contract or subcontract is conditioned upon the acceptance of the wage determination. The State will report all suspected or reported violations to the Federal awarding agency.

7. ANTI-KICKBACK ACT:
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that it will comply 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”). Accordingly, Vendor, Subcontractors, and anyone performing under this contract are 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 State must report all suspected or reported violations to the Federal awarding agency.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
(2 C.F.R. § 200.327 and Appendix II)

Where applicable, and only for contracts awarded by the State in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply 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, Vendor is 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.

9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.
(2 C.F.R. § 200.327 and Appendix II)

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 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.

10. CLEAN AIR ACT
(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this contract exceeds \$150,000, Vendor is 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).

11. DEBARMENT AND SUSPENSION
(2 C.F.R. § 200.327 and Appendix II)

The State will not award to any vendor that is 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.

12. BYRD ANTI-LOBBYING AMENDMENT
(2 C.F.R. § 200.327 and Appendix II)

Vendors 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.

13. PROCUREMENT OF RECOVERED MATERIALS

(2 C.F.R. § 200.327 and Appendix II; 2 C.F.R. § 200.323)

Vendor agrees that it and the State 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.

14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

(2 C.F.R. § 200.327 and Appendix II; 2 CFR § 200.216)

Vendor and State agree that both are prohibited from obligating or expending funds under this Contract to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

State of West Virginia
Purchasing Division

Vendor Name:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A To:
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

W. Va. CSR § 148-1-5

West Virginia Code of State Rules
Title 148. Department of Administration
Legislative Rule (Ser. 1)
Series 1. Purchasing

W. Va. Code St. R. § 148-1-5

§ 148-1-5. Remedies.

Currentness

5.1. The Director may require that the spending unit attempt to resolve any issues that it may have with the vendor prior to pursuing a remedy contained herein. The spending unit must document any resolution efforts and provide copies of those documents to the Purchasing Division.

5.2. Contract Cancellation.

5.2.1. Cancellation. The Director may cancel a purchase or contract immediately under any one of the following conditions including, but not limited to:

5.2.1.a. The vendor agrees to the cancellation;

5.2.1.b. The vendor has obtained the contract by fraud, collusion, conspiracy, or is in conflict with any statutory or constitutional provision of the State of West Virginia;

5.2.1.c. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.1.d. The existence of an organizational conflict of interest is identified;

5.2.1.e. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition;

5.2.1.f. Violation of any federal, state, or local law, regulation, or ordinance, and

5.2.1.g. The contract was awarded in error.

5.2.2. The Director may cancel a purchase or contract for any reason or no reason, upon providing

the vendor with 30 days' notice of the cancellation.

5.2.3. Opportunity to Cure. In the event that a vendor fails to honor any contractual term or condition, or violates any provision of federal, state, or local law, regulation, or ordinance, the Director may request that the vendor remedy the contract breach or legal violation within a time frame the Director determines to be appropriate. If the vendor fails to remedy the contract breach or legal violation or the Director determines, at his or her sole discretion, that such a request is unlikely to yield a satisfactory result, then he or she may cancel immediately without providing the vendor an opportunity to perform a remedy.

5.2.4. Re-Award. The Director may award the cancelled contract to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) without a subsequent solicitation if the following conditions are met:

5.2.4.a. The next lowest responsible bidder (or next highest scoring bidder if best value procurement) is able to perform at the price contained in its original bid submission, and

5.2.4.b. The contract is an open-end contract, a one-time purchase contract, or a contract for work which has not yet commenced.

Award to the next lowest responsible bidder (or next highest scoring bidder if best value procurement) will not be an option if the vendor's failure has in any way increased or significantly changed the scope of the original contract. The vendor failing to honor contractual and legal obligations is responsible for any increase in cost the state incurs as a result of the re-award.

5.3. Non-Responsible. If the Director believes that a vendor may be non-responsible, the Director may request that a vendor or spending unit provide evidence that the vendor either does or does not have the capability to fully perform the contract requirements, and the integrity and reliability necessary to assure good faith performance. If the Director determines that the vendor is non-responsible, the Director shall reject that vendor's bid and shall not award the contract to that vendor. A determination of non-responsibility must be evaluated on a case-by-case basis and can only be made after the vendor in question has submitted a bid. A determination of non-responsibility will only extend to the contract for which the vendor has submitted a bid and does not operate as a bar against submitting future bids.

5.4. Suspension.

5.4.1. The Director may suspend, for a period not to exceed 1 year, the right of a vendor to bid on

procurements issued by the Purchasing Division or any state spending unit under its authority if:

5.4.1.a. The vendor has submitted a bid and then requested that its bid be withdrawn after bids have been publicly opened.

5.4.1.b. The vendor has exhibited poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to any of the following: violations of law, regulation, or ordinance; failure to deliver timely; failure to deliver quantities ordered; poor performance reports; or failure to deliver commodities, services, or printing at the quality level required by the contract.

5.4.1.c. The vendor has breached a contract issued by the Purchasing Division or any state spending unit under its authority and refuses to remedy that breach.

5.4.1.d. The vendor's actions have given rise to one or more of the grounds for debarment listed in W. Va. Code § 5A-3-33d.

5.4.2. Vendor suspension for the reasons listed in section 5.4 above shall occur as follows:

5.4.2.a. Upon a determination by the Director that a suspension is warranted, the Director will serve a notice of suspension to the vendor.

5.4.2.b. A notice of suspension must inform the vendor:

5.4.2.b.1. Of the grounds for the suspension;

5.4.2.b.2. Of the duration of the suspension;

5.4.2.b.3. Of the right to request a hearing contesting the suspension;

5.4.2.b.4. That a request for a hearing must be served on the Director no later than 5 working days of the vendor's receipt of the notice of suspension;

5.4.2.b.5. That the vendor's failure to request a hearing no later than 5 working days of

the receipt of the notice of suspension will be deemed a waiver of the right to a hearing and result in the automatic enforcement of the suspension without further notice or an opportunity to respond; and

5.4.2.b.6. That a request for a hearing must include an explanation of why the vendor believes the Director's asserted grounds for suspension do not apply and why the vendor should not be suspended.

5.4.2.c. A vendor's failure to serve a request for hearing on the Director no later than 5 working days of the vendor's receipt of the notice of suspension will be deemed a waiver of the right to a hearing and may result in the automatic enforcement of the suspension without further notice or an opportunity to respond.

5.4.2.d. A vendor who files a timely request for hearing but nevertheless fails to provide an explanation of why the asserted grounds for suspension are inapplicable or should not result in a suspension, may result in a denial of the vendor's hearing request.

5.4.2.e. Within 5 working days of receiving the vendor's request for a hearing, the Director will serve on the vendor a notice of hearing that includes the date, time and place of the hearing.

5.4.2.f. The hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the hearing, the Director will issue and serve on the vendor, a written decision either confirming or reversing the suspension.

5.4.3. A vendor may appeal a decision of the Director to the Secretary of the Department of Administration. The appeal must be in writing and served on the Secretary no later than 5 working days of receipt of the Director's decision.

5.4.4. The Secretary, or his or her designee, will schedule an appeal hearing and serve on the vendor, a notice of hearing that includes the date, time and place of the hearing. The appeal hearing will be recorded and an official record prepared. Within 10 working days of the conclusion of the appeal hearing, the Secretary will issue and serve on the vendor a written decision either confirming or reversing the suspension.

5.4.5. Any notice or service related to suspension actions or proceedings must be provided by certified mail, return receipt requested.

5.5. Vendor Debarment. The Director may debar a vendor on the basis of one or more of the grounds for debarment contained in W. Va. Code § 5A-3-33d or if the vendor has been declared ineligible to participate in procurement related activities under federal laws and regulation.

5.5.1. Debarment proceedings shall be conducted in accordance with W. Va. Code § 5A-3-33e and these rules. A vendor that has received notice of the proposed debarment by certified mail, return receipt requested, must respond to the proposed debarment within 30 working days after receipt of notice or the debarment will be instituted without further notice. A vendor is deemed to have received notice, notwithstanding the vendor's failure to accept the certified mail, if the letter is addressed to the vendor at its last known address. After considering the matter and reaching a decision, the Director shall notify the vendor of his or her decision by certified mail, return receipt requested.

5.5.2. Any vendor, other than a vendor prohibited from participating in federal procurement, undergoing debarment proceedings is permitted to continue participating in the state's procurement process until a final debarment decision has been reached. Any contract that a debarred vendor obtains prior to a final debarment decision shall remain in effect for the current term, but may not be extended or renewed. Notwithstanding the foregoing, the Director may cancel a contract held by a debarred vendor if the Director determines, in his or her sole discretion, that doing so is in the best interest of the State. A vendor prohibited from participating in federal procurement will not be permitted to participate in the state's procurement process during debarment proceedings.

5.5.3. If the Director's final debarment decision is that debarment is warranted and notice of the final debarment decision is mailed, the Purchasing Division shall reject any bid submitted by the debarred vendor, including any bid submitted prior to the final debarment decision if that bid has not yet been accepted and a contract consummated.

5.5.4. Pursuant to W.Va. Code § 5A-3-33e(e), the length of the debarment period will be specified in the debarment decision and will be for a period of time that the Director finds necessary and proper to protect the public from an irresponsible vendor.

5.5.5. List of Debarred Vendors. The Director shall maintain and publicly post a list of debarred vendors on the Purchasing Division's website.

5.5.6. Related Party Debarment. The Director may pursue debarment of a related party at the same time that debarment of the original vendor is proceeding or at any time thereafter that the Director determines a related party debarment is warranted. Any entity that fails to provide the Director with full, complete, and accurate information requested by the Director to determine related party

status will be presumed to be a related party subject to debarment.

5.6. Damages.

5.6.1. A vendor who fails to perform as required under a contract shall be liable for actual damages and costs incurred by the state.

5.6.2. If any commodities delivered under a contract have been used or consumed by a spending unit and on testing the commodities are found not to comply with specifications, no payment may be approved by the Spending Unit for the merchandise until the amount of actual damages incurred has been determined.

5.6.3. The Spending Unit shall seek to collect damages by following the procedures established by the Office of the Attorney General for the collection of delinquent obligations.

Credits

History: Filed 4-1-19, eff. 4-1-19; Filed 4-16-21, eff. 5-1-21.

Current through register dated May 7, 2021. Some sections may be more current. See credits for details.

W. Va. C.S.R. § 148-1-5, WV ADC § 148-1-5

End of Document

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EXHIBIT B To:
REQUIRED CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY
CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.317):

Prevailing Wage Determination

☐ – Not Applicable Because Contract Not for Construction

☐ – Federal Prevailing Wage Determination on Next Page

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In performance of this contract, the Contractor of the WV Departments of Health (DH), Health Facilities (DHF), and Human Services (DoHS) agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

1. Safeguards

A. The Service Provider shall comply with all applicable regulations regarding the privacy and security of PII (see, e.g., § 1411(g) of the PPACA, 45 CFR § 155.260) and all applicable regulations regarding the privacy and security of PII, including provisions of the HIPAA Privacy and Security Rules at 45 CFR Parts 160 and 164, that govern protections for individually identifiable health information.

B. The Service Provider must comply with the most current version of the suite of documents entitled "Acceptable Risk Controls for Affordable Care Act (ACA), Medicaid, and Partner Entities" (ARC-AMPE), or any subsequent CMS standard or equivalent governing security and privacy control implementation. These documents outline the privacy and security requirements the Service Provider is obligated to follow. Further, the Service Provider also agrees to adhere to all applicable and current guidance, including any updates to ARC-AMPE (or its CMS successor or equivalent), as well as all relevant laws and regulations issued on this subject as they are published and become effective.

C. The Service Provider must ensure that its employees, contractors, and agents implement the appropriate administrative, physical and technical safeguards to protect matching data furnished by CMS under the State Based Administering Entity's Computer Matching Agreement (CMA) and Interconnection Security Agreement (ISA) (including matching data which constitutes PIO from loss, theft or inadvertent disclosure.

- The Service Provider will advise all users who will have access to the matching data (including but not limited to matched and to any data derived from the match) of the confidential nature of the data, the safeguards required to protect the data, and the civil and criminal sanctions for noncompliance contained in applicable Federal laws.
- Physical Security/Storage: The Service Provider will store the matching data and any data derived from the match in an area that is physically and technologically secure from access by unauthorized persons during duty hours, as well as non-duty hours or

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when not in use (e.g., door locks, card keys, biometric identifiers, etc.). Only authorized personnel will transport the matching data and any data derived from the match. The Service Provider will establish appropriate safeguards for such data, as determined by a risk-based assessment of the circumstances involved.

- **Technical Safeguards:** The Service Provider agrees that the data exchanged with CMS will be processed under the immediate supervision and control of authorized personnel to protect the confidentiality of the data in such a way that unauthorized persons cannot retrieve any such data by means of computer, remote terminal, or other means. The Service Provider will strictly limit authorization to those electronic data areas necessary for authorized persons to perform his or her official duties.
- The Service Provider shall ensure that its employees, contractors, and agents understand that they are responsible for safeguarding this information at all times, regardless of whether the employee, contractor, or agent is at his or her regular duty station.
- The Service Provider shall ensure that its employees', contractors', and agents' laptops and other electronic devices/media containing matching data that constitutes PII are encrypted and/or password protected.
- The Service Provider shall ensure that its employees, contractors, and agents transmit e-mails containing matching data that qualifies as PII only when the information is encrypted and sent to, and received by, individuals who are authorized to access such information.
- The Service Provider shall ensure that its employees, contractors, and agents restrict access to the matching data to only those authorized AE employees, contractors, and agents who need such data to perform their official duties in connection with purposes identified in the CMA; such restrictions shall include, at a minimum, role-based access that limits access to those individuals who need it to perform their official duties in connection with the uses of data authorized in the CMA ("authorized users").
 - The Service Provider shall advise all users who will have access to the data provided under the CMA and to any data derived from the data matching contemplated by the CMA of the confidential nature of the data, the safeguards **required to protect the data, and the civil and criminal sanctions for noncompliance contained in the applicable**

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Federal laws. The Service Provider shall require its contractors, agents, and all employees of such contractors or agents with authorized access to the data disclosed under the CMA to comply with the terms and conditions set forth in the CMA, and not to duplicate, disseminate, or disclose such data unless authorized under the CMA.

2. Incident Handling and Reporting

A. The Service Provider shall follow the Departments' policies and procedures and must establish its own formal, written policies and procedures for responding to privacy and security incidents. These policies must comply with applicable state and federal law, ARC-AMPE (or the most current CMS standard or equivalent for security and privacy control implementation), and all relevant CMS guidance. Service Providers shall handle and report incidents in accordance with the Departments and its organization's documented incident handling and breach notification procedures. These policies and procedures should include the scope, roles, responsibilities and how to:

- Identify Incidents involving matching data that constitute PII.
- Report all suspected or confirmed incidents involving matching data that constitute PII. This requirement applies to all system environments.
- Identify and convene a core response group within the organization who will determine the risk level of incidents involving matching data that constitute PII and determine risk-based responses to such incidents.
- Ensure the incident response plan, as required by ARC-AMPE (or most current CMS standard or equivalent for security & privacy control implementation) contains up-to-date contact information for personnel handling interconnection security-related incidents.
- Determine whether breach notification is required, and, if so, identify appropriate breach notification methods, timing, source, and contents from among different options, and bear costs associated with the notice as well as any mitigation.
- Limit the disclosure of information about individuals whose information may have been compromised, misused, or changed without proper authorization, and the persons who improperly disclosed matching data that constitute PII, to authorized federal, state, or local law enforcement investigators in connection with efforts to investigate and mitigate

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the consequences of any such incidents. Inform the affected federal partner agency(s) in a timely manner and facilitate a coordinated federal response.

B. CMS reserves the right to terminate the service provider's interconnection to the federal data services Hub to mitigate or avoid any immediate or recurring risks to the security of its systems. In addition, upon discovery of a security or privacy incident, participating federal agencies may direct CMS to terminate the connection with the affected organization.

C. Maintain audit trail records that contain sufficient detail, as described in ARC-AMPE (or most current CMS standard or equivalent for security & privacy control implementation) to facilitate the reconstruction of events if compromise or malfunction is confirmed or suspected.

D. Review audit records as specified in the WV DoHS System Security and Privacy Plan (SSPP).

3. Records Usage, Duplication, and Redisclosure Restrictions

A. The Service Provider will only use, duplicate, and disclose the electronic files and data provided by CMS as permitted or required by the CMA or as required by applicable Federal law.

B. The Service Provider will not use the matching data to extract information concerning individuals therein for any purpose not specified by the CMA or allowed by applicable SORN or Federal law.

C. The Service Provider will restrict access to data solely to its officers, employees, and contractors.

1. The Service Provider will restrict access to the matching data to Applicants, Enrollees, Application Filers, and Authorized Representatives of such persons. The Service Provider shall execute with each individual or entity such as agents or brokers that (1) gain access from the Service Provider to PII submitted to an Exchange or (2) collect, use, or disclose PII gathered directly from Applicants, or Enrollees while that individual or entity is performing the functions outlined in its agreement with the WV DH, DHF, and DoHS, a written contract or agreement that includes (1) a provision describing the functions to be performed by the individual or entity and strictly limiting the use and

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disclosure of PII to those functions; (2) a provision(s) binding the individual or entity to comply with the same privacy and security standards and obligations that are made applicable to the PII under the CMA, as appropriate, and specifically listing or incorporating those privacy and security standards and obligations; (3) a provision requiring the individual or entity to monitor, periodically assess, and update its security controls and related system risks to ensure the continued effectiveness of those controls; (4) a provision requiring the individual or entity to inform the WV DH, DHF, and DoHS of any change in its administrative, technical, or operational environments defined as material within the contract; (5) a provision that requires the individual or entity to bind any downstream entities to the same privacy and security standards and obligations to which the individual or entity has agreed in its contract or agreement with the Departments.

The Service Provider must assure that it will provide safeguards which restrict the use or disclosure of information concerning Applicants and recipients to purposes directly connected with the administration of all DH, DHF, and DoHS programs. This includes the disclosure of electronic data used to make an Eligibility Determination. 42 CFR § 431, subpart F, including §§ 431.301, 431.302, 431.303, 431.305, 435.945, and 42 CFR § 457.1110.

2. Any officer or employee of the Service Provider who receives information from an Exchange or via the Hub in connection with an eligibility determination for enrollment in an applicable State health subsidy program and who knowingly and willfully uses or discloses information obtained pursuant to the CMA in a manner or for a purpose not authorized by 45 CFR § 155.260 and § 1411(g) of the PPACA is potentially subject to the civil penalty provisions of Section 1411(h)(2) of the PPACA and 45 CFR § 155.285, which carries a fine of up to \$25,000.

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Social Security Administration (SSA) IT Contract Language

Compliance with NIST SP 800-53 Requirements

The Service Provider shall comply with all applicable security and privacy controls as outlined in the National Institute of Standards and Technology (NIST) Special Publication 800-53, latest revision (currently Revision 5), including any updates or successor publications, as applicable to the information system's categorization under the Federal Information Security Modernization Act (FISMA).

The Service Provider shall implement, document, and maintain security and privacy controls aligned with the applicable control baselines (Low, Moderate, or High) as defined in NIST SP 800-53 for all systems, services, and components involved in the performance of this contract.

The Service Provider shall provide, upon request, documentation demonstrating compliance with NIST SP 800-53 controls, including but not limited to a System Security Plan (SSP), Security Assessment Report (SAR), Plan of Action and Milestones (POA&M), and any continuous monitoring reports.

The Government (or Customer) reserves the right to audit or assess the Service Provider's compliance with these requirements at any time during the period of performance.

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Safeguarding Contract Language

I. PERFORMANCE

In performance of this contract, the Contractor agrees to comply with and assume responsibility for compliance by officers or employees with the following requirements:

- (1) All work will be performed under the supervision of the contractor.
- (2) The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- (3) FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.
- (4) FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- (5) The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- (8) No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- (9) Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- (10) To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward

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the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

(11) In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.

(12) For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

(13) The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

II. CRIMINAL/CIVIL SANCTIONS

(1) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

(2) Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

(3) Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

(3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(4) Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and

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recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see Exhibit 4, *Sanctions for Unauthorized Disclosure*, and Exhibit 5, *Civil Damages for Unauthorized Disclosure*). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

(5) **III. INSPECTION** The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

State of West Virginia

Vendor Name:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

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

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

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

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

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

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

- a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
- b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
- c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
- d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
- e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

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

2. Permitted Uses and Disclosures.

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

3. Obligations of Associate.

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

f. Support of Individual Rights.

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:

 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

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

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

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

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

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

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

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

4. Addendum Administration.

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

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

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

5. General Provisions/Ownership of PHI.

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

AGREED:

Name of Agency: _____

Name of Associate: _____

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

Form - WVBA-012004
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jan 20 13
BY 
Patrick Morrissey
Attorney General

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. PHI not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Associate: _____

Name of Agency: _____

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

APPENDIX A TO ADDENDUM

Name of Associate: _____

Name of Agency: The West Virginia Department of Health Facilities

The categories below are derived from the mandatory service requirements defined in the RFP (defined below). All PHI is subject to the minimum necessary standard under 45 CFR § 164.502(b).

WHEREAS, the West Virginia Office of Shared Administration ("OSA") Office of Purchasing, on behalf of the West Virginia Department of Health Facilities ("DHF"), issued that certain Request for Proposals for Management and Operational Services for Mildred Mitchell-Bateman Hospital and William R. Sharpe, Jr. Hospital, dated October 9, 2026 (the "RFP");

WHEREAS, pursuant to the RFP, the Agency seeks a qualified vendor to provide comprehensive management and operational services for Mildred Mitchell-Bateman Hospital ("Bateman Hospital"), a 110-bed acute care psychiatric facility located in Huntington, West Virginia, and William R. Sharpe, Jr. Hospital ("Sharpe Hospital"), a 200-bed acute care inpatient psychiatric facility located in Weston, Lewis County, West Virginia (collectively, the "Hospitals"), including, without limitation, clinical and treatment services, patient care coordination, staffing management, quality improvement, billing and revenue cycle support, and all other management and operational functions described in the RFP;

WHEREAS, (a) in responding to the RFP and performing any actions attendant thereto (the "Response") and, (b) upon an award of a contract (the "Agreement") and its corresponding obligations, in order to perform such management and operational services - both necessarily requires or may require the Associate to create, receive, maintain, and transmit Protected Health Information ("PHI") relating to patients of the Hospitals, including civil commitment patients, forensic patients adjudicated as Incompetent to Stand Trial ("IST"), and patients adjudicated as Not Guilty by Reason of Mental Illness ("NGMI");

WHEREAS, the parties acknowledge that PHI expressly includes, but is not limited to, the specific categories of information identified in this Appendix A to the Addendum, as may be amended from time to time by written agreement of the parties; and

WHEREAS, the parties intend by this Appendix A to supplement the Addendum, to reflect the specific scope of services set forth in the RFP, to identify with particularity the categories of PHI that the Associate will create, receive, maintain, or transmit in connection with assessing and responding to the RFP and/or ultimately performing such services, and to confirm the continued applicability and alignment of all compliance provisions with HIPAA, the HITECH Act, and

applicable West Virginia state law. Nothing herein shall be construed to limit the obligations of the Associate under the RFP and any Agreement awarded thereunder. Capitalized terms that are undefined herein shall have the meaning ascribed to them in the RFP.

I. CATEGORIES

A. CATEGORY 1 — Patient Demographic and Identifying Information

Form: *Electronic and Physical*¹

PHI Data Element	Business Purpose Under RFP
Full legal name	Required for all admission, treatment, billing, discharge, and reporting functions across all service categories
Date of birth	Required for medical recordkeeping, payer eligibility verification, and regulatory reporting
Social Security Number	Required for Medicare/Medicaid eligibility determinations and social service benefit applications
Current and prior addresses	Required for admission records, discharge planning, and community provider linkages
Gender and sex	Required for clinical assessment, treatment planning, and regulatory reporting
Race and ethnicity	Required for quality improvement reporting and performance outcome measurement
Primary language	Required for patient rights compliance, informed consent, and care coordination
Marital and family status	Required for family education, counseling, and support group services
Emergency contact information	Required for next-of-kin notification, discharge planning, and patient rights compliance

¹ Physical shall include, without limitation, PHI maintained in non-electronic form, including where applicable paper medical records, handwritten clinical notes, printed laboratory reports, physical intake forms, physical billing records, printed discharge plans, and any other tangible medium containing individually identifiable health information.

Unique patient/medical record number	Required for recordkeeping, EHR implementation, and records retrieval
Admission and discharge dates	Required for daily census reporting
Legal status at admission (civil commitment / IST / NGMI)	Required to determine applicable clinical protocols, legal obligations, and court reporting duties; forensic patient legal statuses include individuals adjudicated as Incompetent to Stand Trial ("IST") and Not Guilty by Reason of Mental Illness ("NGMI")
Court case / docket numbers	Required for competency reporting, conditional release planning, and court coordination for forensic patients
Referring court, agency, or facility	Required for intake processing, legal status verification, and coordination with criminal justice entities
Insurance and payer identification numbers	Required for billing, prior authorization, and revenue cycle management

B. CATEGORY 2 — Clinical, Psychiatric, and Medical Records

Form: Electronic (primary via electronic health record system); Physical (handwritten notes, printed reports)

PHI Data Element	Business Purpose Under RFP
Initial and ongoing psychiatric evaluations	Required as part of a comprehensive active treatment program reflecting a recovery-oriented, evidence-based model that places the patient at the center of treatment planning and service delivery
Psychological testing and assessment results	Required for diagnosis, individualized treatment planning, and competency evaluation
Diagnosis codes (DSM / ICD — psychiatric and co-occurring)	Required for treatment planning, billing, and performance outcome reporting
Medical history and physical examination records	Required for all physical and mental health care, including dental services

Dental health records	Required for dental service obligations under the RFP
Nursing assessments and clinical notes	Required for 24-hour nursing coverage and clinical documentation
Progress notes (all disciplines)	Required for ongoing individualized treatment plan updates and interdisciplinary team coordination
Medication administration records (MAR)	Required to support comprehensive medication management policies including prescribing, administration, informed consent, monitoring, and patient education
Prescription and pharmacological records	Required for on-site pharmacy services, formulary management, and STAT dose capability
Laboratory and diagnostic test results	Required for medical management and treatment decision-making
Vital signs records	Required for medical management and nursing assessment
Substance abuse assessment and treatment records	Required for integrated mental health and substance abuse treatment
Competency evaluation reports	Required for, among other things, patients committed as IST and competency assessments required under RFP
Risk assessment records (NGMI and civil commitment patients)	Required because for NGMI patients, the Associate must assess continuing commitment criteria at least every six months and provide vigorous discharge and conditional release planning throughout the patient's stay
Behavioral program records	Required to support specialized behavioral programming available for patients exhibiting aggressive or maladaptive behavior, developed and coordinated in consultation with a Certified Behavior Analyst
Suicide risk assessment records	Required to support a comprehensive suicide prevention program, including environmental risk reduction and staff training

Restraint and seclusion records	Required to document and monitor restraint and seclusion procedures compliant with applicable guidelines of West Virginia and the DFH and Joint Commission standards, with a documented commitment to minimizing their use
Abuse and neglect reports	Required to support an abuse and neglect reporting system compliant with applicable West Virginia mandatory reporting laws and DHF procedures
Adverse event and incident reports	Required to support critical incident reporting consistent with DHF procedures and applicable West Virginia laws
Mortality review documentation	Required because Associate per RFP must implement a comprehensive mortality review process for all patient deaths occurring at a Hospital or within 30 days of discharge, and corresponding reporting protocols to the relevant West Virginia advocacy agency, including, without limitation, the West Virginia Department of Health Vital Statistics, Hospice, Office of Health Facilities Licensure and Certification, Joint Commission, and the West Virginia State Police
Patient rights restriction records	Required because all administrative decisions that limit patient rights must be reported to the Department Contract Manager before implementation, except in emergencies, which must be reported within 48 hours
Patient grievance records	Required to support the patient grievance process consistent with Department's standards and Joint Commission requirements

C. CATEGORY 3 — Individualized Treatment Plans and Care Coordination Records

Form: Electronic and Physical

PHI Data Element	Business Purpose Under RFP
Individualized treatment plan documents (goals, objectives, interventions)	Required because individualized treatment plans must be developed by an interdisciplinary team including, at minimum, a psychiatrist or psychologist, nursing staff, social workers, direct care staff, and relevant therapists, and must be developed with patient participation and updated regularly to reflect patient progress

Interdisciplinary team meeting records	Required to document treatment planning team composition, decisions, and patient participation
Patient participation and consent records	Required for recovery-oriented, person-centered care and informed consent to treatment
Treatment plan update and revision records	Required to document ongoing treatment progress and plan revisions
Discharge and transition plan documents (including aftercare appointments and community placement details)	Required because active transition and discharge planning must begin at admission; before discharging any patient to the community, aftercare appointments must be confirmed
Medication supply records at discharge	Required because a 30-day supply of medications must accompany any patient discharged to a community placement
Social service application records	Required because where eligible, social service applications (Social Security, Medicare, Medicaid) must be submitted at least 45 days before anticipated release
Conditional release plan documents (forensic patients)	Required because Associate shall prepare conditional release plans as required for IST patients
Court competency status reports	Required because reports to the committing court on competency status must be submitted every six months or upon restoration or determination of non-restorability, subject to other deadlines set by the court or applicable law
NGMI continuing commitment assessment records	Required because Associate must assess continuing commitment criteria at least every six months for NGMI patients
Community provider referral and linkage records	Required because the Associate must establish linkages with community mental health agencies, health care providers, social service agencies, courts, prosecutors, defense attorneys, and county jails
Family education, counseling, and support records	Required because a comprehensive program of family education, counseling, and support groups must be provided

D. CATEGORY 4 — Billing and Revenue Cycle Data

Form: *Electronic (primary via billing platform); Physical (paper claims, explanations of benefits)*

PHI Data Element	Business Purpose Under RFP
Medicare and Medicaid beneficiary numbers	Required for claims submission, eligibility verification, and revenue cycle management
Private payer insurance information	Required for billing, prior authorization, and accounts receivable management
Prior authorization records	Required for securing payer approval before provision of services
Claims data (UB-04, CMS-1500, and related forms)	Required for billing and revenue cycle operations
Diagnosis codes and procedure codes	Required for accurate claims submission and revenue cycle management
Encounter and service records	Required for billing documentation and audit support
Accounts receivable records	Required for financial management and reporting
Explanations of benefits (EOB)	Required for payment reconciliation and revenue cycle management
Social Security and benefit application records	Required to pursue federal and state funding opportunities
Financial eligibility screening records	Required to determine patient eligibility for Medicaid, Medicare, and other payer sources

E. CATEGORY 5 — Patient Census and Staffing-Linked Operational Data

Form: *Electronic (primary); Physical (secondary)*

PHI Data Element	Business Purpose Under RFP
Daily patient census data (admissions and discharges)	Required for daily census reports (admissions and discharges from the previous business day) due by 10:00 a.m. the following business day

Patient acuity-level data	Required to maintain nursing staff and other clinical staff at ratios consistent with the patient census and acuity
Patient unit and ward assignment records	Required to maintain appropriate staffing levels and therapeutic milieu across all patient units
Bed utilization records	Required to develop and implement policies and procedures to provide timely assessment, treatment, discharge planning, and care coordination designed to reduce unnecessary lengths of stay while ensuring residents are clinically appropriate for discharge
Diversion data	Required because reporting of census, diversion, and related data to DHF is mandatory following emergency admissions

F. CATEGORY 6 — Quality Improvement, Performance Reporting, and Risk Management Data

Form: *Electronic (primary); Physical (incident forms and peer review documentation)*

PHI Data Element	Business Purpose Under RFP
Performance outcome data (readmission rates, length of stay, symptom relief rates)	Required for monthly performance outcome reports due by the close of business on the fifth business day of each month
Competency restoration timelines (IST patients)	Required as a performance measure: the average number of days to restore competency for IST patients must be tracked and reported
NGMI symptom relief and outcome data	Required as a performance measure: the percentage of NGMI patients achieving or maintaining symptom relief must be tracked
Readmission rate data	Required as a performance measure: readmission rates must be tracked and reported
Discharge plan completion data	Required as a performance measure: the percentage of patients with completed discharge plans upon discharge must be tracked

Adverse event data (assaults, serious injuries, escapes, suicides)	Required as a performance measure: the rate of adverse events (assaults, serious injuries, escapes, suicides) must be tracked and reported
Peer review records	Required to operate a comprehensive quality improvement program that includes performance monitoring and peer review participation
Quality assurance program records	Required because the Associate must operate a comprehensive quality improvement program that includes a client advocate function
Joint Commission survey-related records and accreditation documentation	Required because the Associate must commit to maintain, at all times during the contract term, full accreditation of the Hospitals by the Joint Commission
Incident reports	Required as a mandatory reporting obligation: incident reports must be submitted as required by DHF procedures or applicable West Virginia law
Sentinel event and critical incident records	Required for regulatory reporting to the Joint Commission and West Virginia licensing authorities
Mortality review documentation	Required for mortality review process and mandatory reporting to state authorities (see Category 2)

G. CATEGORY 7 — Legal and Forensic Patient Records

Form: Electronic and Physical

PHI Data Element	Business Purpose Under RFP
Civil commitment orders	Required to verify legal basis for admission and ongoing commitment for civil patients
Court orders (forensic patients)	Required because Sharpe Hospital admits patients through civil commitment procedures or, in the case of forensic patients, through court order
IST and NGMI adjudication records and legal status documentation	Required to implement the applicable clinical and legal protocols mandated for forensic patients

Court competency status reports	Required because reports to the committing court on competency status must be submitted every six months or upon restoration or determination of non-restorability
Conditional release orders and conditional release plans	Required because the Associate shall provide testimony in court as requested and shall prepare conditional release plans as required
Criminal justice coordination correspondence	Required to establish and sustain productive working relationships with all components and parties involved with the West Virginia criminal justice system, community behavioral health centers, and other relevant stakeholders
Court testimony records and filings	Required to fulfill Associate's obligation to provide court testimony in connection with forensic patients

H. CATEGORY 8 — Electronic Health Records System Data (ePHI)

Form: *Electronic only*

The Associate must identify and propose implementation of specific electronic health records systems, including conversion of existing records to specified systems, and confirm the proposed timeline for full conversion and implementation of such systems. All PHI categories above may exist in electronic form within EHR and related clinical information systems. The following data types are specifically identified as ePHI for security and system-governance purposes:

ePHI² Data Element	Business Purpose Under RFP
All electronic clinical documentation (Categories 2 and 3 above)	Required for EHR implementation, active treatment programming, and clinical documentation
Electronic medication administration records	Required for pharmacy management, formulary management, and medication safety compliance

² ePHI shall mean PHI that is created, received, maintained, or transmitted in electronic form, consistent with 45 CFR § 160.103, including all PHI held or processed within any electronic health record ("EHR") system, hospital information system, clinical database, billing platform, reporting portal, or other digital medium received by the Associate in connection with responding to the RFP or used by the Associate in the performance of services under the Agreement.

Electronic billing and revenue cycle data (Category 4 above)	Required for claims submission, accounts receivable management, and financial reporting
Electronic census and acuity data (Category 5 above)	Required for staffing management, reporting, and bed utilization tracking
Electronic performance and outcome data (Category 6 above)	Required for quality improvement, performance reporting, and regulatory submissions
Electronic records transmitted to courts, licensing authorities, and accreditation bodies	Required for any reports required by Joint Commission, West Virginia licensing authorities, federal agencies, or required under West Virginia Code, rules or regulations
All ePHI stored on EHR and hospital information systems	For non-public data and personal data, the Associate shall provide its data center services to the public jurisdiction and its end users solely from data centers in the U.S.; storage of public jurisdiction data at rest shall be located solely in data centers in the U.S.

2. ADDITIONAL NOTES

A. RECORDS RETENTION NOTE

All records pertaining to the operation of the Hospitals must be retained for a minimum of seven years after the date of patient discharge or death, or longer as required by applicable law. This seven-year retention period governs and supersedes the six-year minimum stated in Section 3(g) of the Addendum. Patient records must be maintained in strict compliance with applicable confidentiality laws, including HIPAA and West Virginia privacy statutes. All records must be available to the Agency upon request. At the end of the Agreement or Addendum term, all records become the property of the Agency.

B. DATA DISPOSAL NOTE

In the event of a termination of the Addendum and/or Agreement, the Associate shall implement an orderly return of public jurisdiction data within the time period and format specified in the Addendum and/or Agreement and, after the data has been successfully returned, securely and permanently dispose of public jurisdiction data. The Associate shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper. Data shall

be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods.

C. TERM AND TERMINATION NOTE

To the extent the Associate is not awarded the Agreement in response to the RFP, the date of notice and/or knowledge of the same shall be deemed the termination date of the Addendum, notwithstanding anything to the contrary in the Addendum.

This Appendix A is made a part of the WV State Government HIPAA Business Associate Addendum (Form WVBAA-012004, as amended June 26, 2013).

DHHR

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL OTHER CONTRACTS: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than onethousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code §61-5-3*) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20__.

My Commission expires _____, 20__.

AFFIX SEAL HERE

NOTARY PUBLIC _____

West Virginia Ethics Commission



Disclosure of Interested Parties to Contracts

Pursuant to *W. Va. Code* § 6D-1-2, a state agency may not allow a vendor to perform work on a contract, or a series of related contracts, that has/have an actual or estimated value of \$1 million or more until the business entity submits to the state agency a Disclosure of Interested Parties to the applicable contract. In addition, the business entity awarded a contract is obligated to submit a supplemental Disclosure of Interested Parties reflecting any new or differing interested parties to the contract within 30 days following the completion or termination of the applicable contract.

For purposes of complying with these requirements, the following definitions apply:

"Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation, but does not include publicly traded companies listed on a national or international stock exchange.

"Interested party" or "Interested parties" means:

- (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors;
- (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract. (This subdivision does not apply to a publicly traded company); and
- (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency. (This subdivision does not apply to persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.)

"State agency" means a board, commission, office, department or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: Provided, that for purposes of *W. Va. Code* § 6D-1-2, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of that provision.

The contracting business entity must complete this form and submit it to the state agency prior to beginning work under a contract and to complete another form within 30 days of contract completion or termination.

This form was created by the State of West Virginia Ethics Commission, 210 Brooks Street, Suite 300, Charleston, WV 25301-1804. Telephone: (304)558-0664; fax: (304)558-2169; e-mail: ethics@wv.gov; website: www.ethics.wv.gov.

West Virginia Ethics Commission
Disclosure of Interested Parties to Contracts

(Required by W. Va. Code § 6D-1-2)

Name of Contracting Business Entity: _____ Address: _____

Name of Authorized Agent: _____ Address: _____

Contract Number: _____ Contract Description: _____

Governmental agency awarding contract: _____

☐ Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (*attach additional pages if necessary*):

1. Subcontractors or other entities performing work or service under the Contract

☐ Check here if none, otherwise list entity/individual names below.

2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)

☐ Check here if none, otherwise list entity/individual names below.

3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)

☐ Check here if none, otherwise list entity/individual names below.

Signature: _____ Date Signed: _____

Notary Verification

State of _____, County of _____:

I, _____, the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this _____ day of _____, _____.

Notary Public's Signature

To be completed by State Agency:

Date Received by State Agency: _____

Date submitted to Ethics Commission: _____

Governmental agency submitting Disclosure: _____

Revised April 1, 2022