

REQUEST FOR PROPOSAL
West Virginia Board of Risk and Insurance Management
RIM: 02032014

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SECTION ONE: GENERAL INFORMATION

1. Purpose: The West Virginia Board of Risk and Insurance Management (hereinafter “BRIM” or “Agency”) is soliciting proposals pursuant to **West Virginia Code §5A-3-10b** for a broker to serve as the agent of record for BRIM to assist in its procurement of Cyber Liability Insurance Coverage for the State of West Virginia.
2. By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in this Request for Proposal (“RFP”).

An RFP is generally used for the procurement of services in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

3. Schedule of Events:

| | |
|---|---------------------------|
| RFP Issuance | 02/03/2014 |
| Vendor’s Written Questions Submission Deadline..... | 02/28/2014 |
| Proposals due to BRIM | 3:00 P.M., EST 03/28/2014 |
| Oral Presentation (<i>If BRIM Desires</i>)..... | 03/31/2014 to 04/25/2014 |

Questions may be submitted in writing or by email to BRIMInquiries@wv.gov . All questions and answers will be posted on the BRIM web site as they are received and addressed. Vendors should periodically check the BRIM web site to keep advised of what is being asked and answered. BRIM will note when answering the final question(s).

SUBMISSIONS TO BE SENT TO:

West Virginia Board of Risk and Insurance Management
90 MacCorkle Avenue, SW, Suite 203
South Charleston, WV 25303

Prominently marked: **VENDOR PROPOSAL – RFP RIM: 02032014**

SECTION TWO: GENERAL TERMS AND CONDITIONS

1. **Contract Provisions:** The RFP and the Vendor's response will be incorporated into the contract by reference. The order of precedence shall be the contract, the RFP and any addendum, and the vendor's proposal in response to the RFP.
2. **Public Record:** All documents submitted to BRIM related to purchase orders or contracts are considered public records. All bids, proposals, or offers submitted by Vendors become the property of BRIM and shall become public information and are available for inspection during normal official business hours at BRIM after the bid opening.
 - 2.1 **Risk of Disclosure:** The only exemptions to disclosure of information are listed in **West Virginia Code** §29B-1-4. Any information considered a trade secret must be separated from the Vendor submission and clearly labeled as such. Primarily, only trade secrets, as submitted by a bidder, are exempt from public disclosure. The submission of any information to the State by a Vendor puts the risk of disclosure on the Vendor. The State does not guarantee non-disclosure of any information to the public.
 - 2.2 **Written Release of Information:** All public information may be released with or without a Freedom of Information request; however, only a written request will be acted upon with duplication fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently, the fees are 50 cents per page.
3. **Conflict of Interest:** Vendor 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 BRIM.
4. **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 RFP 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, *et cetera* 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 BRIM 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.

The Vendor shall not assign, convey, transfer, or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association, or entity without expressed written consent of BRIM.

4.1 Subcontracts/Joint Ventures: The Vendor may, with the prior written consent of the State, enter into subcontracts for performance of work under this contract.

4.2 Indemnification: The Vendor agrees to indemnify, defend, and hold harmless the State and BRIM, 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 laws.

4.3 Governing Law: This contract shall be governed by the laws of the State of West Virginia. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws and regulations as provided by Federal, State, and local governments.

5. **Term of Contract and Renewals**: This contract will be effective upon award and shall extend for the period of one (1) year, at which time the contract may, upon mutual consent, be renewed. Such renewals are for a period of up to one (1) year, with a maximum of two (2) one-year renewals, or until such reasonable time thereafter as is necessary to obtain a new contract. The "reasonable time" period shall not exceed twelve (12) months. During the "reasonable time" period, Vendor may terminate the contract for any reason upon giving BRIM ninety (90) days written notice. Notice by Vendor of intent to terminate will not relieve Vendor of the obligation to continue providing services pursuant to the terms of the contract.

6. **Non-Appropriation of Funds**: If funds are not appropriated for BRIM in any succeeding fiscal year for the continued use of the services covered by this contract, the State may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The State shall give the Vendor written notice of such non-appropriation of funds as soon as possible after BRIM receives notice. No penalty shall accrue to BRIM in the event this provision is exercised.

7. **Changes**: If changes to the contract become necessary, a formal contract change order will be negotiated between BRIM and the Vendor.

As soon as possible, but not to surpass thirty (30) days after receipt of a written change request from BRIM, the Vendor shall determine if there is an impact on price with the change requested and provide BRIM a written Statement identifying any price impact on the contract. The Vendor shall provide a description of any price change associated with the implementation.

NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER FROM BRIM.

8. **Price Quotations:** The price(s) quoted in the Vendor's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided in the original specifications.
9. **Invoices and Progress Payments:** The Vendor shall submit invoices, in arrears, to BRIM at the address on the face of the purchase order labeled "Invoice To." Progress payments may be made at the option of BRIM on the basis of percentage of work completed if so defined in the final contract.
10. **Contract Termination:** The State may terminate any contract resulting from this RFP immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFP and resulting contract. The State shall provide the Vendor with advance notice of performance conditions which may endanger the contract's continuation. If after such notice the Vendor fails to remedy the conditions within the established timeframe, the State shall order the Vendor to cease and desist any and all work immediately. The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

The contract may be terminated by the State with thirty (30) days prior notice pursuant to **West Virginia Code of State Rules** § 148-1-7.16.2.

11. **Special Terms and Conditions:**

11.1 Insurance Requirements: *(Insurance certificates are required prior to award, but are not required at the time of bid).*

- CGL and Automobile Coverage
- Professional liability
All with at least a \$1,000,000 liability limit.
- Workers' Compensation Coverage as required by Statute

12. **Record Retention (Access and Confidentiality):** Vendor shall comply with all applicable Federal and State rules, regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by the Vendor. The Vendor shall maintain such records a minimum of five (5) years and make such records available to Agency personnel at the Vendor's location during normal business hours upon written request by BRIM within ten (10) days after receipt of the request.

Vendor shall have access to private and confidential data maintained by BRIM to the extent required for the Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and BRIM against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by the Vendor.

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>.

The Vendor agrees that it will comply with the West Virginia State Government HIPAA Business Associate Agreement, approved by the Attorney General and available at the following link: <http://www.state.wv.us/admin/purchase/vrc/WvBaaAgEffectiveJun2013.pdf>

SECTION THREE: PROJECT SPECIFICATIONS

1. **Location:** Agency is located at 90 MacCorkle Avenue, SW, Suite 203, South Charleston, WV 25303.
2. **Background and Current Operating Environment:** BRIM administers a multifaceted insurance program including liability and property insurance for all state agencies, state boards of education, and various political subdivisions and non-profit entities. BRIM also acts as the reinsurance vehicle for the West Virginia Mine Subsidence Fund.

As of July 2013, BRIM covered over 102,000 employees, almost 29,000 vehicles and approximately \$17.5 billion in property values in its property and liability programs. BRIM uses a combination of self-insurance, reinsurance and guaranteed cost insurance to administer the programs listed above.

BRIM contact will be Charles E. Jones, Jr., Executive Director.

3. **Qualifications and Experience:** Vendors will provide in **Attachment A: Vendor Response Sheet** information regarding their firm, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.
4. **Project and Goals:** The project goals and objectives are:
 - 4.1 To engage a knowledgeable insurance broker to assist BRIM in creating a risk management program to address the cyber liability needs of the State of West Virginia;
 - 4.2 To engage a knowledgeable insurance broker to assist BRIM in identifying and assessing/quantifying cyber liability risks applicable to the State of West Virginia;
 - 4.3 To engage a knowledgeable insurance broker to assist BRIM by performing a gap analysis of currently available insurance coverage to identify gaps in coverage or overlapping coverage with respect to cyber liability risks;

- 4.4 To engage a knowledgeable insurance broker to assist BRIM in determining and justifying what insurance coverage is necessary and in what amounts to address the cyber liability risks identified, or in the alternative to identify other risk management techniques which it would recommend to BRIM as a method for adequately and appropriately addressing those risks;
- 4.5 To engage a knowledgeable insurance broker to assist BRIM by going to the market to obtain quotes and addressing different offerings from different carriers for insurance coverage to address cyber liability risks if the need for such is identified;
- 4.6 To engage a knowledgeable insurance broker to assist BRIM in doing any and all other things needed to put into place a program to address the cyber liability risks of the State of West Virginia.

5 **Mandatory Requirements**

The following mandatory requirements must be met by the Vendor as a part of the submitted proposal. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the proposal. The terms “must”, “will”, “shall”, “minimum”, “maximum”, or “is/are required” identify a mandatory item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of BRIM.

- 5.1 The successful vendor must demonstrate that it has the knowledge and experience necessary to be able to address the following coverage/services which BRIM has identified as potentially being needed:
 1. Privacy and Security Expenses
 - Forensics
 - Breach Coach
 - Advice and consultation to support incident response, including the investigation and mitigation
 - Notification/Call Center
 - Credit Monitoring
 - Public Relations Expenses
 2. Privacy Liability
 - Regulatory Defense
 - Fines and Penalties
 3. Media Liability
 4. First-Party Data Restoration
 5. Business Interruption/System Failure
 6. Extortion Threats
- 5.2 The successful vendor must demonstrate that it has the knowledge and experience necessary to be able to identify risks:

- Data Types (including regulated and highly sensitive), Sources, Processes
 - Threats, Vulnerabilities, Perils;
- 5.3 The successful vendor must demonstrate that it has the knowledge and experience necessary to be able to assess/quantify risks:
- Likelihood/Impact Matrix
 - Loss Distribution Curve;
- 5.4 The successful vendor must demonstrate that it has the knowledge and experience necessary to be able to assist BRIM in completing the risk assessment process;
- 5.5 The successful vendor must demonstrate that it has the knowledge and experience necessary to be able to perform a gap analysis of existing insurance coverage to identify gaps in coverage or overlapping coverage;
- 5.6 The successful vendor must identify which needed services must come from an insurer and which may be provided by either the insurer or the broker;
- 5.7 The successful vendor must identify what services the broker is able to provide;
- 5.8 The successful vendor must identify risk financing options available to BRIM to address identified needs (e.g. self-retention, transfer, fronting, etc.);
- 5.9 The successful vendor must demonstrate that it has the knowledge and experience necessary to be able to assist BRIM in the event of a claim(s);
- 5.10 The successful vendor must demonstrate that it has placed cost effective, adequate and appropriate cyber liability insurance coverage on behalf of:
- a state government; or
 - a large pool consisting of other governmental/quasi-governmental entities (*i.e.* a combination of school boards/districts, cities, towns or counties); or
 - other large commercial business organization;
- 5.11 The successful vendor must explain alternative broker compensation methodologies (e.g. flat fee, commission based fee, etc.) and the positive and negative aspects of each methodology, and provide a recommendation as to which should be selected and why.
- 5.12. The successful vendor must affirmatively state that he or she will be willing to execute a WV96 form, required for all state contracts, at the time of contract acceptance. (*Sample Attached*)
- 5.13 The successful vendor must affirmatively state that he or she will be willing to execute a West Virginia State Government HIPAA Business Associate Agreement, available at

<http://www.state.wv.us/admin/purchase/vrc/WvBaaAgEffectiveJun2013.pdf> , and required for all state contracts, at the time of contract acceptance.

6. **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, it would be listed in the Schedule of Events (Section 1.3) of this RFP. During oral presentations, Vendors may not alter or add to their submitted proposal, but only clarify information. A description of the materials and information to be presented is provided below:

- 6.1. **Materials and Information Required at Oral Presentation:**

Will be identified (if desired) if Oral Presentations requested.

SECTION FOUR: VENDOR PROPOSAL

- 1 **Economy of Preparation:** Proposals should be prepared simply and economically providing a straightforward, concise description of the Vendor's abilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of the content.
- 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.
- 3 **Proposal Format:** Vendors should provide responses in the format listed below:

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.

Table of Contents: Clearly identify the material by section and page number.

Attachment A: Within the attached response sheet (**Attachment A: Vendor Response Sheet**), provide the following: firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

Also, describe the approach and methodology proposed for this project. This should include how each of the goals and objectives listed is to be met.

Attachment B: Complete **Attachment B: Mandatory Specification Checklist**. By signing and dating this attachment, the Vendor acknowledges that they meet or exceed each of these specifications as outlined in 4.5 of Section Four: Project Specifications. The State reserves the right to require documentation detailing how each is met at its discretion.

Attachment C: Complete **Attachment C: Cost Sheet** included in this RFP and submit in a separate sealed envelope. Cost should be clearly marked.

Oral Presentations: If established by the Agency in the Schedule of Events (Section 1.3), all Vendors participating in this RFP will be required to provide an oral presentation, based on the criteria set in Section 4.6. During oral presentations, Vendors may not alter or add to their submitted proposal, but only to clarify information.

- 4 **Proposal Submission:** Proposals must be received in **two distinct parts**: technical and cost.
- **Technical proposals** must not contain any cost information relating to the project.
 - **Cost proposal** shall be sealed in a separate envelope and will not be opened initially.

All proposals must be received by BRIM no later than 3:00 p.m. EST on March 28, 2014. All bids will be dated and time stamped to verify official time and date of receipt. All submissions must be in accordance with the provisions listed below and in Section Two: Instructions to Bidders Submitting Bids above.

- 5 **Technical Bid Opening:** BRIM will open only the technical proposals received prior to the date and time specified in the Request for Proposal. The technical proposals shall then be provided to the Agency evaluation committee.
- 6 **Cost Bid Opening:** BRIM will open cost proposals following the evaluation of the technical proposals by the Agency evaluation committee. All cost bids for qualifying proposals will be opened. Cost bids for non-qualifying proposals will also be opened but shall not be considered. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code** §5A-3-11(h) and **West Virginia Code of State Rules** §148-1-6.2.5..

SECTION FIVE: EVALUATION AND AWARD

- 1 **Evaluation Process:** Proposals will be evaluated by a committee of three (3) or more individuals against the established criteria with points deducted for deficiencies. The Vendor who demonstrates that they meet all of the mandatory specifications required; and has appropriately presented within their written response and/or during the oral demonstration (if applicable) their understanding in meeting the goals and objectives of the project; and attains the highest overall point score of all Vendors shall be awarded the contract. The selection of the successful Vendor will be made by a consensus of the evaluation committee.
- 2 **Evaluation Criteria:** All evaluation criteria is defined in the specifications section and based on a 100 point total score. Cost shall represent a maximum of 25 of the 100 total points.

The following are the evaluation factors and maximum points possible for technical point scores:

| | |
|---------------------------------|---------------------------|
| • Qualifications and experience | 35 Points Possible |
| • Approach and methodology | 40 Points Possible |
| • Cost | <u>25 Points Possible</u> |
| Total | 100 Points Possible |

Each cost proposal cost will be scored by use of the following formula for all Vendors who attained the minimum acceptable score:

$$\frac{\text{Lowest price of all proposals}}{\text{Price of Proposal being evaluated}} \times 25 = \text{Price Score}$$

- 2.1 **Technical Evaluation:** The Agency evaluation committee will review the technical proposals and deduct points where appropriate.
- 2.2 **Minimum Acceptable Score:** Vendors must score a minimum of 75% (52 points or 70% of 75) of the total technical points possible. All Vendors not attaining the minimum acceptable score (MAS) shall be considered as non-qualifying; therefore, the cost bids will not be opened. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award, pursuant to **West Virginia Code** §5A-3-11(h) and **West Virginia Code of State Rules** §148-1-6.2.5.
- 2.3 **Cost Evaluation:** The Agency evaluation committee will review the cost proposals, and assign appropriate points.

REQUEST FOR PROPOSAL
West Virginia Board of Risk and Insurance Management
RIM: 02032014

Attachment A: Vendor Response Sheet

MAY UTILIZE SEPARATE SHEET(S) AS NECESSARY OR DESIRED

Provide a response regarding the following: firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and what the project goals and objectives were and how they were met.

List project goals and objectives contained in Section 3, Subsection 4:

Section 3, Subsection 4.1:

Vendor Response:

Section 3, Subsection 4.2:

Vendor Response:

Section 3, Subsection 4.3:

Vendor Response:

Section 3, Subsection 4.4:

Vendor Response:

Section 3, Subsection 4.5:

Vendor Response:

Section 3, Subsection 4.6:

Vendor Response:

Attachment B: Mandatory Specification Checklist

MAY UTILIZE SEPARATE SHEET(S) AS NECESSARY OR DESIRED

List mandatory specifications contained in Section 3, Subsection .5:

Section 3, Subsection 5.1:

Vendor Response:

Section 3, Subsection 5.2:

Vendor Response:

Section 3, Subsection 5.3:

Vendor Response:

Section 3, Subsection 5.4

Vendor Response:

Section 3, Subsection 5.5:

Vendor Response:

Section 3, Subsection 5.6:

Vendor Response:

Section 3, Subsection 5.7:

Vendor Response:

Section 3, Subsection 5.8:

Vendor Response:

Section 3, Subsection 5.9:

Vendor Response:

Section 3, Subsection 5.10:

Vendor Response:

Section 3, Subsection 5.11:

Vendor Response:

Section 3, Subsection 5.12:

Vendor Response:

Section 3, Subsection 5.13:

Vendor Response:

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 bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that, to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

(Company)

(Representative Name, Title)

(Contact Phone/Fax Number)

(Date)

Attachment C: Cost Sheet

Cost information below as detailed in the Request for Proposal and submitted in a separate sealed envelope. Cost should be clearly marked.

AGREEMENT ADDENDUM

In the event of conflict between this addendum and the agreement, this addendum shall control:

1. **DISPUTES** - Any references in the agreement to arbitration or to the jurisdiction of any court are hereby deleted. Disputes arising out of the agreement shall be presented to the West Virginia Court of Claims.
2. **HOLD HARMLESS** - Any provision requiring the Agency to indemnify or hold harmless any party is hereby deleted in its entirety.
3. **GOVERNING LAW** - The agreement shall be governed by the laws of the State of West Virginia. This provision replaces any references to any other State's governing law.
4. **TAXES** - Provisions in the agreement requiring the Agency to pay taxes are deleted. As a State entity, the Agency is exempt from Federal, State, and local taxes and will not pay taxes for any Vendor including individuals, nor will the Agency file any tax returns or reports on behalf of Vendor or any other party.
5. **PAYMENT** - Any references to prepayment are deleted. Payment will be in arrears.
6. **INTEREST** - Any provision for interest or charges on late payments is deleted. The Agency has no statutory authority to pay interest or late fees.
7. **NO WAIVER** - Any language in the agreement requiring the Agency to waive any rights, claims or defenses is hereby deleted.
8. **FISCAL YEAR FUNDING** - Service performed under the agreement may be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise being available for this service. In the event funds are not appropriated or otherwise available for this service, the agreement shall terminate without penalty on June 30. After that date, the agreement becomes of no effect and is null and void. However, the Agency agrees to use its best efforts to have the amounts contemplated under the agreement included in its budget. Non-appropriation or non-funding shall not be considered an event of default.
9. **STATUTE OF LIMITATION** - Any clauses limiting the time in which the Agency may bring suit against the Vendor, lessor, individual, or any other party are deleted.
10. **SIMILAR SERVICES** - Any provisions limiting the Agency's right to obtain similar services or equipment in the event of default or non-funding during the term of the agreement are hereby deleted.
11. **FEES OR COSTS** - The Agency recognizes an obligation to pay attorney's fees or costs only when assessed by a court of competent jurisdiction. Any other provision is invalid and considered null and void.
12. **ASSIGNMENT** - Notwithstanding any clause to the contrary, the Agency reserves the right to assign the agreement to another State of West Virginia agency, board or commission upon thirty (30) days written notice to the Vendor and Vendor shall obtain the written consent of Agency prior to assigning the agreement.
13. **LIMITATION OF LIABILITY** - The Agency, as a State entity, cannot agree to assume the potential liability of a Vendor. Accordingly, any provision limiting the Vendor's liability for direct damages to a certain dollar amount or to the amount of the agreement is hereby deleted. Limitations on special, incidental or consequential damages are acceptable. In addition, any limitation is null and void to the extent that it precludes any action for injury to persons or for damages to personal property.
14. **RIGHT TO TERMINATE** - Agency shall have the right to terminate the agreement upon thirty (30) days written notice to Vendor. Agency agrees to pay Vendor for services rendered or goods received prior to the effective date of termination.
15. **TERMINATION CHARGES** - Any provision requiring the Agency to pay a fixed amount or liquidated damages upon termination of the agreement is hereby deleted. The Agency may only agree to reimburse a Vendor for actual costs incurred or losses sustained during the current fiscal year due to wrongful termination by the Agency prior to the end of any current agreement term.
16. **RENEWAL** - Any reference to automatic renewal is deleted. The agreement may be renewed only upon mutual written agreement of the parties.
17. **INSURANCE** - Any provision requiring the Agency to purchase insurance for Vendor's property is deleted. The State of West Virginia is insured through the Board of Risk and Insurance Management, and will provide a certificate of property insurance upon request.
18. **RIGHT TO NOTICE** - Any provision for repossession of equipment without notice is hereby deleted. However, the Agency does recognize a right of repossession with notice.
19. **ACCELERATION** - Any reference to acceleration of payments in the event of default or non-funding is hereby deleted.
20. **CONFIDENTIALITY**: -Any provision regarding confidentiality of the terms and conditions of the agreement is hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act.
21. **AMENDMENTS** - All amendments, modifications, alterations or changes to the agreement shall be in writing and signed by both parties. No amendment, modification, alteration or change may be made to this addendum without the express written approval of the Purchasing Division and the Attorney General.

ACCEPTED BY:

STATE OF WEST VIRGINIA

VENDOR

Spending Unit: _____

Company Name: _____

Signed: _____

Signed: _____

Title: _____

Title: _____

Date: _____

Date: _____