



Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

# State of West Virginia Master Agreement

Order Date: 09-20-2021

CORRECT ORDER NUMBER MUST  
APPEAR ON ALL PACKAGES, INVOICES,  
AND SHIPPING PAPERS. QUESTIONS  
CONCERNING THIS ORDER SHOULD BE  
DIRECTED TO THE DEPARTMENT  
CONTACT.

Order Number:	CMA 0511 0511 HHR2200000001 1	Procurement Folder:	929306
Document Name:	COMMON AUDIT AGREEMENT	Reason for Modification:	
Document Description:	COMMON AUDIT AGREEMENT		
Procurement Type:	Central Sole Source		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2021-11-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2022-10-31

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000215318 PALMETTO GBA LLC 17 TECHNOLOGY CIRCLE  COLUMBIA SC 29203 US Vendor Contact Phone: 999-999-9999 Extension:  Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			Requestor Name: Jeffrey L Bush Requestor Phone: (304) 558-2587 Requestor Email: jeffrey.l.bush@wv.gov  <b>22</b> <b>FILE LOCATION</b> _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
BUYER - 304-957-0209 HEALTH AND HUMAN RESOURCES ADMINISTRATION AND FINANCE ONE DAVIS SQUARE, RM 300 CHARLESTON WV 25301 US	BUYER - 304-957-0209 HEALTH AND HUMAN RESOURCES ADMINISTRATION AND FINANCE ONE DAVIS SQUARE, RM 300 CHARLESTON WV 25301 US

Total Order Amount:

Open End

Purchasing Division's File Con

PURCHASING DIVISION AUTHORIZATION

DATE:

ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM

DATE:

ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION

DATE:

ELECTRONIC SIGNATURE ON FILE

**Extended Description:**

THE VENDOR, PALMETTO GBA LLC, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, INTO A CONTRACT FOR COMMON AUDIT AGREEMENT PER THE TERMS AND CONDITIONS AND THE VENDOR'S QUOTE DATED 08/19/2021, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	93151607			HOUR	83.530000
	<b>Service From</b>	<b>Service To</b>			
	2021-11-01	2022-10-31			

**Commodity Line Description:** Cost Report Services - Desk Audit/Reviews

**Extended Description:**

Base Year: Cost Report Services: Desk Audit/Reviews

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	93151607			HOUR	126.620000
	<b>Service From</b>	<b>Service To</b>			
	2021-11-01	2022-10-31			

**Commodity Line Description:** Cost Report Services - Field Audit/Reviews

**Extended Description:**

Base Year: Cost Report Services: Field Audit/Reviews

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	93151607			HOUR	83.530000
	<b>Service From</b>	<b>Service To</b>			
	2021-11-01	2022-10-31			

**Commodity Line Description:** DSH Survey Form Services - Desk Audit/Reviews

**Extended Description:**

Base Year: DSH Survey Form Services: Desk Audit/Reviews

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
4	93151607			HOUR	126.620000
	<b>Service From</b>	<b>Service To</b>			
	2021-11-01	2022-10-31			

**Commodity Line Description:** DSH Survey Form Services - Field Audit/Reviews

**Extended Description:**

Base Year: DSH Survey Form Services: Field Audit/Reviews

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
5	93151607			HOUR	126.620000
	<b>Service From</b>	<b>Service To</b>			
	2021-11-01	2022-10-31			

**Commodity Line Description:** Additional Services/On-site (Chas., WV)

**Extended Description:**

Base Year: Additional Services/On-site (Chas., WV)

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
6	93151607			HOURL	83.530000
	<b>Service From</b>	<b>Service To</b>			
	2021-11-01	2022-10-31			

**Commodity Line Description:** Additional Services/Offsite

**Extended Description:**  
Base Year: Additional Services/Off-site

## **GENERAL TERMS AND CONDITIONS:**

**1. CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office 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 West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, 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 that is published by the Purchasing Division.

**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 November 1, 2021 and the initial contract term extends until One (1) year.

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division 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 three (3) 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 months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for \_\_\_\_\_ successive \_\_\_\_\_ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

**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 \_\_\_\_\_  
Revised 07/01/2021

**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, Purchasing Division, and Attorney General's office.

**6. EMERGENCY PURCHASES:** The Purchasing Division 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 Division 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 Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division 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 delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **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 Purchasing Division 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 shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: \_\_\_\_\_ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: \_\_\_\_\_ per occurrence.

☐ **Aircraft Liability** in an amount of: \_\_\_\_\_ per occurrence.

☐☐☐☐



Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

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

**10. [Reserved]**

**11. LIQUIDATED DAMAGES:** This clause shall in no way be considered exclusive and 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:

☐ \_\_\_\_\_ for \_\_\_\_\_.

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

**12. 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.

**13. 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.

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

**15. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer ~~and 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.)~~

**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. 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.

**18. 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.

**19. CANCELLATION:** The Purchasing Division Director 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 Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

**20. TIME:** Time is of the essence regarding all matters of time and performance in this Contract.

**21. 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.

**22. 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.

**SUBCONTRACTOR COMPLIANCE:** 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. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**23. 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.

**24. 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, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**25. 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.

**26. 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 Agency or Purchasing Division 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.

**27. 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, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

**28. 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.

**29. 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.

**30. 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>.

**31. 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 §§ 5A-3-1 et seq., 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 Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**32. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, 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 Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**SUBCONTRACTOR COMPLIANCE:** 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. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

**33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a 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.

**34. 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.

**35. 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.

**36. 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.

**37. 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 Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

**38. 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.

**39. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☐ Such reports as the Agency and/or the Purchasing Division 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 Purchasing Division via email at [purchasing.division@wv.gov](mailto:purchasing.division@wv.gov).

**40. 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.

**41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- 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 heath, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

1. The cost for each contract item used does not exceed one tenth of one percent (.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
2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., 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.

**43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

**44. 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.

**45. 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.

Sarah Mott, Director Contracts Administration

(Name, Title)

(Printed Name and Title)

17 Technology Circle, Columbia, SC 29203

(Address)

803-763-5766

803-935-0176

(Phone Number) / (Fax Number)

Sarah.Mott@palmettogba.com

(email 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.

Palmetto GBA

(Company)

*Walter J. Johnson*

Digitally signed by Walter J. Johnson  
Date: 2021.09.02 12:39:05  
+04'00'

Walter J. Johnson, President & COO

(Authorized Signature) (Representative Name, Title)

Walter J. Johnson, President/COO

(Printed Name and Title of Authorized Representative)

9/2/2021

(Date)

803-763-1176

803-935-0176

(Phone Number) (Fax Number)



**PALMETTO GBA**  
A CELERIAN GROUP COMPANY

PO BOX 100134 | COLUMBIA, SC 29202-3134 | PALMETTOGBA.COM | ISO 9001

**WALTER J. JOHNSON**  
*President and Chief Operating Officer*

**August 19, 2021**

**Jeffrey L. Bush, CPA**  
**Office Director**  
**WV Dept. of Health & Human Resources**  
**Office of Accountability and Management Reporting**  
**One Davis Square, Suite 304**  
**Charleston, WV 25301**

**Regarding: Offer to Provide Common Audit Cost Report Services for West Virginia**

**Dear Mr. Bush:**

Palmetto GBA hereby affirms its proposal to provide cost report desk review, field audit, and other necessary services to assist the West Virginia Department of Health and Human Resources, Office of Accountability and Management Reporting in meeting its Title V and Title XIX cost report settlement requirements. This correspondence should be considered as a formal bid to provide such services

Palmetto GBA, LLC, the Jurisdiction M A/B Medicare Administrative Contractor (MAC) will perform the Title V, and Title XIX (Medicaid) provider cost report settlements in conjunction with the provider's annual Title XVIII (Medicare) cost report settlement, if applicable. Such services will include the following provider types required to file interim and final cost reports:

1. Inpatient Hospitals to include: Prospective Payment, Rehabilitation, and Critical Access,
2. Inpatient Hospital associated sub providers to include: Skilled Nursing Facilities, Home Health Agencies, Rural Health Clinics, Hospices, Swing-Bed SNFs, and Renal Dialysis,
3. Freestanding Federally Qualified Health Centers (FQHCs),
4. Community Mental Health Centers (CMHCs),
5. Psychiatric <21 Treatment Facilities
6. Psychiatric Residential Treatment Facilities
7. Freestanding Rural Health Clinics

**Compensation:**

Palmetto GBA, requests reimbursement monthly on the basis of all-inclusive hourly rates. Where rates are labeled as desk reviews, the rates apply to services provided in our office in Columbia, SC and do not include travel. Where rates are labeled as field audits, the rates apply to reviews conducted at the provider site and include travel costs.

Where rates are labeled as "onsite" under the additional service sections, services will be provided within the greater Charleston, WV city limits. "Off-site" rates apply to additional

services provided from our home office in South Carolina. The difference in cost reflects anticipated travel expenses.

Price Quotation

NOVEMBER 1, 2021 – OCTOBER 31, 2022: BASE YEAR

COST REPORT SERVICES		
Desk Audits/Reviews		\$83.53/Hour
Field Audits/Reviews		\$126.62/Hour
DSH SURVEY FORM SERVICES		
Desk Audits/Reviews		\$83.53/Hour
Field Audits/Reviews		\$126.62/Hour
ADDITIONAL SERVICES		
Additional Services/On-site		\$126.62/Hour
Additional Services/Off-site		\$83.53/Hour

NOVEMBER 1, 2022 – OCTOBER 31, 2023: YEAR ONE

COST REPORT SERVICES		
Desk Audits/Reviews		\$86.04/Hour
Field Audits/Reviews		\$130.41/Hour
DSH SURVEY FORM SERVICES		
Desk Audits/Reviews		\$86.04/Hour
Field Audits/Reviews		\$130.41/Hour
ADDITIONAL SERVICES		
Additional Services/On-site		\$130.41/Hour
Additional Services/Off-site		\$86.04/Hour

NOVEMBER 1, 2023 – OCTOBER 31, 2024: YEAR TWO

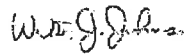
COST REPORT SERVICES		
Desk Audits/Reviews		\$88.62/Hour
Field Audits/Reviews		\$134.33/Hour
DSH SURVEY FORM SERVICES		
Desk Audits/Reviews		\$88.62/Hour
Field Audits/Reviews		\$134.33/Hour
ADDITIONAL SERVICES		
Additional Services/On-site		\$134.33/Hour
Additional Services/Off-site		\$88.62/Hour

NOVEMBER 1, 2024 – OCTOBER 31, 2025: YEAR THREE

COST REPORT SERVICES		
Desk Audits/Reviews		\$91.28/Hour
Field Audits/Reviews		\$138.36/Hour
DSH SURVEY FORM SERVICES		
Desk Audits/Reviews		\$91.28/Hour
Field Audits/Reviews		\$138.36/Hour
ADDITIONAL SERVICES		
Additional Services/On-site		\$138.36/Hour
Additional Services/Off-site		\$91.28/Hour

If you have any questions concerning this offer to the State of West Virginia, please contact Arteya Robinson at 803-382-6166 or if by email, [arteya.robinson@palmettogba.com](mailto:arteya.robinson@palmettogba.com)

Sincerely,



Digitally signed by Walter J.  
Johnson  
Date: 2021.08.19 13:52:41  
-04'00'

Walter J. Johnson  
President & COO

**STATE OF WEST VIRGINIA**  
**Department Of Health and Human Resources**  
**Office of the Deputy Secretary for Administration**

**PART 1                      GENERAL INFORMATION**

This Contract is made and entered into and between the State of West Virginia, Department of Health and Human Resources, Office of Accountability and Management Reporting, (OAMR), hereafter referred to as the "Department" or "Agency", and Palmetto GBA, hereafter referred to as the "Contractor" or "Vendor".

The official contract Purchase Order will be issued on behalf of the Agency by the Acquisition and Contract Administration Section of the West Virginia Department of Administration, Purchasing Division, hereafter referred to as the "State".

This document is "The Title V, XVIII, and XIX Common Audit Agreement" and shall hereafter be referred to as the "Contract".

**PART 2                      OPERATING ENVIRONMENT**

The Secretary, U.S. Department of Health and Human Services (US-DHHS), has the responsibility for the administration of Titles V (Children With Special Health Care Needs), XVIII (Medicare), and XIX (Medicaid) of the Social Security Act. The Secretary has delegated the administration of these programs as follows:

- a.     The West Virginia Federal Title XVIII Inpatient Hospital Services program is administrated by Palmetto, GBA, under US-DHHS Contract HCFA 87-027-2.
- b.     The West Virginia Federal Title V and Title XIX programs are administrated by the West Virginia Department of Health and Human Resources, under Federal grant-in-aids CFDA-93.796, and CFDA-93.778, respectively.

The Secretary has urged the respective parties to coordinate the audit of health care providers to the extent practicable (See Section 1603, Intermediary Manual (Pub-13), Part 1, Fiscal Administration). A common provider audit program will reduce the cost of provider auditing and avoid duplicate auditing efforts. Therefore, the purpose of this Contract is to have one audit of a participating Title V, Title XVIII, and Title XIX provider which will serve the needs of each program.

**PART 3                      PROCUREMENT SPECIFICATIONS**

**3.1     General Requirements:**

The Contractor will provide cost report desk review, field audit, and other necessary services to assist the Department in meeting its Title V, and Title XIX cost report settlement requirements. The Contractor will perform the Title V, and Title XIX (Medicaid) provider

cost report settlements in conjunction with the provider's annual Title XVIII (Medicare) cost report settlement, if applicable.

The following provider types are required to file interim and final cost reports:

1. Inpatient Hospitals (to include: Prospective Payment, Rehabilitation, Critical Access),
2. Inpatient Hospital associated subproviders (To include: Skilled Nursing Facilities, Home Health Agencies, Rural Health Clinics, Hospices, Swing-bed SNFs, & Renal Dialysis),
3. Freestanding Federally Qualified Health Centers (FQHCs),
4. Community Mental Health Centers (CMHCs),
5. Psychiatric <21 Treatment Facilities
6. Psychiatric Residential Treatment Facilities
7. Freestanding Rural Health Clinics

### **3.2 Scope of Work:**

#### **3.2.1 Interim and Final Cost Report Settlements:**

The Contractor will prepare interim and final cost report settlements for each West Virginia Title V and Title XIX (Medicaid) enrolled provider for the cost report periods specified by the Department. The cost report settlements will be based on: West Virginia Medicaid's provider reimbursement policy, The Center for Medicare and Medicaid Services (CMS) provider reimbursement policy, and generally accepted accounting principles (GAAP).

##### **3.2.1.1 Contractor Responsibility**

1. The Contractor will screen each submitted cost report within thirty days to determine if the Medicaid information is complete; and will notify the provider in writing of all deficiencies. All communication occurring between Contractor and providers will be copied electronically to the Department.
2. The Contractor will complete all desk review or field audit steps necessary to assure that all Medicaid data is reasonably complete, accurate, and finalized on a timely basis.
3. The cost of the Medicare audits, including desk review and field audit activity, will be incurred totally by the Medicare Intermediary to the extent that such activity would be normally undertaken for Title XVIII purposes.
4. The Contractor will provide a paper copy of each settled cost report, adjustment reports, work papers, data, and cost report settlement worksheet.

5. The Contractor will provide, in a format determined by the Department, a copy of each settled cost report, work papers, adjustment reports, cost report settlement worksheet, and data used to settle each cost report.
6. The Contractor will transfer the provider's final audited electronic cost report file and related materials to the Department within a mutually agreed time period.
7. Contractor will provide or make available necessary cost report training to Department staff at the Additional Services rate set forth in Section 4.2.
8. The Contractor will assist the Department in preparing for provider hearings and appeals and/or to serve as expert witness during such appeals or hearings.
9. The Contractor will perform at a minimum two hospital field audits with the delivery of a final audit report to occur on or before the end of the State's fiscal year.
10. The Contractor will perform tentative and final settlements within an agreed on time frame for the Department.
11. The Contractor will submit a list of data requests which will enable the Department to more efficiently respond to those requests.

#### **3.2.1.2 Department Responsibility**

1. The Department will provide access to all West Virginia Medicaid Provider Reimbursement Manuals through the Department's website.
2. The Department will notify each provider of their obligation to prepare and file a Medicare/Medicaid cost report after year-end.
3. The Department will disburse or collect all cost report settlement amounts due to or from providers.
4. The Department will provide to the contractor necessary data for purposes of calculating tentative and final settlements.

#### **3.2.2 Interim and Final Medicaid Disproportionate Share Hospital Survey Form Review/Audit:**

The Contractor will review or audit each Hospital's Annual Disproportionate Share Hospital (DSH) Survey Form based on West Virginia Medicaid's disproportionate

share hospital reimbursement policy upon request by the Department. DSH reviews or audits will be performed for each State Fiscal Year specified by the Department.

### **3.2.3 Additional Services:**

The Contractor will perform additional tasks as may be required by the Department to analyze the Department's provider payment methodologies, or other necessary tasks for the efficient operation and management of the Department's Title V and Title XIX Programs. Additional tasks will not be limited to the provider types identified within Section 3.1 above. The Contractor will conduct provider and Department Staff training as required by the Department and such services shall be charged at the Additional Services rate set forth in Section 4.2. Additional services requested by the Department, within the Scope of this section, shall not be considered a Contract change as defined within Section 3.4.13 below.

### **3.2.4 Quarterly Work Plan:**

The Contractor will prepare a quarterly Work Plan.

**3.2.4.1** The Work Plan will be submitted to the Department for review and approval ten (10) working days prior to the beginning of each quarter. At a minimum, the Work Plan will include:

1. The number of planned desk reviews,
2. The number of planned field audits,
3. The proposed quarterly staffing,
4. A confidential list of the providers to be reviewed or audited during the quarter, and
5. A listing and the current status of all Additional Service Requests.

**3.2.4.2** The Work Plan may be renegotiated on a more or less frequent basis than quarterly when material changes take place or may be anticipated during this period. Changes to the Work Plan would be agreed upon by both the Contractor and the Department, and may reflect changes in hours charged accordingly.

### **3.2.5 Contract Materials:**

All materials produced under this Contract, except for the materials produced in connection with the Title XVIII Contract, shall remain property of the State. Use of same by the Contractor for any purpose outside this Contract shall be only with the advance written permission of the Department.



### **3.3 Special Terms and Conditions:**

#### **3.3.1 Vendor Registration:**

The Contractor will complete and file a Vendor Registration and Disclosure Statement (Form WV-1) and remit the required fee.

#### **3.3.2 License Requirements:**

Provide certification that Contractor is registered with the Secretary of State's Office to do business in West Virginia; provide evidence that Contractor is in good standing with the State Agency of Employment Programs as to Unemployment Compensation coverage and Worker's Compensation coverage or exempt from such coverage.

#### **3.3.3 No Debt Affidavit:**

West Virginia State Code §5A-3-10a-(3)(d) requires that all Contractors submit an affidavit of debt which certifies that there are no outstanding obligations or debts owing the State of West Virginia. The Contractor will submit a No Debt Affidavit (completed and signed) prior to contract award or renewal.

#### **3.3.4 HIPAA**

The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's website (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR 160 103) and will be disclosing Protected Health Information (45 CFR 160 103) to the vendor. The Contractor shall indemnify and hold harmless the State and the Agency against any and all claims brought by any party attributed to actions of breach of confidentiality by the Contractor, subcontractors, or individuals permitted access by Contractor.

### **3.4 General Terms and Conditions:**

#### **3.4.1 Conflict of Interest:**

Contractor affirms that, as of the effective date of this Contract, it, its officers or members or employees have no unmitigated interest and shall not acquire any interest, direct or indirect, which would conflict or compromise in any manner or degree with the performance or its services hereunder. The Contractor further covenants that in the performance of the Contract, the Contractor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Agency.

### **3.4.2 Prohibition against Gratuities:**

Contractor warrants that it has not employed any company or person other than a bona fide employee working solely for the Contractor or a company regularly employed as its marketing agent to solicit or secure the Contract and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the Contract.

For breach or violation of this warranty, the State shall have the right to annul this Contract without liability at its discretion, and/or to pursue any other remedies available under this Contract or by law.

### **3.4.3 Certifications Related to Lobbying:**

The Contractor will certify that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit a disclosure form to report the lobbying.

The Contractor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this Contract was made and entered into.

### **3.4.4 Contractor Relationship:**

The relationship of the Contractor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this Contract. The Contractor as an independent contractor is solely liable for the acts and omissions of its employees and agents.

Contractor shall be responsible for selecting, supervising and compensating any and all individuals employed pursuant to the terms of this Contract. Neither the Contractor nor any employees or contractors of the Contractor shall be deemed to be employees of the State for any purposes whatsoever.

Contractor shall be exclusively responsible for payment of employees 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, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

With respect to the independent contractor relationship between the Contractor and the Department, the Contractor 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.

The Contractor 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 the Agency.

#### **3.4.5 Indemnification:**

The Contractor 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 Contractor's performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Contractor, 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; (3) Any failure of the Contractor, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws.

#### **3.4.6 Governing Law:**

This Contract shall be governed by the laws of the State of West Virginia. The Contractor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws (Federal, State or Local Government) regulations.

#### **3.4.7 Force Majeure:**

Neither party shall be liable for delays or nonperformance of this Contract due to strikes, fires, accidents, Acts of God, or other causes beyond the control of the party.

#### **3.4.8 Compliance with Laws and Regulations:**

The Contractor shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body.

The Contractor shall pay any applicable sales, use, or personal property taxes arising out of this Contract and the transactions contemplated thereby. Any other taxes levied upon this Contract, the transaction, or the equipment, or services delivered pursuant hereto shall be borne by the Contractor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this Contract.

#### **3.4.9 Subcontracts/Joint Ventures:**

The Contractor is solely responsible for all work performed under the Contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this Contract. The State will consider the Contractor to be the sole point of contact with regard to all contractual matters. The Contractor may, with the prior written consent of the State, enter into written subcontracts for performance of work under this Contract; however, the Contractor is totally responsible for payment to all subcontractors.

#### **3.4.10 Term of Contract & Renewals:**

This Contract shall be effective upon approval by purchasing and shall extend for the period of one (1) year, at which time the Contract may, upon mutual written consent at least thirty (30) days prior to the end of the then-current term, be renewed. Such renewals are for a period of up to one (1) year, with a maximum of two (3) 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, the Vendor may terminate the Contract for any reason upon giving the Agency ninety (90) days written notice. Notice by the Vendor of intent to terminate will not relieve the Vendor of the obligation to continue to provide services pursuant to the terms of the Contract.

#### **3.4.11 Non-Appropriation of Funds:**

If the Agency is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this Contract by the West Virginia Legislature, the Agency may terminate the Contract at the end of the affected current fiscal period without further charge or penalty. The Agency shall give the Contractor written notice of such non-allocation of funds as soon as possible after the Agency receives notice. No penalty shall accrue to the Agency in the event this provision is exercised.

#### **3.4.12 Contract Termination:**

The State may terminate this Contract immediately at any time the Contractor fails to carry out its responsibilities or to make substantial progress under the terms of this Contract. The State shall provide the Contractor with advance written notice of performance conditions which are endangering the Contract continuation. If the Contractor fails to remedy the conditions contained in the notice within thirty (30) days of the date of the notice, the State shall issue the Contractor an order 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 Contractor upon ninety (90) days prior notice to the State if the Contractor will no longer serve as either the Fiscal Intermediary ("FI") or Medicare Administrative Contractor ("MAC") for the State of West Virginia.

The Contract may also be terminated upon mutual agreement of the parties with ninety (90) days prior notice.

#### **3.4.13 Changes**

If changes to the original Contract become necessary, a formal Contract change order will be negotiated by the State, the Agency, and the Contractor, to address changes to the terms and conditions, and costs of work included under the Contract. An approved Contract change order is defined as one approved by the Purchasing Division and approved as to form by the West Virginia Attorney General's Office, encumbered and placed in the U.S. Mail prior to the effective date of such amendment. An approved Contract change order is required whenever the change affects the payment provision and/or the scope of the work. Such changes may be necessitated by new and amended Federal and State regulations and requirements.

As soon as possible after receipt of a written change request from the Agency, but in no event more than thirty (30) days thereafter, the Contractor shall determine if there is an impact on price with the change requested and provide the Agency a written statement identifying any price impact on the Contract or stating that there is no impact. In the event that price will be impacted by the change, the Contractor shall provide a description of the price increase or decrease involved in implementing the requested change.

**NO CHANGE SHALL BE IMPLEMENTED BY THE CONTRACTOR UNTIL SUCH TIME AS THE CONTRACTOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER.**

#### **3.4.14 Invoices:**

The Contractor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the Contract.

#### **3.4.15 Record Retention:**

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

### **PART 4 DEPARTMENT RESPONSIBILITIES**

#### **4.1 General Requirements:**

The Department agrees to provide the following:

**4.1.1** Provide the Contractor copies of all current regulations, policies and guidelines which are applicable to the performance of the Contractor's duties. At the Contractor's request, provide clarification regarding any State or Department regulations and procedures. The Department shall use its best efforts to provide appropriate administrative support and guidance to the Contractor.

**4.1.2** Provide the Contractor copies of all Medicaid provider cost reports, and other financial and program information applicable to the performance of the Contractor's duties.

**4.1.3** Arrange for meetings with integral Department personnel and outside entities for ongoing discussions and briefings with Contractor personnel.

**4.1.4** Provide the Contractor with a complete list of providers, including contact names and addresses, and quarterly updates to the provider list.

#### **4.2 Payment:**

The Contractor shall be reimbursed monthly on the basis of an all-inclusive hourly rate. The all-inclusive hourly rates are as follows ("on-site" will be considered within the greater Charleston, WV city limits):

NOVEMBER 1, 2021 – OCTOBER 31, 2022: BASE YEAR

**COST REPORT SERVICES**

Desk Audits/Reviews	\$83.53/Hour
Field Audits/Reviews	\$126.62/Hour

**DSH SURVEY FORM SERVICES**

Desk Audits/Reviews	\$83.53/Hour
Field Audits/Reviews	\$126.62/Hour

**ADDITIONAL SERVICES**

Additional Services/On-site (Chas., Wv)	\$126.62/Hour
Additional Services/Off-site (Columbia, SC)	\$83.53/Hour

NOVEMBER 1, 2022 – OCTOBER 31, 2023: YEAR ONE

**COST REPORT SERVICES**

Desk Audits/Reviews	\$86.04/Hour
Field Audits/Reviews	\$130.41/Hour

**DSH SURVEY FORM SERVICES**

Desk Audits/Reviews	\$86.04/Hour
Field Audits/Reviews	\$130.41/Hour

**ADDITIONAL SERVICES**

Additional Services/On-site (Chas., Wv)	\$130.41/Hour
Additional Services/Off-site (Columbia, SC)	\$86.04/Hour

NOVEMBER 1, 2023 – OCTOBER 31, 2024: YEAR TWO

**COST REPORT SERVICES**

Desk Audits/Reviews	\$88.62/Hour
Field Audits/Reviews	\$134.33/Hour

**DSH SURVEY FORM SERVICES**

Desk Audits/Reviews	\$88.62/Hour
Field Audits/Reviews	\$134.33/Hour

**ADDITIONAL SERVICES**

Additional Services/On-site (Chas., Wv)	\$134.33/Hour
Additional Services/Off-site (Columbia, SC)	\$88.62/Hour

NOVEMBER 1, 2024 – OCTOBER 31, 2025: YEAR THREE

**COST REPORT SERVICES**

Desk Audits/Reviews	\$91.28/Hour
Field Audits/Reviews	\$138.36/Hour

**DSH SURVEY FORM SERVICES**

**Desk Audits/Reviews**

**\$91.28/Hour**

**Field Audits/Reviews**

**\$138.36/Hour**

**ADDITIONAL SERVICES**

**Additional Services/On-site (Chas., Wv) \$138.36/Hour**

**Additional Services/Off-site (Columbia, SC) \$91.28/Hour**

**Palmetto GBA**

BY: Walter J. Johnson Digitally signed by Walter J. Johnson  
Date: 2021.08.19 15:44:09 -0400

(name and title of Intermediary's  
authorized representative)

DATE: August 19, 2021

**WV DHHR**

BY: Jeffrey L. Bush  
Office Director

(Name and Title WV DHHR Designee)

DATE: 09-02-2021



Exhibit 1

Agreement for Common Audit Under Titles V, XVIII and XIX

WHEREAS the Secretary of Health, Education and Welfare has the responsibility for the administration of titles V, XVIII and XIX of the Social Security Act and has urged coordination of these programs to the extent practicable;

WHEREAS it is required that under titles V, XVIII and XIX participating health care institutions, hereinafter referred to as providers, are to be reimbursed for inpatient services on a reasonable cost basis;

WHEREAS representatives of the Social Security Administration, the Medical Services Administration and the Maternal and Child Health Services of the Department of Health, Education, and Welfare have agreed that whatever audit of providers is required should serve the purpose of the three programs;

WHEREAS the (Palmetto, GBA), hereinafter referred to as the intermediary or MAC, has entered into an agreement with the Secretary of Health, Education, and Welfare to act as the fiscal intermediary under title XVIII, and that the intermediary is contractually obligated to make such audit of records of providers of services as is necessary to assure that the facilities are being reimbursed in accordance with the provisions of the Act and the Regulations promulgated pursuant thereto;

WHEREAS the Secretary has authorized intermediaries and State agencies to enter into agreements for use of common audit information under titles V, XVIII and XIX and sharing of such audit costs;

THEREFORE, the intermediary and the State of West Virginia, Department of Health and Human Resources, Deputy Secretary for Administration, hereinafter referred to as the WV DHHR, hereby agree to the following:

1. The intermediary shall have responsibility for performance of desk reviews of provider cost reports to determine their acceptability and for deciding the need for and scope of field audits. It is expected that the intermediary will arrange for appropriate consultation with the WV DHHR in arriving at its decision regarding need for or scope of any audit.
2. The intermediary and the WV DHHR, shall select a mutually acceptable audit capability to be used in the conduct of field audits, including the consideration of the intermediary's and the State agency's in-house audit staff. The intermediary and the WV DHHR shall enter into any subcontracts which might be necessary to accomplish field audits under the common audit program, in accordance with their responsibilities under their agreements with the

**EXHIBIT 1 (Cont.)**

Secretary of Health, Education, and Welfare for administration of their respective programs. (Administration of subcontracts will be arranged between the intermediary and State agency.)

**3. Cost sharing**

- a. The cost of common audits, including desk review, field audit activities, and, if applicable, final settlement activities, will be shared by the intermediary and the WV DHHR;
- b. The cost to each party to this agreement will be based upon the ratio of benefits paid to individual providers by titles V, XVIII, and XIX for the period covered by the cost report;
- c. (This provision will set forth the mutually satisfactory arrangements to be reached whereby each party contributes its share of the audit costs on a timely basis.)

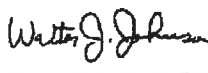
4. This agreement shall begin on November 01, 2014 and end on October 31, 2015. It will automatically be renewed for successive periods of one year unless the intermediary or the State agency(s) gives written notice of intention not to renew the agreement at least 90 days before the end of the current period.

5. Any costs incurred as a result of termination of this agreement will be shared on an equal basis.


6. Final settlement with the providers will be made Palmetto, GBA. (If separate settlements are to be made, the following should be added, "Coordination of settlements by the intermediary and the WV DHHR will be necessary to insure consistent treatment of questioned items.")

7. The provisions of the Agreement shall be applicable only in connection with the audit of those providers receiving reimbursement under title XVIII and at least one of the other titles referred to in this agreement.

**Palmetto GBA**

BY:  Digitally signed by Walter J. Johnson  
Date: 2021.02.19 15:44:18 -0400  
(name and title of Intermediary's authorized representative)

**WV DHHR**

BY: 

## EXHIBIT I

### Agreement for Common Audit Under Titles V, XVIII and XIX

WHEREAS the Secretary of Health, Education and Welfare has the responsibility for the administration of titles V, XVIII and XIX of the Social Security Act and has urged coordination of these programs to the extent practicable;

WHEREAS it is required that under titles V, XVIII and XIX participating health care institutions, hereinafter referred to as providers, are to be reimbursed for inpatient services on a reasonable cost basis;

WHEREAS representatives of the Social Security Administration, the Medical Services Administration and the Maternal and Child Health Services of the Department of Health, Education, and Welfare have agreed that whatever audit of providers is required should serve the purpose of the three programs;

WHEREAS the (Palmetto GBA), hereinafter referred to as the intermediary or MAC, has entered into an agreement with the Secretary of Health, Education, and Welfare to act as the fiscal intermediary under title XVIII, and that the intermediary is contractually obligated to make such audit of records of providers of services as is necessary to assure that the facilities are being reimbursed in accordance with the provisions of the Act and the Regulations promulgated pursuant thereto;

WHEREAS the Secretary has authorized intermediaries and State agencies to enter into agreements for use of common audit information under titles V, XVIII and XIX and sharing of such audit costs;

THEREFORE, the intermediary and the State of West Virginia, Department of Health and Human Resources, Deputy Secretary for Administration, hereinafter referred to as the WV DHHR, hereby agree to the following:

1. The intermediary shall have responsibility for performance of desk reviews of provider cost reports to determine their acceptability and for deciding the need for and scope of field audits. It is expected that the intermediary will arrange for appropriate consultation with the WV DHHR in arriving at its decision regarding need for or scope of any audit.
2. The intermediary and the WV DHHR, shall select a mutually acceptable audit capability to be used in the conduct of field audits, including the consideration of the intermediary's and the State agency in-house audit staff. The intermediary and the WV DHHR shall enter into any subcontracts which might be necessary to accomplish field audits under the common audit program, in accordance with their responsibilities under their agreements with the Secretary of Health, Education, and Welfare for administration of their respective programs. (Administration of subcontracts will be arranged between the intermediary and State agency.)
3. Cost sharing
  - a. The cost of common audits, including desk review, field audit activities, and, if applicable, final settlement activities, will be shared by the intermediary and the WV DHHR;
  - b. The cost to each party to this agreement will be based upon the ratio of benefits paid to individual providers by titles V, XVIII, and XIX for the period covered by the cost report;
  - c. (This provision will set forth the mutually satisfactory arrangements to be reached whereby each party contributes its share of the audit costs on a timely basis.) The schedule of rates attached to the proposal shall represent the mutually agreed upon arrangements for audit costs.

**EXHIBIT 1-continued**

4. This agreement shall begin on November 1, 2021 and end on October 31, 2022. It will automatically be renewed for successive periods of one year unless the intermediary or the State agency(s) gives written notice of intention not to renew the agreement at least 90 days before the end of the current period.
5. Any costs incurred as a result of termination of this agreement will be shared on an equal basis.
6. Final settlement with the providers will be made Palmetto, GBA. (If separate settlements are to be made, the following should be added, "Coordination of settlements by the intermediary and the WV DHHR will be necessary to insure consistent treatment of questioned items.")
7. The provisions of the Agreement shall be applicable only in connection with the audit of those providers receiving reimbursement under title XVIII and at least one of the other titles referred to in this agreement.

**Palmetto GBA**

BY: Walter J. Johnson Digitally signed by Walter J. Johnson  
Date: 2021.08.19 14:14:19 -0400  
(name and title of Intermediary's  
authorized representative)

**WV DHHR**

BY: Jeffrey L. Bush

Rev. 60

OK  
Alison  
Greenhouse

1-119

**STATE OF WEST VIRGINIA  
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): West Virginia Department of Health and Human Resources

Vendor: Palmetto GBA

Contract/Lease Number ("Contract"): CMA HHR2200000001

Commodity/Service: Common Audit Agreement

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – 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.  
Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the 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.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.  
Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.  
Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.  
Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikes through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: WV OAMR WV OHHR  
By: Jeffrey L. Bush Althea Greenhouse  
Printed Name: Jeffrey L. Bush Althea Greenhouse  
Title: Office Director Procurement Spec. Sr.  
Date: 09/02/2021 9-7-2021

Vendor: Palmetto GBA  
By: Walter J. Johnson Digitally signed by Walter J. Johnson  
Printed Name: Walter J. Johnson  
Title: President & COO  
Date: 9/2/2021

### **Provisions Required for Federally Funded Procurements**

- 1. Federal Funds:** This purchase is being funded in whole or in part with Federal Funds and is subject to the requirements established in 2 CFR § 200. Pursuant to 2 CFR § 200.317 the provisions of 2 CFR §§ 200.322 and 200.326 are expressly included in this solicitation below and incorporated into any contract resulting from this solicitation by reference.
- 2. 2 CFR §200.322 Procurement of recovered materials:** A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 3. §200.326 Contract provisions:** Pursuant to the requirements contained in 2 CFR §§ 200.317 and 200.326, the following provisions are included any contract resulting from this solicitation, to the extent that the provisions are applicable.
  - (A)** At a minimum, the administrative, contractual, or legal remedies contained in W. Va. CSR § 148-1-5 and the applicable definitions contained in W. Va. CSR § 148-1-2 apply to any contract resulting from this solicitation in instances where contractors violate or breach contract terms for contracts for more than the simplified acquisition threshold currently set at \$150,000 (which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908),.

West Virginia Code of State Rules § 148-1-5 states:

#### **§ 148-1-5. Remedies.**

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

**5.2.a.1.** The vendor agrees to the cancellation;

**5.2.a.2.** 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.a.3.** Failure to honor any contractual term or condition or to honor standard commercial practices;

**5.2.a.4.** The existence of an organizational conflict of interest is identified;

**5.2.a.5.** Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.

**5.2.a.6.** Violation of any federal, state, or local law, regulation, or ordinance.

**5.2.b.** 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.c. 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.d. 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.d.1.** 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.d.2.** 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.a.** The Director may suspend, for a period not to exceed one (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.a.1.** The vendor has exhibited a pattern of submitting bids and then requesting that its bid be withdrawn after bids have been publicly opened. For purposes of this provision, a pattern is two or more instances in any 12 month period.

**5.4.a.2.** The vendor has exhibited a pattern of poor performance in fulfilling his or her contractual obligations to the State. Poor performance includes, but is not limited to, two or more instances of any of the following: violations of law, regulation, or ordinance; failure to deliver timely; failure to deliver quantities ordered; poor performance reports; and failure to deliver commodities, services, or printing at the quality level required by the contract.

**5.4.a.3.** 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.a.4.** The vendor's actions have given rise to one or more of the grounds for debarment listed in section 5A-3-33d.

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

**5.4.b.1. Upon a determination by the Director that a suspension is warranted, the Director will serve a notice of suspension to the vendor.**

**5.4.b.2. A notice of suspension must inform the vendor:**

**5.4.b.2.A. Of the grounds for the suspension;**

**5.4.b.2.B. Of the duration of the suspension;**

**5.4.b.2.C. Of the right to request a hearing contesting the suspension;**

**5.4.b.2.D. That a request for a hearing must be served on the Director no later than five (5) working days of the vendor's receipt of the notice of suspension;**

**5.4.b.2.E. That the vendor's failure to request a hearing no later than five (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.b.2.F. 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.b.3. A vendor's failure to serve a request for hearing on the Director no later than five (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.b.4. 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.b.5. Within five (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.b.6. The hearing will be recorded and an official record prepared. Within ten (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.c. A vendor may appeal a decision of the Director to the Secretary of Administration. The appeal must be in writing and served on the Secretary no later than five (5) working days of receipt of the Director's decision.

5.4.d. 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 ten (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.e. 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 West Virginia 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.a. Debarment proceedings shall be conducted in accordance with West Virginia 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.b. 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.c. 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.d. Pursuant to West Virginia Code section 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.e. List of Debarred Vendors. The Director shall maintain and publicly post a list of debarred vendors on the Purchasing Division's website.

**5.6. Damages.**

5.6.a. 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.b. 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.c. 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.

**(B)** At a minimum, the termination for cause and for convenience provisions contained in W. Va. CSR § 148-1-5.2 and the applicable definitions contained in W. Va. CSR § 148-1-2 apply to any contract in excess of \$10,000 resulting from this solicitation.

West Virginia Code of State Rules § 148-1-5.2 states:

**5.2. Contract Cancellation.**

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

5.2.a.1. The vendor agrees to the cancellation;

5.2.a.2. 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.a.3. Failure to honor any contractual term or condition or to honor standard commercial practices;

5.2.a.4. The existence of an organizational conflict of interest is identified;

5.2.a.5. Funds are not appropriated or an appropriation is discontinued by the legislature for the acquisition.

5.2.a.6. Violation of any federal, state, or local law, regulation, or ordinance.

5.2.b. 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.c. 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.

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

41 CFR § 60-1.3 defines "Federally assisted construction contract" as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

Accordingly, to the extent that this contract meets the definition of a "federally assisted construction contract" under 41 CFR Part 60-1.3, the following clause is included:

**41 CFR 60-1.4 - Equal opportunity clause. (b) *Federally assisted construction contracts.***

In accordance with the requirements of described above, and except as otherwise provided in the applicable regulations, the following language is hereby incorporated into any contract resulting from this solicitation involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may

request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**(D) Davis-Bacon Act, as amended (40 U.S.C.3141–3148).** Any construction contract resulting from this solicitation hereby requires 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 are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week.

Any construction contract resulting from this solicitation hereby requires compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient 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.

**(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708).** Where applicable, any contract resulting from this solicitation in excess of \$100,000 that involve the employment of mechanics or laborers hereby requires compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor 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.

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

**(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—** Any contract resulting from this solicitation in excess of \$150,000 hereby requires compliance 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).

**(H) Debarment and Suspension (Executive Orders 12549 and 12689)—** Any contract resulting from this solicitation will not be awarded to parties listed on the government wide Excluded Parties List System 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."

**(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—** Any contract resulting from this solicitation requires compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award of \$100,000 or more 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.

## 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. 111<sup>th</sup> 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](http://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](mailto: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 a 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.

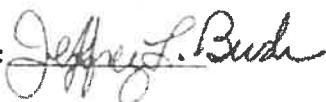
#### 5. General Provisions/Ownership of PHI.

- 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.

APPROVED AS TO FORM THIS 26th  
DAY OF June 20 11  
BY Patrick Morrissey  
Attorney General


**AGREED:**

**Name of Agency:** WV DHHR OAMR

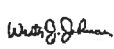
**Signature:** 

**Title:** Office Director WV OAMR

**Date:** 09-02-2021

  
Procurement Specialist, Sr  
9-7-2021

**Name of Associate:** Palmetto GBA

**Signature:**   
Digitally signed by  
Walter J. Johnson  
Date: 2021.08.19  
12:59:38 -04'00'

**Title:** President/COO

**Date:** August 19, 2021

## 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: Palmetto GBA

Name of Agency: WV DHHR Office of Accountability and Management Reporting (OAMR)

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

PHI may consist of schedules and attachments to various Medicare and Medicaid cost report submissions by different health care provider types that are intentionally or inadvertently included with information.