



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

State of West Virginia
Contract

Order Date: 05-18-2022

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:	CCT 0506 3074 BPH2200000001 1	Procurement Folder:	1031835
Document Name:	PUBLIC HEALTH EMERGENCY NOTIFICATION SYSTEM	Reason for Modification:	
Document Description:	PUBLIC HEALTH EMERGENCY NOTIFICATION SYSTEM		
Procurement Type:	Central Contract - Fixed Amt		
Buyer Name:	Crystal G Hustead		
Telephone:	(304) 558-2402		
Email:	crystal.g.hustead@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2022-05-16
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-05-15

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000161584 COLLABORATIVE FUSION INC 235 PEACHTREE ST NE SUITE 2300 ATLANTA GA 30303 US Vendor Contact Phone: 954-308-8728 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>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	Not Entered			#3	Not Entered			#4	Not Entered			Requestor Name: Courtney M Buskirk Requestor Phone: 304-352-4853 Requestor Email: courtney.m.buskirk@wv.gov 22 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	Not Entered																				
#3	Not Entered																				
#4	Not Entered																				

INVOICE TO	SHIP TO
PURCHASING DIRECTOR 304-356-4116 HEALTH AND HUMAN RESOURCES BPH - THREAT PREPAREDNESS 505 CAPITOL ST, STE 200 CHARLESTON WV 25301 US	PURCHASING DIRECTOR 304-356-4116 HEALTH AND HUMAN RESOURCES BPH - THREAT PREPAREDNESS 505 CAPITOL ST, STE 200 CHARLESTON WV 25301 US

Total Order Amount: \$47,764.36

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION <i>Linda Harper</i> DATE: 01/27/2022 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM <i>John S. Gray</i> DATE: 5/31/2022 ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION <i>Beverly Toles</i> DATE: 6-1-2022 ELECTRONIC SIGNATURE ON FILE
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Extended Description:

THE VENDOR, COLLABORATIVE FUSION INC, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES (DHHR), BUREAU FOR PUBLIC HEALTH (BPH), CENTER FOR THREAT PREPAREDNESS (CTP), INTO A CONTRACT FOR MANAGING THE SERVICE TO PROVIDE AUTOMATED NOTIFICATIONS OF PUBLIC HEALTH AND MEDICAL EMERGENCY CALLOUTS AND OTHER CRITICAL INFORMATION TO MEMBERS OF VARIOUS EMERGENCY AND HEALTH PREPAREDNESS RESPONSE TEAMS AND PUBLIC HEALTH PARTNERS THROUGHOUT THE STATE, PER THE SPECIFICATIONS, TERMS AND CONDITIONS, BID REQUIREMENTS, ADDENDUM 1 ISSUED 07/22/2020, AND THE VENDOR'S BID DATED 07/31/2020, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	93131802	0.00000		0.000000	\$500.00
Service From	Service To	Manufacturer		Model No	
2022-05-16	2023-05-15				

Commodity Line Description: Emergency Notification System - Year 1/Deliverable 4

Extended Description:

Year 1/Deliverable 4: Specifications Item 4.1.14.1.4: By end of the first month of the first year of the contract: Vendor will develop initial user training curriculum/ delivery mechanism and complete initial user training for State and LHDs as described above in this document in Section 4.1.12..

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	93131802	0.00000		0.000000	\$46,421.00
Service From	Service To	Manufacturer		Model No	
2022-05-16	2023-05-15				

Commodity Line Description: Emergency Notification System - Year 1/Deliverable 6

Extended Description:

Year 1/Deliverable 6: Specifications Item 4.1.14.1.6: From the first day of the second month of the first year of the contract through the end of contract (first year): Vendor will maintain system in "ready" state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
3	93131802	0.00000		0.000000	\$843.36
Service From	Service To	Manufacturer		Model No	
2022-05-16	2023-05-15				

Commodity Line Description: Emergency Notification System - Year 1/Deliverable 7

Extended Description:

Year 1/Deliverable 7: Specifications Item 4.1.14.1.7: From the first day of the second month of the first year of the contract through the end of contract (first year): Technical assistance will be performed as needed upon contact by State or Local staff at a minimum not to exceed quantity of 15 hours of technical assistance per month (vendor may provide more hours in any month as part of this deliverable, but must provide at least 15 hours, and may not charge for any hours in addition to the 15).

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid 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 May 16, 2022 and extends for a period of One (1) year(s).

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.

4. NOTICE TO PROCEED: Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

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 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 or not 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.

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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: The apparent successful 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:

☒ N/A _____ for _____

☐ Liquidated Damages Contained in the Specifications

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: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

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 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.

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 with regard to 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. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

39. 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.

40. 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.requisitions@wv.gov.

41. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. 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.

Revised 01/09/2020

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. 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. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the 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.

43. 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.

44. 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.

45. 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.



Certification Page

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.

Ann Marie Brown

(Name , Title)

Ann Marie Brown – Client Success Manager

(Printed Name and Title)

235 Peachtree Street NE, Suite 2300 Atlanta GA, 30303

(Address)

336 689 5060 - annmarie.brown@juvare.com

(Phone Number)/ Email

CERTIFICATION AND SIGNATURE: By signing below, or resubmitting 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 is 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.

Collaborative Fusion

DocuSigned by: (Company)

Nick Meeks

D4DD6026E50C4C6...

(Authorized Signature) (Representative Name, Title)

Nick Meeks – Senior Vice President and Chief Financial Officer

(Printed Name and Title of Authorized Representative)

July 31, 2020

(Date)

470.279.6457 Fax – 470.279.6025

SOFTWARE SERVICES AGREEMENT

In the event of an inconsistency in the terms of this Agreement and the terms in the Attachment 1 - Provisions Required for Federally Funded Procurements, the terms in the Attachment 1 - Provisions Required for Federally Funded Procurements shall control for purposes of the inconsistency.

This Software Services Agreement (the "Agreement"), effective _____, 2020 ("Effective Date"), is by and between the **State of West Virginia Department of Health and Human Services** (hereinafter referred to as "Client"), a State of West Virginia government department having its principal place of business located at State Capitol Complex, Bldg. 3, Room 206, Charleston, West Virginia 25305, and **Collaborative Fusion, Inc. ("CFI")**, a Delaware corporation with its principal place of business located at 235 Peachtree Street NE, Suite 2300, Atlanta, Georgia 30303. The following Exhibits are attached hereto and incorporated herein as part of this Agreement:

1. Attachment 1 - Provisions Required for Federally Funded Procurements
2. Exhibit A – Definitions
3. Exhibit B – Third-Party Functionality Used to Support the Subscription
4. Exhibit C – Fees and Payment Terms
5. Exhibit D – Description of Hosted Services
6. Exhibit E – Description of Support Services

Upon execution of this Agreement by both parties, Client understands and acknowledges: (i) no new Software is being provided to Client pursuant to this Agreement as Client already received a subscription based access to the CORES RMS™ Software identified on Exhibit C to this Agreement and this Agreement is initially only for a one (1) year renewal of the Software-as-a-Services ("SaaS") based subscription to the CORES RMS Software; and (ii) any previously executed agreements, including, without limitation, the Contract – Order Number CCT 0506 0506 BPH1500000001, dated 2015-06-18 (collectively, the "Prior Agreement") by and between the parties for the CORES RMS Software Subscription and related services thereto shall be terminated and replaced by this Agreement in all effects. Any payment obligations set forth in such Prior Agreements shall remain due and payable and shall survive such termination.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Unless otherwise specifically stated in this Agreement or in another Exhibit hereto, the capitalized terms used in this Agreement shall have the meanings set forth in Exhibit A to this Agreement.

2. **Subscription.**

2.1. **Subscription Grant.** Subject to the terms and conditions of this Agreement, CFI hereby grants to Client a non-exclusive, non-transferable right to Use the Software identified on Exhibit C on a Software-as-a-Services ("SaaS") subscription basis without right of sublicense solely for Client's internal purposes for the stated Term. This Subscription does not transfer a license, title, or any proprietary or Intellectual Property rights to the Software, Documentation, or any Trade Secrets, copyrights, patents, or trademarks, embodied therein or used in connection therewith. CFI or its third-party service providers retain all right, title, and interest in and to the original, and any copies, of the Software and Intellectual Property rights therein.

2.2. **Change in Scope of Subscription.** The scope of this Subscription may be changed by a supplemental written agreement or amendment executed by both parties; for clarification purposes only, additional software products may be included in the Subscription, or the Subscription may be used for additional purposes beyond those described in 2 above.

2.3. **Client Responsibilities.**

(a) Client agrees not to, and shall not allow any of its authorized Users, employees, agents, representatives, affiliates or other third party to, (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any Source Code or underlying ideas, algorithms, file formats or programming, or

interoperability interfaces of the Software or any portion thereof, (ii) sublicense, assign, transfer, rent, or sell use of the Subscription or the Software therein, (iii) remove any product identification, copyright, or other notices, (iv) develop any derivative work based upon the Subscription, Software, Documentation, or any Confidential Information, (v) provide, disclose, divulge or make available to, or permit use of the Subscription or the Software therein by any third party without CFI's prior written consent, or (vi) except as specified in the applicable user documentation, modify or incorporate the Subscription or the Software therein into or with other software. Client is responsible for the use and access of its Users, employees, agents, representatives, affiliates or other third party.

(b) **Login Credentials.** Client shall be solely responsible for all security regarding its User IDs, logins, passwords, and connectivity. Should security of any of these items be compromised, Client is obligated to immediately contact CFI to have such User IDs or passwords changed to prevent malicious use or any use in violation of this Agreement of the Subscription or Software. Further, if any of these items are compromised and used for malicious purposes, Client is responsible for all content and fees, including notification charges for messages sent using the compromised account information.

(c) **Third Party Technology Licenses.** Client acknowledges and agrees that, (a) in order to be executed, the Subscription require certain third-party technology, described in Exhibit B hereof, (b) CFI does not have the right to grant sublicenses to such third-party technology, and (c) prior to use of the Subscription, the CLIENT will, if necessary, obtain the licenses from the vendors of such third-party technology.

(d) **Client Data.**

(i) Entry of Client Data. Client's Users using the Subscription shall be solely responsible for all data entry, error correction, and the accuracy of the data related to themselves while using the Subscription. Notwithstanding the foregoing and only if the Services purchased by CLIENT includes such service, CFI shall use its reasonable efforts to verify, on a routine basis through external databases, the accuracy of credential information inputted into the Software by the Users.

(ii) Ownership. Information entered by Users into the Software (collectively "Client Data") will remain the property of Client. The Client Data is owned and controlled by the Client. CFI shall have the right to access and use the Client Data to perform its obligations in this Agreement, so long as it maintains the confidentiality thereof. If included as part of the Services, CFI may access the Client Data for the purpose of verifying through external databases, the accuracy of credential information data, so long as it maintains the confidentiality thereof.

(iii) Schema. The schema relating to the storage and organization of the Client Data is owned and controlled by CFI. Client agrees and acknowledges that the Client has no right to the schema relating to the storage and organization of the Client Data. Client further agrees and acknowledges that the Client has no right to receive the Client Data in a format organized or stored according to the schema.

(iv) Return of Client Data. Upon the expiration of the Subscription or the termination of this Agreement, whichever is earlier, Client may request an export by CFI of the Client Data. The costs associated with exporting the Client Data will be paid by the Client at CFI's then-current rates for data extraction services at the time of the export.

(e) Notifications. Client is responsible for all notifications transmitted through the Subscription and the Software thereto. Client acknowledges that all content, data, text, messages and other material contained in a voice, text, e-mail, Short Message Service ("SMS"), or other telephonic or electronic Notification ("Content") is the sole responsibility of the Client. Client is solely responsible for the integrity and quality of the Content. Client will not send any notifications unless (i) (a) the recipient of the message is an employee of Client sending the message (b) is using a device owned or paid for by the Client sending the message (c) using a personal device and the User has given the Client permission to communicate with them via the device or (d) Client has obtained "opt-in" consent from the User and/or recipient; (ii) applicable to sending SMS only, CFI provides Users with a mechanism for opting out of receiving messages, including information on how to "opt-out" through the Software within the Subscription. Users can opt-out of receiving messages from the Client by sending a message to the Client Administrator with "unsubscribe" in the text or removing themselves from the notifications; (iii) Client represents and warrants that it will send notifications in accordance with this Agreement; (iv) Client has determined that the phone numbers to be called exclude emergency numbers and other numbers that may not be called using an automated system under applicable law; (v) by way of example, and not as limitation, Client agrees to (a) comply with all federal, state and local laws, including but not limited to, the Fair Debt Collection Practices Act, Federal Trade Commission or any other federal or state regulatory authority; (vi) and that Client will not: (a) violate any regulation of the U.S. Securities and Exchange Commission or any stock exchange, infringe one another's rights in Intellectual Property, is invasive of another's right to privacy, or violate any privacy laws, privacy policies of Client or any other third parties or do anything that would justify a complaint to the Federal Communications Commission; (b) engage or facilitate any illegal, unethical, deceptive or misleading practices in connection with the use of the Subscription and Software thereto, including but not limited to, creating a false id CLIENT or forged

email, phone or message header or otherwise attempt to mislead others as to the id CLIENT of the sender or the origin of the message; (c) use the Subscription and Software thereto in connection with any junk email, junk phone messages, spamming or any unsolicited messages (commercial or otherwise); (d) provide, or knowingly allow any third parties to provide, content or other material to be transmitted in connection with or through the Subscription and Software thereto which: is defamatory, libelous, obscene, pornographic or is harmful to minors; promotes violence, discrimination, or illegal activities; transmit any material that contains viruses, worms, cancelbots or any other harmful code or computer programs designed to disrupt the functionality of any computer software or hardware or telecommunications equipment; or (e) violate any law, statute, ordinance or regulation, (including without limitation the laws and regulations governing export control); and (vii) Client is allowed to send SMS in text format only. No binary SMS messaging is allowed. The CLIENT acknowledges that all Content, data, text, messages and other material contained in a voice or text Notification sent by the CLIENT through the Subscription and Software thereto are the sole responsibility of the CLIENT. Under no circumstances will CFI or any of its Providers be responsible for any loss, damage, or liability arising out of the Content of any notification, including any mistakes contained in the Content or the use or transmission of the Content.

(f) Background Services. Client warrants and certifies that it will request, receive, disseminate and otherwise use the background screening services including, but not limited to, criminal record history, motor vehicle records, employment verification, education verification, and social security number verification (collectively "Background Services") in compliance with all applicable federal, state and local statutes, rules, codes and regulations, including but not limited to, the Fair Credit Reporting Act ("FCRA") and its state equivalents, the Driver's Privacy Protection Act 18 U.S.C. §2721 et seq., ("DPPA") and its state equivalents, the Gramm-Leach-Bliley Act ("GLB") and its state equivalents, and including any changes, supplements or amendments to such statutes, rules, codes and regulations as well as any case law interpreting such statutes, rules, codes and regulations (collectively referred to herein as "The Laws"). Client accepts the responsibility of understanding and for staying current with all applicable laws, specific state forms, certificates of use or other documents or agreements including any changes, supplements or amendments thereto imposed by the states (collectively referred to as "Specific State Forms") from which it will order Background Services or materials. The Client hereby certifies that it has filed or will file prior to use all applicable Specific State Forms required by individual states and that if it receives Background Services or materials from a State requiring a state form, it will execute a copy of the appropriate State agreements and return same to CFI. Client warrants and certifies that it is a permissible purpose under the FCRA for which the Background Services were furnished; it has established, will implement and comply with reasonable procedures designed to ensure that the information supplied by CFI and CFI's partners is only distributed to an end-user with a permissible purpose including exercising reasonable efforts to verify the id of that user; obtain a certification from the end-user of the purposes for which the report will be used, and a certification that the report will not be used for any other purpose. Client shall, at Client's sole cost and expense, defend, indemnify and hold CFI, its affiliates and each party's employees, officers, directors, agents, representatives and contractors harmless from and against any and all claims and damages that arise from (a) infringement or contributory infringement to the extent caused in whole or in part by Client, its Authorized Users, agents, representatives, employees or by third parties under Client's direction; (b) additions, changes or modifications to the Services

and/or Software therein by or on behalf of Client; (c) incorporation of the services or any component thereof into any other Client product or process; (d) use of the services by Client other than as permitted by this Agreement or applicable Exhibit hereto; (e) Client's breach of any of its obligations under this Agreement or applicable Exhibit hereto; (f) any personal injury or property damage caused by Client; (g) Client's breach of any national, federal, state or local law or regulation in connection with Client's use of the System or services; (h) Client's performance of services for Client's clients; (i) claims against CFI by Client's clients, customers or third parties that Client communicates with using the services; and (j) libelous, slanderous, indecent or other statement concerning or arising out of Client's statement or publications to or about individuals or business entities.

3. **Services.** During the Term and provided Client is not in violation of this Agreement, including, without limitation, payment of the applicable Fees for the Term, CFI will provide the following services:

3.1. **Activation and Access.** Upon CFI's receipt of the Client's payment of the Fees set forth on Exhibit C, CFI will activate and provide the Client with access to Use the Subscription.

3.2. **Hosting Services.** CFI will provide the Hosted Services, as set forth in Exhibit D hereto, for the Subscription to the Software during the Standard Business Hours.

3.3. **Support Services.** CFI will provide Support Services, all as further defined in Exhibit E hereto, for the Subscription and the Software therein during the Standard Business Hours consisting of the following: (i) CFI will use reasonable efforts to maintain the Software to comply with the applicable Documentation in all material respects, and (ii) if and when made generally available through Support Services to CFI's other customers receiving Support Services, providing subsequent Software Updates for Use consistent with this Agreement and CFI's then-current policies. All Software Updates received by Client shall be subject to the terms of this Agreement. Support Services shall not include, and CFI shall not be responsible for, (i) failures of the Software to perform consistent with the Documentation, specifications, requirements and other details set forth in this Agreement or any subsequent amendments or quotes hereto in all material respects resulting from or caused by Client, Client's hardware and equipment, Client's connection to the Software, third party service providers, including, without limitation, communications services providers, or otherwise disclaimed elsewhere in this Agreement; (ii) any latency or downtime due to acts or omissions by the Client, its Administrators, or Users; (iii) or acts or omissions of unauthorized third parties and/or third parties over which CFI has no control; (iv) Internet latency, failures, or outages; (v) problems associated with the computer hardware and software systems used by the Client or its Administrators.

3.4. **Background Services.** If Background Services are included on the Services set forth on Exhibit C, CFI shall Beginning on the effective date of this Agreement, CFI shall maintain and shall cause the CLIENT to maintain all records related to each request made to for Background Services for a (3) year period (and such period as prescribed by law) from the date each request was made. The information retained and reports pursuant to this Section shall include, but not be limited to, the: request date, requested individual, requestor, and permissible purpose for each report and any other information sufficient to verify that the request and use of the report complies with the terms of this Agreement and the FCRA.

4. Fees and Payment Terms.

4.1 **Payment: Late Payment.** All amounts are due and payable by Client to CFI as set forth in Exhibit C hereto (unless alternative payment terms are mutually agreed up on by the parties). Any

payments not received by CFI within thirty (30) days after the date of the applicable invoice (or as otherwise due pursuant to Exhibit C or an applicable Quote) will be considered past due and will accrue a late fee of 1.5% (or, if less, the highest amount allowed by applicable law) for failure to pay such invoiced amount within thirty (30) days of the applicable invoice date and for each thirty (30) day period thereafter that such amounts remain past due and owing.

4.2 **Travel Expenses and Additional Charges.** To the extent that the Services provided hereunder may require CFI to travel, Client shall pay Travel Expenses reasonably incurred by CFI in connection with such travel. CFI shall invoice Client for Travel Expenses on a monthly basis as incurred. Travel Expenses are in addition to any charges set forth in this Agreement or any Quote hereto. Other additional charges may be required should Client elect to: (a) additional Services beyond what has been agreed to herein; (b) increase the use limitations on the Software; (c) increase the number of non-production instances of the Software; (d) additional Software; (e) upon exercise of an Option Period; (f) increase storage capacity; or (g) as otherwise required by the Agreement.

4.3 (Omitted.)

4.4 **Suspension of the Software, Services and Support Services.** Without limitation as to any other rights or remedies of CFI under this Agreement, CFI reserves the right to immediately suspend Client's access to and use of the Services (including, without limitation, to the Software and the Support Services), without notice to Client, if any amounts payable to CFI are past due and not paid within the time frame set forth in Section 5.1 or elsewhere in this Agreement or an Exhibit, Statement of Work or Quote hereto, as applicable. Client agrees that CFI shall have no liability to Client, and Client waives any claim or action against CFI in the event of suspension or termination of access to or use of the Services for Client's failure to timely pay charges. Client's payment obligations shall continue during any period of suspension pursuant to this Section.

4.5 **Taxes.** All amounts charged by CFI are exclusive of, do not include, and Client shall be solely responsible for payment of, all sales, excise, use, value added, or other taxes, tariffs and duties that may be applicable to the Services, except for any taxes based upon CFI's net income, assets or worth. CFI shall invoice Client for amounts it is obligated to collect or is allowed to recover as such taxes, tariffs and duties. Client's obligations for the payment of taxes, tariffs and duties payable hereunder shall survive the expiration or termination of this Agreement. If the transaction or the Client is exempt from taxes, CFI will not charge tax provided that Client timely provides CFI with a valid exemption certificate or other evidence of such exemption in a form reasonably acceptable to CFI. To the extent permitted under applicable laws and regulations, CFI will not charge tax on transactions for the electronic delivery of the Services.

5. **Ownership of Intellectual Property.** The Software, including, without limitation, the CORES Platform, and Documentation, and all copies thereof, shall remain the exclusive property of CFI and/or its third-party licensors. All applicable Intellectual Property rights, including, without limitation, copyrights, trademarks, logos, and patents, shall remain vested in CFI and/or its third-party licensors. Client shall not claim, register, alter or modify, any interest in such Intellectual Property rights, including, without limitation, copyrights, trademarks, logos, and patents, nor shall Client nor attempt to do any of the foregoing. Client shall not translate any of the CFI trademarks into any other language or alphabet. Notwithstanding the foregoing, Client shall always have title to data input and output arising out of the use of the Software, and any computer programs developed by or for Client using output of the Software as input to another source, and which do not include any logic and code of the Software, and such shall remain the

exclusive property of the Client. Client acknowledges and agrees that CFI may seek equitable relief at any time to remedy a violation or threatened violation of the restrictions set forth herein regarding the use and protection of the Software and Documentation.

6. Warranties and Disclaimers

6.1 Limited Warranty. During the term of this Agreement, CFI and its Providers warrant only to Client that the Subscription and Software will be accessible through the Internet and that CLIENT's use of the Software and Subscription will not be materially limited. CLIENT'S SOLE AND EXCLUSIVE REMEDY, AND CFI'S SOLE AND EXCLUSIVE LIABILITY, FOR BREACH OF THIS WARRANTY WILL BE REACTIVATION OF THE SUBSCRIPTION TO THE SOFTWARE UPON CFI'S RECEIPT OF WRITTEN NOTIFICATION FROM CLIENT THAT SUCH ACCESS IS NOT WORKING OR IN COMPLIANCE OR THAT IT IS LIMITED. CFI AND ITS PROVIDERS DO NOT WARRANT THAT THE SUBSCRIPTION, SOFTWARE THERETO, SERVERS, AND/OR TELEPHONY INFRASTRUCTURE WILL MEET CLIENT'S REQUIREMENTS, WILL BE UNINTERRUPTED OR ERROR-FREE, OR WILL MEET ANY PARTICULAR CRITERIA OR PERFORMANCE, QUALITY, ACCURACY, PURPOSE, OR NEED. Because the foregoing Limited Warranty relates to the availability of the Software, which may be used on a daily basis, no action for breach of such Limited Warranty may be commenced unless Client has provided CFI with written notice and an opportunity to cure within the thirty (30) calendar days immediately following the date of the alleged breach.

6.2 Disclaimer. EXCEPT FOR THE LIMITED EXPRESS WARRANTY PROVIDED ABOVE, CFI AND ITS PROVIDERS MAKE NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIM THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ESPECIALLY RELATING TO THIRD PARTY INTEGRATIONS DATA ACCURACY. CLIENT ACKNOWLEDGES THAT NO REPRESENTATIONS OTHER THAN THOSE CONTAINED IN THIS AGREEMENT HAVE BEEN MADE RESPECTING THE SOFTWARE, THE SUBSCRIPTION, OR THE SERVICES TO BE PROVIDED BY CFI AND ITS PROVIDERS, AND THAT CLIENT HAS NOT RELIED ON ANY REPRESENTATION NOT EXPRESSLY SET OUT HEREIN. FURTHER, CLIENT ACKNOWLEDGES AND AGREES THAT THE INTERNET IS NOT ESTABLISHED OR MAINTAINED BY CFI, THAT CFI HAS NO CONTROL OVER THE INTERNET, AND THAT CFI IS NOT LIABLE FOR THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET WHICH MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE SOFTWARE, THE SUBSCRIPTION, OR THE PROVISION OF THE SERVICES. ADDITIONALLY, ALL BACKGROUND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, INCLUDING ANY WARRANTIES OR REPRESENTATIONS OF ACCURACY OR COMPLETENESS. NEITHER CFI OR ITS THIRD PARTY SUPPLIERS OR PROVIDERS MAKE REPRESENTATIONS, COVENANTS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE SERVICES OR MATERIALS DELIVERED OR THE MEDIUM OF DELIVERY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IN RESPECT OF ANY WARRANTY ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. NEITHER CFI NOR ITS THIRD-PARTY SUPPLIERS AND/OR PROVIDERS SHALL HAVE ANY LIABILITY FOR CONCLUSIONS REACHED FROM USE OF THE SERVICES OR MATERIALS. CFI and its third party suppliers / providers shall not be liable to the

CLIENT, the user, or to anyone else for any loss or damage of any kind, including without limitation, special, indirect, incidental or consequential damages, with respect to the Background Services or materials delivered or the medium of distribution, regardless of whether such liability is based in tort, contract or otherwise from the use of the Background Services. Neither CFI nor its third party suppliers / providers shall be liable to the CLIENT for any loss, injury, claim, liability or damage of any kind resulting in any way from (a) errors in or omissions from the Background Services or materials available or not included therein, (b) the unavailability or interruption of the Background Services or materials, (c) use of the Background Services or materials (regardless of whether the Client received any assistance from CFI or any supplier and/or provider in using the Background Services or materials), (d) the content of the Background Services, (e) use of the Background Services or authorized printouts by an authorized individual, user or organization, authorized user or other third parties.

6.3 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY EXHIBITS OR ATTACHMENTS HERETO AND TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, CFI (INCLUDING ITS AFFILIATES) SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY EXHIBIT, QUOTES OR ORDERS HEREUNDER (HOWEVER ARISING, UNDER ANY THEORY INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, CONTRACT OR STRICT LIABILITY), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR INTERRUPTED COMMUNICATIONS, LOST DATA, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, LOSS OF RIGHTS OR SOFTWARE OR SERVICES AND/OR DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE SOFTWARE OR SERVICES, EVEN IF CFI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN. SUBJECT TO THE FOREGOING AND TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, FOR THIS AGREEMENT AND EACH QUOTE FOR SOFTWARE OR SERVICES HEREUNDER, IN NO CASE SHALL CFI'S (INCLUDING ITS AFFILIATES) MAXIMUM AGGREGATE LIABILITY DURING ANY TWELVE (12) MONTH PERIOD DURING THE TERM OF THIS AGREEMENT (THE FIRST OF WHICH SHALL COMMENCE ON THE EFFECTIVE DATE OF THIS AGREEMENT) UNDER ANY CIRCUMSTANCES EXCEED THE AMOUNTS ACTUALLY PAID TO CFI BY CLIENT PURSUANT TO THIS AGREEMENT DURING SUCH TWELVE (12) MONTH PERIOD (EXCLUDING TRAVEL EXPENSES). THE PARTIES UNDERSTAND AND AGREE THAT THE LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT REPRESENTS A REASONABLE ALLOCATION OF RISKS, AND EACH PARTY EXPRESSLY CONSENTS TO SUCH ALLOCATION. CFI SHALL HAVE NO LIABILITY OF ANY KIND IN THE EVENT CLIENT'S RECORDS OR OTHER DATA SUBMITTED FOR PROCESSING ARE LOST OR DAMAGED.

6.4 Limitation of Warranties. Except the Limited Warranty in Section 6.1, Client acknowledges and agrees that CFI has made no agreements, representations or warranties other than those expressly set forth in this agreement.

7. Release and Indemnity

7.1 Release from Liability. CLIENT agrees to indemnify, defend, hold harmless, and release and forever discharge CFI (and its Providers, directors, officers, managers, employees, affiliates, successors, members, auditors, advisors, shareholders, and

assigns) from and against all losses, damages (including incidental and consequential damages), expenses (including court costs, reasonable attorneys' fees, interest expenses and amounts paid in compromise or settlement), suits, actions, claims, penalties, liabilities, demands, causes of action, or obligations, related to, caused by, arising from or on account of the activities of CLIENT or any other person, including but not limited to any claims asserted against CFI relating in any way to the provision of services or products, the performance of CFI's obligations, the services or products provided by CFI (except to the extent that such claims arise out of or result solely from the gross negligence or willful misconduct of CFI, its employees or agents), or the failure of CLIENT to comply with any covenant, provision, or agreement of CLIENT contained herein. The obligation of CLIENT to indemnify CFI shall also include, without limitation, claims relating to any modification to the Software or the Subscription by anyone other than a CFI employee or contractor.

7.2. Release from Liability. CLIENT ACKNOWLEDGES THAT PERSONS OTHER THAN CFI MAY INTERFERE WITH THE PROPER FUNCTIONING OF THE SUBSCRIPTION AND THE SOFTWARE THERE, I.E. "HACK" THE SOFTWARE, AND THAT IT MAY BE DIFFICULT TO DETERMINE PRECISELY WHO TOOK SUCH ACTIONS OR WHEN THEY WERE TAKEN. CLIENT IS RESPONSIBLE FOR MONITORING THE USE OF THE SUBSCRIPTION AND THE SOFTWARE THEREIN ON A REGULAR BASIS TO BE CERTAIN THAT IT DOES NOT CONTAIN INAPPROPRIATE MATERIAL AND IS FUNCTIONING PROPERLY. IN THE EVENT CLIENT DISCOVERS ANY MATERIAL THAT SHOULD BE REMOVED FROM THE SUBSCRIPTION AND THE SOFTWARE OR THE CLIENT DATA THEREIN, IT WILL DO SO PROMPTLY OR, IF IT CANNOT DO SO, WILL IMMEDIATELY NOTIFY CFI IN WRITING.

8. Confidential Information

8.1 Confidential Information Defined. During the Term of this Agreement and in connection with each party's performance of their respective duties and obligations hereunder and thereunder, each party will disclose to the other ("Disclosing Party") and the other party shall receive ("Receiving Party") certain Confidential Information of the Disclosing Party. The term "Confidential Information" shall mean any and all information that the Disclosing Party discloses to the Receiving Party in connection with or related to this Agreement, whether disclosed verbally, electronically, visually, or in a written or other tangible or intangible form, including, but is not limited to, trade secrets, pricing information, terms of this Agreement, customers, customer lists, Intellectual Property, computer programs, software, documentation, formulas, data, inventions, techniques, financial, marketing or product development plans, personnel, audit results, designs, performance data, as to CFI, the Software and any other deliverables (including, without limitation, data, information, computer code and reports) provided in connection with the Subscription, and, as to Client, the Client's Information, as well as any other information that the Disclosing Party clearly communicates to the Receiving Party as confidential.

8.2 Duties with Regard to Confidential Information. The Receiving Party agrees that it will only use the Disclosing Party's Confidential Information in the performance of its obligations hereunder or as otherwise expressly provided in this Agreement, and that it will only disclose the Disclosing Party's Confidential Information only to those of its directors, officers, employees, consultants, agents, independent contractors, and professional advisers who need to know such information and who are subject to written agreements with the Receiving Party sufficient to enable the Receiving Party to require such persons to comply with the Receiving Party's confidentiality obligations hereunder. The Receiving Party agrees that it will treat all of the Disclosing Party's

Confidential Information with the same degree of care (but no less than reasonable care) as it accords its own confidential information.

Notwithstanding the foregoing or CFI's obligations elsewhere in this Section, Client understands that CFI does not require any information for the performance of Services hereunder, and that CFI cannot guarantee the security of Client Information when stored on Client's applicable equipment and hardware or transmitted or accessible when using the internet or other services providers. CFI shall not be liable or responsible to Client or any other party for any losses, damages, claims, costs or other obligations arising out of or relating to any unauthorized access to, disclosure or use of information stored by Client on the System, including, without limitation, while such information is transmitted or accessible through the Software, the internet, or services providers. Additionally, CFI shall not be responsible for any breach of security or confidentiality caused by Client's failure to maintain the confidentiality and control of its user identification numbers or passwords related to its use of the Software provided hereunder.

8.3 Exclusions from Confidential Information. Confidential Information does not include information that (a) is or becomes generally available to the public other than as a result of an unauthorized disclosure by the Receiving Party or its personnel; (b) has been or is obtained by the Receiving Party from an independent source without accompanying obligations of confidentiality; (c) is independently developed by the Receiving Party without reliance in any way on the Disclosing Party's Confidential Information; or (d) has been approved for unrestricted release by the Disclosing Party in writing. Additionally, the Receiving Party may disclose the Disclosing Party's Confidential Information where the Receiving Party is required by law to disclose information that is otherwise Confidential Information, provided (to the extent not prohibited by law) the Receiving Party has first notified the Disclosing Party in writing as soon as is commercially reasonable of such requirement to disclose the Disclosing Party's otherwise Confidential Information in order to permit the Disclosing Party to seek confidential treatment of such information. Additionally, Client agrees to reimbursement CFI at its then current hourly rate for such services for the number of hours spent by CFI responding to legal requests for Client Information in CFI possession.

8.4 Protection of Confidential Information. Notwithstanding the "Dispute Resolution" Section of this Agreement, the Receiving Party acknowledges that the Disclosing Party shall have the right to take all reasonable steps to protect the Disclosing Party's confidential and proprietary interests, including, but not limited to, injunctive relief in a court of law or equity and any other remedies as may be available at law or in equity in the event the Receiving Party does not fulfill its obligations under this Section.

8.5 Survival of Confidentiality Obligations. Each party's obligations of confidentiality pursuant to this Section for all Confidential Information disclosed between the parties during the term of this Agreement shall survive the expiration or termination of this Agreement as follows: (i) for Confidential Information consisting of trade secrets, for so long as such information remains a trade secret of the disclosing party or for five (5) years following the expiration or termination of this Agreement, whichever is longer, (ii) for Confidential Information consisting of the disclosing party's Client information or CFI's suppliers' information, indefinitely, and (iii) for all other Confidential Information, for five (5) years following the expiration or termination of this Agreement.

8.6 Termination of This Agreement. Upon termination of this Agreement or upon the Disclosing Party's written request, the Receiving Party agrees to terminate all use of the Disclosing Party's Confidential Information and to either to return to the Disclosing Party all copies of the Disclosing Party's Confidential Information in its possession or under its control or to provide the Disclosing Party

with a written notice from one of the Receiving Party's authorized representatives certifying that all copies of the Disclosing Party's Confidential Information in the Receiving Party's possession or control have been destroyed; provided, however, the Receiving Party may (at its option, but not its obligation) keep a copy of the Disclosing Party's Confidential Information in its archives, and the provisions of this Section shall continue with respect to such Confidential Information.

9. Term and Termination

9.1 Term. The term of this Agreement and the Services and Subscription herein, shall commence on the Effective Date and, unless terminated as set forth in this Section, shall (i) continue for an initial period ending one (1) year thereafter (the "Initial Term"), and (ii) shall automatically terminate unless and until Client exercises an option year (each a "Option Period") on the anniversary of the Effective Date for additional successive one-year terms (each Option Period with the Initial Term shall be referred to as the collective "Term"); provided, however, in Client does not exercise an option year as set forth above, the Services and Software shall immediately terminate and Client and its Users shall immediately cease all use and access of the Services and Software as of the expiration date of the Initial Term or a then-current Option Period.

9.2 Termination for Cause. This Agreement or any Exhibit or Quotes hereto may be terminated as follows:

a. by CFI upon the breach by Client of any of its payment obligations under this Agreement or any Quote or Exhibit hereto, which breach has not been cured within five (5) days after Client has received written notice thereof,

b. by one party upon the breach by the other party of any of such other party's material obligations under this Agreement or any Quote or Statement of Work hereto that has not been cured within thirty (30) days after the breaching party has received written notice thereof (provided, however, that there shall be no cure period in the event of a breach by Client of its obligations related to CFI's Confidential Information and Intellectual Property rights), or

c. by CFI if all or a substantial portion of the assets of Client are transferred to an assignee for the benefit of creditors or Client files or has filed against it a petition for liquidation under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days.

If the basis for termination for cause applies only to a specific Quote or Statement of Work, the non-breaching party may elect to terminate only the affected Quote and associated Statement of Work, in which case this Agreement and other Quotes will remain in full force and effect. A breach of the terms of this Agreement or a Quote by a User shall be deemed to be a breach of the terms of this Agreement by Client.

9.3 Effective Date of Termination for Cause. Termination for cause based upon 9.1(a) above shall be effective on the 6th day after Client received the original written notice of breach if cure is not made or if some interim arrangement has not been reached between the parties (and agreed in writing) during the five (5) day cure period. Termination for cause based upon 9.1(b) above shall be effective on the 31st day after the breaching party received the original written notice of breach if cure is not made or if some interim arrangement has not been reached between the parties (and agreed in writing) during the thirty (30) day cure period; provided, however, if a breach under 9.1(b) is not subject to cure (e.g., disclosure of a party's Confidential Information), termination for cause is effective immediately upon the party providing written notice of termination to the breaching party consistent with the notices provision of this Agreement. Termination for cause based upon 9.1(c) above shall be effective immediately after the assignment for benefit of creditors has been made or the filing of a

petition for liquidation under bankruptcy or other insolvency laws and such have not been dismissed, dissolved or the petition lifted or stayed.

9.4 Termination for Convenience. If Client exercises its option to terminate this Agreement for its convenience pursuant to Attachment 1 and W. Va. CSR § 148-1-5.2(b), there shall be no refund to Client and all outstanding amounts due to CFI for any and all professional services that have been performed by CFI shall be paid to CFI pursuant to the payment terms in this Agreement.

9.5 Effects of Termination. Termination of this Agreement shall result in the termination of all outstanding Quotes, Statements of Work and Exhibits, and termination of all outstanding Quotes, Statements of Work and Exhibits shall result in the termination of this Agreement. Upon termination of this Agreement and/or any Quotes, Statements of Work and Exhibits for any reason, any amounts owed to CFI under this Agreement or any Quotes, Statements of Work and Exhibits, regardless of whether not yet due and payable, will be accelerated and deemed immediately due and payable (including, without limitation, the remaining balance of unpaid fees for professional services and Travel Expenses). All Subscriptions, including, without limitation, Services and all Software use and access, granted under this Agreement and all Quotes, Statements of Work and Exhibits hereto shall immediately terminate upon termination of this Agreement. All Subscriptions, including, without limitation, Services and all Software use and access, granted pursuant to an applicable Quotes, Statements of Work and Exhibits shall terminate upon the expiration or termination of the applicable Quotes, Statements of Work and Exhibits. Upon termination of this Agreement, CFI will immediately cease performing all Services and terminate Client's and its User access to the Software. CFI shall have no obligation for retaining or maintaining a copy of any such Client's Information or data from the Software following the date of expiration or termination of the Quotes, Statements of Work and Exhibits governing such information or (if sooner) the expiration or termination of this Agreement. CFI shall be entitled, without further liability, to destroy all such Client's Information or data from the Software following the date of expiration or termination of the Quotes, Statements of Work and Exhibits governing such information or (if sooner) the expiration or termination of this Agreement. If Client receives Hosted Services from CFI, the following termination provisions also apply upon termination of this Agreement for any reason:

a. Client's access to the Hosted Services (including, without limitation, all access to the hosted environments and data) shall be suspended;

b. Client shall immediately surrender to CFI any Internet protocol numbers, addresses or CFI-owned domain names assigned to Client in connection with the Hosted Services delivered hereunder;

c. Unless other arrangements are requested by Client within five (5) days of the effective date of termination and provided Client has paid all outstanding amounts due to CFI under this Agreement, for the five (5) day period following the effective date of termination of this Agreement CFI shall provide Client with access to its data or information within the Hosted Services for Client to download the Client Data or information; and

d. Any and all Client Data shall be overwritten, erased, encrypted or otherwise rendered unrecognizable upon the sooner to occur of (i) Client's confirmation that it has downloaded the Client Data or information, or (ii) expiration of the period of access as set forth in subsection (c) above, or (ii) thirty (30) days from the effective date of termination of this Agreement.

9.6 Other Termination/Suspension of Services. In addition to all other remedies to which it may be entitled hereunder, CFI shall have the right, without notice to Client, to immediately suspend the provision of any and all Software and Services hereunder,

including, without limitation, access to the Software and Support Services, in the event of (i) any breach or threatened breach of this Agreement or any Quotes, Statements of Work and Exhibits hereto by Client or its Users or contractors, (ii) any requirement or direction by any legal or regulatory body having jurisdiction over Client, CFI or its suppliers or third party service providers, or (iii) any change in law that renders CFI provision of the Software unlawful or otherwise non-compliant with applicable law. Client's payment obligations shall continue during any period of suspension pursuant to this Section. Client agrees that CFI shall have no liability to Client, and Client waives any claim or action against CFI, in the event of termination of access to the Software as provided in this Agreement. CFI shall make reasonable efforts to restart such access upon Client's cure or correction of the event of default or breach unless it has already terminated this Agreement or any Quotes, Statements of Work and Exhibits as provided hereunder. Client shall reimburse and pay to CFI all charges, expenses and fees incurred by CFI or payable by CFI to third parties as a result of such suspension of Software or reconnection/restart of such access to such Software.

9.7 Collection Costs. CFI shall be entitled to recover from Client any and all of CFI's attorneys' charges and expenses, including, without limitation, court costs, incurred by CFI in connection with any attempts to pursue collection of amounts owed by Client hereunder or otherwise incurred by CFI in enforcing of the terms and conditions of this Agreement or any Quotes, Statements of Work and Exhibits hereto.

9.8 Survival. The provisions of this Agreement that, by sense and context of the provision, are intended to survive performance by either or both parties shall also survive the completion, expiration, termination or cancellation of this Agreement.

9.9 The termination of this Agreement shall not relieve the Client of its obligation to pay any Charges and Fees incurred hereunder prior to the effective date of such termination or expiration or that result or arise from the termination of this Agreement (as provided in herein).

10. GENERAL PROVISIONS

a) Entire Agreement; Waiver. This Agreement and the Schedules attached hereto constitute the entire agreement between the Parties and supersede all prior agreements, understandings and arrangements between the Parties with respect to the subject matter thereof. Any provisions, terms or conditions on Client's purchase orders which are, in any way, inconsistent with or in addition to the terms and conditions of this Agreement shall not be binding upon CFI and shall have no applicability hereunder. The failure of any Party to insist, in any one or more instances, upon the performance of any term or condition of this Agreement shall not be construed as a waiver or relinquishment of any right granted hereunder or the future performance of such term or condition.

b) Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of West Virginia (United States of America) regardless of application of choice of law rules or principles. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods. The original language of this Agreement is English. In case of any discrepancies or conflicts between the English text version of this Agreement and any translation, the English version shall prevail.

c) Assignment. Client may not assign or otherwise transfer, in whole or in part, or in any other manner, any rights, obligations, or any interest in or under this Agreement without the prior written consent of CFI and any purported attempt to do so will be null and void. A merger or other acquisition by a third party will be treated as an assignment. CFI may at any time and without Client's consent assign all or a portion of its rights and duties under this Agreement to a company or companies wholly owning, owned by, or in common

ownership with CFI. This Agreement shall be binding on each party's successors and permitted assigns. Additionally, CFI may delegate the performance of certain Services to its Affiliates and third-party providers, provided CFI remains responsible to Client for the delivery of such Services and the compliance of such Affiliates and third-party providers with this Agreement.

d) Change in Subcontractors. CFI has the right to change, modify and otherwise convert its services providers (including, without limitation, its affiliates) and subcontractors used to provide the Services and terms under which the Services are offered, provided that the basic functionality and quality of the Services will not be materially adversely affected.

e) Interpretation. In the event of a conflict between this Agreement and the terms of any Exhibit, Statement of Work or Quote attached hereto, the terms of the Exhibit, Statement of Work or Quote shall prevail and control the interpretation of this Agreement. The Exhibits, Statement of Work or Quote, attachments, and schedules together with this Agreement shall be interpreted as a single document.

f) Force Majeure. Excluding payment obligations, no breach of any obligation of a party to this Agreement or Exhibit, Statement of Work or Quote shall constitute an event of default or breach to the extent it arises out of a cause, existing or future, that is beyond the reasonable control and without negligence of the party otherwise chargeable with breach or default, including without limitation, flood, war, terrorists' acts, riot, theft, labor disputes, earthquake or natural disaster. Either party desiring to rely upon any of the foregoing as an excuse for non-performance, default or breach, shall, when the cause arises, give to the other party prompt notice of the facts that constitute such cause and when the cause ceases to exist, give prompt notice thereof to the other party.

g) Limitations Period. Client agrees not to bring a legal action against CFI more than two years after the later of the date on which the cause of action accrues or the date on which the party discovered or with reasonable investigation should have discovered the cause of action.

h) Prevailing Party. The prevailing party in any arbitration, suit, or action brought by one party against the other party to enforce the terms of this Agreement, any Exhibits or Quotes or Statement of Works hereto or any rights or obligations hereunder, shall be entitled to receive its reasonable costs, expenses, and attorneys' charges of bringing such arbitration, suit, or action.

i) Independent Contractors. The parties are independent contractors, and no agency, partnership, franchise, joint venture or employment relationship is intended or created by this Agreement. Neither party shall make any statement, representation, warranty or other commitment on behalf of the other party.

j) No Licenses. There are no licenses to the Software, express or implied, granted or provided under this Agreement. Neither party shall exceed the scope of the Subscription granted hereunder. CFI reserves all rights not specifically granted to Client.

k) Notice. All notices shall be in writing and sent by certified mail (return receipt requested), overnight courier, or delivered personally to the addresses indicated on the first page of this Agreement for the applicable intended recipient, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. All notices to CFI shall be directed to the attention of the President/CEO of CFI, with a copy of all such notices also sent to CFI to the attention of CFI's General Counsel at the same address as CFI. Notice will be effective on the date shown on the delivery receipt or, in the case of personal delivery, actual receipt. All notices required pursuant to this Agreement shall be provided in strict compliance with this Section.

l) Severability. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any

way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

m) No Third-Party Beneficiaries. CFI and Client agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this Agreement.

n) Headings. The headings used in this Agreement, Exhibits, Quotes and Statements of Work are solely for convenience and shall not be considered in its interpretation.

o) Authorized Signer. Each party represents that the person signing this Agreement and any Exhibit, Statement of Work or Quotes hereto has been properly authorized and empowered to execute and deliver this Agreement and any Exhibit, Statement of Work or Quotes hereto on behalf of such party. This Agreement becomes null and void if the time between the earlier dated signature and the later dated signature exceeds sixty (60) days, unless waived by CFI.

p) Incorporation by Reference. Any Attachments to this Agreement and any Exhibit, Statement of Work or Quote now existing and hereafter executed or issued that are made pursuant to this Agreement shall be deemed to be part of this Agreement and are incorporated into this Agreement by reference.

q) Amendments. Except as otherwise provided herein or in an applicable Exhibit, Statement of Work or Quote, this Agreement and

any Exhibit, Statement of Work or Quote may be changed or modified only in a written document signed by duly authorized representatives of both parties.

r) Counterparts/Duplicate Originals. This Agreement and any Exhibit, Statement of Work or Quote may be executed by the parties in one or more counterparts or duplicate originals, and each of which when so executed shall be an original, but all such counterparts shall constitute one and the same document.

s) Publicity/Use of Trademarks. Client agrees to permit the occasional use of Client's name and logo as well as reference to this Agreement and the Services in their respective promotional advertising, press releases and public relations efforts. All such use will be only in a manner that reflects positively upon the other party. CFI may place Client's name on a list of CFI's customers.

t) Non-Solicitation. Client shall not, without CFI's prior written consent, directly or indirectly, solicit for employment or hire any Restricted Employee (as defined herein) while such person is employed by CFI and for the 12-month period starting on the earlier of: (i) termination of such Restricted Employee's employment with CFI, or (ii) termination or expiration of this Agreement. "Restricted Employee" means any former or current employee of CFI or its Affiliates that provided services on behalf of CFI hereunder or that Client became aware of or came into contact with during CFI's performance of its obligations under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the day and year set forth above. This Agreement becomes null and void if the time between the earlier dated signature and the later dated signature exceeds sixty (60) days, unless waived by CFI.

Collaborative Fusion, Inc.

State of West Virginia Department of Health and Human Services

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

/End of Agreement; Attachment 1 and Exhibits follow.

EXHIBIT A TO SOFTWARE SERVICES AGREEMENT
Definitions

For purposes of this Agreement, the following definitions shall apply:

1. **"Administrator"** means an employee, officer, director or consultant of Client to whom Client has provided a user account and certain rights to administer the Subscription on behalf of Client.
2. **"Client Data"** means data input by Client or its authorized Users into the Subscription and/or Software thereto.
3. **"CORES Platform"** means the computer software programs developed and owned by CFI that is part of the Software provided via the Subscription to the CLIENT, in machine executable object code form and the Documentation, together with Software Updates.
4. **"Custom Software"** means purchased customizations or modifications to the Software pursuant to a Statement of Work hereto which sets forth the customizations or modifications, the fees for such development services, the ownership of such, and whether such customizations or modifications to the Software are subject to Support Services.
5. **"Documentation"** means the user manuals, requirements, specifications, training materials, and any other documents, materials, information or guidance, whether supplied as printed material or in electronic form, provided by CFI in conjunction with the purchase, training, use, technical support or update of the Software and Services provided hereunder.
6. **"Effective Date"** means the execution date of this Agreement.
7. **"Initial Term"** shall mean as set forth in Section 9 of the Agreement.
8. **"Intellectual Property"** means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing: copyrights (including derivative works, as defined by the United States Copyright Act, thereof), trademarks, trade names, Trade Secrets, mask work rights, know-how, patents and any other intellectual and industrial property and proprietary rights, of every kind and nature throughout the universe and however designated, and including all registrations, applications, renewals and extensions thereof, under applicable law as it may currently exist or as it may in the future exist.
9. **"Option Period"** shall mean as set forth in Section 9 of the Agreement.
10. **"Party"** means CFI or the Client individually and "Parties" shall mean CFI and the Client collectively.
11. **"Services"** means the services set forth in Section 3 in the Agreement and the Exhibits thereto as applicable.
12. **"Software,"** means, individually and collectively, all of the software, including, without limitation, the CORES Platform, granted to Client from CFI via the Subscription as identified on Exhibit C hereto. Software includes Software Updates to such software.
13. **"Software Updates"** means any technical correction, patch, bug fix, enhancement or other software release to the Software that is provided to Client pursuant to the Client purchased Support Services and/or the Subscription.
14. **"Source Code"** means a series of instructions or statements in an English-like high level computer language such as but not limited to PHP, FORTRAN, C, or PASCAL, or in a relatively low-level language such as the assembly language for a particular processor. Source Code is normally readable by humans trained in the particular computer language in question. It is transformed by compiler into machine readable Object Code (or Executable Code) for actual use on a computer.
15. **"Support Services"** means the technical support services provided by CFI pursuant to the Agreement and Exhibit E. May also be referred to as "Software Support Services."
16. **"Statement of Work"** means a document(s) setting forth in detail services to be performed by CFI pursuant to the fees therein, all subject to and to be governed by this Agreement. A Statement of Work may be amended only in writing with the mutual agreement of the parties from time to time in accordance with this Agreement.
17. **"Subscription"** means a SaaS based subscription for Client to use and access the proprietary Software, Software Updates, online and/or hard-copy documentation and user guides as set forth in Section 4 of this Agreement and for the Term set forth in Exhibit A.
18. **"Term"** shall mean as set forth in Section 9 of the Agreement.
19. **"Use"** means accessing and using the Subscription and Software therein in accordance with the terms and conditions of the Agreement (including, without limitation, any additional limitations or restrictions specified therein) and the applicable Documentation.
20. **"User"** means any authorized employee, contractor, or third-party representative of Client who accesses the Subscription and Software therein.

/End of Exhibit A

EXHIBIT B TO SOFTWARE SERVICES AGREEMENT

THIRD-PARTY FUNCTIONALITY USED TO SUPPORT THE SUBSCRIPTION

Minimum Requirements:

- o Connection to the Internet
- o Ability to read Comma-Separated Values (CSV) Files
- o Browser Requirements
 - o Vendor Supported
 - o JavaScript Enabled
 - o Cookies Enabled
 - o 128-bit SSL Enabled
 - o Pop-up Blocker Disabled

Recommended Browsers:

- o Microsoft Internet Explorer, version 11 or later
- o Mozilla Firefox (most recent version)
- o Chrome (most recent version)
- o Edge (most recent version)

/End of Exhibit B

**EXHIBIT C TO SOFTWARE SERVICES AGREEMENT
FEES AND PAYMENT SCHEDULE**

Fees - Further to quote # Q-01937, dated July 27, 2020:

Year 1 Subscriptions and Consulting Services				
ITEM NUMBER	DESCRIPTION	SALES PRICE	QTY	TOTAL PRICE
300-S-HAN-1	Subscription - CORES Health Alert Network (HAN) Year 1/Deliverable 6 CORES HAN	\$46,421.00	1	\$46,421.00
700-P-SCP-1	Consulting Services - Service Credit Hours Client Support Support Engineer Off-site Year 1/Deliverable 7 Technical assistance performed as needed not to exceed 15 hour of technical assistance per month.	\$843.36	1	\$843.36
800-R-WBT-1	Training Center - Web-Based Training CORES Web-based Administrator Training (includes one (1) two-hour training session for up to 30 students) Year 2/Deliverable 1 & 2 CORES HAN User & Administrator Training	\$500.00	1	\$500.00
800-R-WBT-1	Training Center - Web-Based Training CORES Web-based Administrator Training (includes one (1) two-hour training session for up to 30 students) Year 3/Deliverable 1 & 2 User and State/LHD Training DVD	\$500.00	1	\$500.00
700-P-SCP-1	Consulting Services - Service Credit Hours Client Support Support Engineer Off-site Year 2/Deliverable 4 Technical assistance not to exceed 10 hours per month.	\$562.20	1	\$562.20
700-P-SCP-1	Consulting Services - Service Credit Hours Client Support Support Engineer Off-site Year 4/Deliverable 4 Technical assistance as needed not to exceed 5 hours per month.	\$281.16	1	\$281.16
300-S-HAN-1	Subscription - CORES Health Alert Network (HAN) CORES Implementation Package Year 1/Deliverable 1, 2, 3, & 5 CORES HAN implementation Package	\$0.00	1	\$0.00
800-R-WBT-1	Training Center - Web-Based Training CORES Web-based Administrator Training (includes one (1) two-hour training session for up to 30 students) Year 1/Deliverable 4 CORES HAN Administrator Training DVD	\$500.00	1	\$500.00
800-R-WBT-1	Training Center - Web-Based Training CORES Web-based Administrator Training (Includes one (1) two-hour training session for up to 30 students) Year 4/Deliverable 1 & 2 CORES HAN User & Administrator Training DVD	\$500.00	1	\$500.00
300-S-HAN-1	Subscription - CORES Health Alert Network (HAN) CORES Health Alert Network (HAN) Year 3/Deliverable 3 CORES HAN	\$46,421.00	1	\$46,421.00
300-S-HAN-1	Subscription - CORES Health Alert Network (HAN) CORES Health Alert Network (HAN) Year 2/Deliverable 3 CORES HAN	\$46,421.00	1	\$46,421.00
300-S-HAN-1	Subscription - CORES Health Alert Network (HAN) CORES Health Alert Network (HAN) Year 4/Deliverable 3 CORES HAN	\$46,421.00	1	\$46,421.00
700-P-SCP-1	Consulting Services - Service Credit Hours Client Support Support Engineer Off-site Year 3/Deliverable 4 Technical assistance not to exceed 5 hours per month	\$281.16	1	\$281.16
Total Year 1 Fees for Subscriptions and Consulting Services (plus applicable taxes)				\$189,651.88

Payment Terms

For purposes of this Exhibit C, the "Total Year 1 Fees for Subscriptions and Consulting Services" set forth above in the amount of **\$189,651.88.00 USD** (plus applicable taxes) shall be invoiced by CFI to Client upon CFI's receipt of this Agreement (executed by Client).

All charges in this Agreement are exclusive of taxes incurred by CFI in the performance of services and are in addition to any charges set forth in any other Statement of Works or Addenda or Quotes to the Agreement or in the Agreement. All invoices are due and payable thirty (30) days from the date of the invoice and interest fees/late charges (as provided in the Agreement) shall apply to any invoiced amounts not paid within the time periods provided in this Exhibit C or in the Agreement.

If Client is tax exempt, Client shall be responsible for providing all necessary documentation to show such tax-exempt status to CFI or to the taxing CLIENT.

Pricing contained herein is based on configuration outlined above. Some items may not be sold separately. Pricing is valid until the expiration date on the Quote identified above.

/End of Exhibit C

EXHIBIT D TO SOFTWARE SERVICES AGREEMENT
DESCRIPTION OF HOSTED SERVICES

1. Definitions. For the purposes of this Exhibit, the following words have the meaning set forth below:
 - a. "**Juvare Cloud**" means the shared hardware environment for the purpose of hosting and maintaining software and data on behalf of CFI's customers. Juvare Cloud™ is a trademark of Juvare, LLC.
 - b. "**Hosted System**" means the combination of hardware, software and networking components used by the Application Service Provider to deliver the Hosted Services.
 - c. "**Hosted Services**" means the installation and management of specified software applications in the Juvare Cloud shared environment on behalf of a CFI customer and exclusively for the benefit of permitted users of the Software.All other capitalized terms in this Exhibit D shall have the same meaning set forth in the Agreement, except where otherwise stated in this Exhibit.
2. Scope of Services. CFI shall provide the following services to address the Software hosting needs:
 - a. CFI shall provide Hosted Services to Client according to the provisions set forth in the Agreement and this Exhibit. CFI shall notify Client promptly upon creation of Hosted Services account and provide Client with all information required to access such account. CFI, at its sole discretion, may provide and maintain such Hosted System and/or deliver such Hosted Services internally or through a qualified subcontractor.
 - b. CFI shall provide and maintain the facilities, hardware, and networking components as it sees fit to provide access to the Juvare Cloud for the benefit of Client.
 - c. CFI shall perform, at its convenience and after notice to Client, scheduled updates of the Juvare Cloud as CFI or its hosting subcontractor sees fit. Such updates shall be scheduled to enable the simultaneous update to all of CFI-hosted customers.
 - d. CFI or its hosting subcontractors shall be entitled to perform, as needed, emergency security updates to the Hosted System to protect the Juvare Cloud or the subcontractor's hosted environment from newly identified and widespread threats to the internet or internet-based services posed by worms, viruses and Trojans, or to address other vulnerabilities, with little or no notice to Client.
 - e. CFI shall provide and maintain a redundant shared environment of the Juvare Cloud at a location that is geographically separated from its primary ASP Environment to ensure continuity of Software access and operation in the event of any unforeseen outage, disaster or other event that may interrupt service at the primary location of the Juvare Cloud. Failover to the redundant shared environment of the Juvare Cloud is a manual process and service will be activated by CFI immediately upon notification of malfunction, unavailability or failure of primary shared environment of the Juvare Cloud.
 - f. CFI will notify (via CFI's Support Center) the Client of any planned service outages, i.e., for the purpose of performing Software updates or testing, or other inability to perform the services outlined in this Agreement.
 - g. CFI shall schedule, perform and maintain a duplicate ("backup") record of Client's data within the Juvare Cloud. CFI shall perform hourly SQL transaction log backups and daily full backups. Data backups are limited to SQL database server files (i.e., those files having a .mdf or .ldf file extension). Data backups shall be retained on-site for four weeks.
 - h. In addition to the Support Services pursuant to the Agreement and Exhibit E, CFI shall provide Client with Support Services for the Hosted Services which include assistance with problems related to the Juvare Cloud, data access, Hosted System access, or similar problems. Such Support Services for the Hosted Services may be accessible to Client via the same contact information provided to Client for Support Services; provided, however, services to be provided by CFI under this Exhibit and the Agreement do not include assistance with third party products; training; installation of plug-ins, boards or modules; API support; or board building; or maintenance, repair or correction of errors, defects or other operational or performance defects caused by Software configuration, modification, enhancement or programming provided by any party other than CFI or an CFI-certified technician. Any professional services described in this Section 2(h), or services required to repair or correct the errors and defects described in this Section 2(h), shall be provided on a fee-for-services basis at rates consistent with the CFI published price list in effect at the time services are rendered.
 - i. Client may request performance of additional services by CFI. Such services shall be invoiced separately by CFI at the current published rate for labor and actual costs for materials and travel, if applicable.
3. Client Obligations
 - a. The Client shall maintain, at Client's expense, a secure high-speed internet connection through which to access its hosted Software.
 - b. The Client shall appoint a designated point of contact and two alternate points of contact for its interactions with CFI. Client shall provide CFI with the name, job title, physical address, telephone number, facsimile number and electronic mail address for each of the contact persons. Client shall keep such contact information up-to-date and promptly notify CFI, in writing via electronic mail, of any changes.
 - c. The Client shall use reasonable security precautions in connection with the use of Services provided under this Agreement.
 - d. The Client is responsible for any and all use and access to the Hosted System and Hosted Services by its employees, agents, contractors and permitted users of the Software and Hosted Services.
 - e. The Client shall make best efforts to notify CFI in writing, via electronic mail or facsimile, of any planned non-emergency use of its Software, such as the occurrence of training sessions, drills and exercises, to aid CFI with the planning of any scheduled outages.
 - f. The Client shall promptly notify CFI Support Center of any identified Hosted Services outage that impairs Client's access to the Software so that CFI may manually activate the redundant shared environment of the Juvare Cloud and immediately commence work to restore service to the primary shared environment of the Juvare Cloud.

- b. The Client shall not conduct any load testing, performance testing or any other test of the Hosted System which may degrade performance or limit or adversely impact availability of the Juvare Cloud for other customers.

4. Limitations on Use of Hosted Services.

- a. Access to the Hosted System may not be rented, leased, sold, sub-leased, assigned or otherwise transferred for value or for no value by Client to any third party.
- b. Hosted System and Hosted Services are provided to support the Software which is an information management tool. Hosted Services are not guaranteed to be fault-tolerant or to provide fail-safe performance. Hosted Services are not appropriate for use in ultra-hazardous environments where failure of the Hosted System or the Juvare Cloud may lead to bodily injury, death or destruction of property.
- c. Installation of Software applications in the Juvare Cloud is limited to the Software included in the Subscription to Client by CFI and Software supplied by CFI either as a component of the Hosted System or to support delivery of Hosted Services.
- d. CFI shall only be responsible for performance of components of the Hosted System and Services under its control. CFI shall not be responsible for performance deficiencies caused by processes, hardware and software beyond its control including, but not limited to, information transmission delays due to excessive internet traffic, internet outages, or failure of Client to perform its obligations under this Agreement.
- e. The warranties set forth in the Agreement shall be void if any breach of this warranty or failure of the hosting environment or Software is caused by unauthorized use, improper use or modification to Software made by Client or its authorized users.

/End of Exhibit D

EXHIBIT E TO SOFTWARE SERVICES AGREEMENT DESCRIPTION OF SUPPORT SERVICES FOR THE SOFTWARE

Support Services for the Software shall include the following (in addition to what is stated in the Agreement):

- 1) **Telephone Assistance:** Client's "Support Contact" (as defined below) may contact the CFI's Support Center for telephone assistance to seek advice relating to the use of Hosted Services and/or to identify and work to provide a "workaround" for Software problems, if available. Telephone assistance for non-Emergency Support Services shall be available during Standard Business Hours.
- 2) **Problem Assistance:** Client may submit problem assistance requests for Software assistance via the published CFI's support escalation procedures. CFI will notify Client if any request is beyond the scope of this Agreement and is, therefore, subject to additional charges. Requests for problem assistance for non-Emergency Support Services shall be available during Standard Business Hours.
- 3) **Software Updates:** CFI will update the Software as such updates and future versions of the applicable Software are made generally available to other CFI clients receiving Support Services at no additional charge. Any training required by Client related to such Software Updates and subsequent versions of the Software are provided for an additional charge. CFI shall provide Client with Software Updates to the Software, except for modules, as such Software Updates become available. Software Updates may include correction releases (i.e. patches provided to correct software anomalies), point releases (i.e. modifications to current generation of software including enhancement and improvements), and level releases (i.e. new releases or new generation of software), but shall not include new products, modules or plug-ins released commercially by CFI as independently priced items. For Modules, CFI shall provide Client any Software Updates released by CFI to correct errors affecting the operation of the Module, whether such error is caused by the Module itself or by an error in the Software, and any Software Updates required to maintain compatibility with the Software. CFI shall not provide for any enhancements to the Module.

Process to Obtain Support Services. To obtain Support Services or telephone or problem assistance, Client's designated Support Contact (an assigned Administrator that has completed the Administrator training and is listed as the Support Contact for Client) may contact CFI's Support Center as per CFI's published support procedures. Such support procedures include contacting CFI's Support Center via telephone, email and, when required, remote session support during Standard Business Hours and during Non-Standard Business Hours.

"Routine" Support Services includes assistance with the use and configuration of the software; assistance with identification and resolution of errors or defects assistance with application and use of new releases; general support for Board Builder and boards built by CFI or an CFI-certified technician; and access to WebEOC best practices, community-use status boards, "help" resources and other content made available through <https://www.iuvare.com/customers/technical-support>, a "client only" web forum. Support Services may be accessed by Client by calling the Support Center via (877) 771-0911 or by electronic mail at support@juvare.com (subject to updates and changes by CFI).

"Emergency" Support Services shall be available 24 hours per day, 365 days per year. Emergency telephone support includes any assistance needed by Client while Software is in use operationally, whether for actual incidents or exercises excluding assistance with GIS interfaces, mapping or products, which is licensed by a third-party vendor is available only during Standard Business Hours. Emergency Support Services may be accessed by calling the Support Center via (877) 771-0911 (subject to updates and changes by CFI).

Client may request performance of additional services by CFI. Such services shall be invoiced separately by CFI at CFI's then current rate for such services and Travel Expenses, if applicable.

Limitations on Support Services. CFI will provide Support Services for only the current version of any Software. Client is obligated to promptly implement all Software Updates, work arounds and error corrections provided by CFI.

Problems or Issues Not Covered by Support Services. The following issues/problems, and all issues or problems caused by the following, are not covered by Support Services:

1. Alterations to the Software not authorized by CFI;
2. Unless otherwise agreed in an Exhibit or Statement of Work hereto, customizations to the Software from consulting or professional services provided by CFI, including applications design or recommendations by Client;
3. Software problems created by Client negligence or fault or failure to comply with any specifications, policies, procedures or requirements for use of the Software, including, without limitation, those set forth in CFI's Acceptance Use Policy and Privacy Policy;
4. Software problems caused by or related to a change in Client's service provider or internet access provider. Without limiting the generality of the foregoing, no reconfiguration of the Software due to a change in a service provider is covered under Support Services. Client should notify CFI prior to changing its service provider to enable CFI to provide configuration specifications to the new service provider. Any programming and configuration changes will be charged to Client at the then-current CFI's daily/hourly rates for such reconfiguration services;
5. Software problems that do not significantly impair or affect the operation of the Software;
6. Assistance with third party products; Training; Installation of plug-ins, boards or modules; API support; Board building; and
7. Client's failure to allow for the prompt implementation of Error corrections, Software updates, or any work-around provided or made available by CFI (including, without limitation and applicable at all times, implementation of more recently released, generally available versions or releases of the Software made available through Support Services that contain corrections to the relevant Error or where such Error does not occur when using such more recently released version or release of the Software).

Client Responsibilities. Client agrees to limit its requests for Support Services after Standard Business Hours to occasions when the problem related to the Software is critical to Client's operation and cannot wait to be addressed until Standard Business Hours on the next succeeding Contractor business day. CFI's provision of Support Services is subject to CLIENT documenting and promptly reporting all errors or malfunctions of the Software and Subscription to CFI. The CLIENT shall properly train its Users in the use and application of the Software and Subscription and the equipment on which it is used.

/End of Exhibits

**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: Collaborative Fusion Inc.

Contract/Lease Number ("Contract"): CCT BPH2200000001

Commodity/Service: Public Health Emergency Notification System

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.

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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 ~~strike 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 DHHR
By: *Althea Greenhowe*
Printed Name: Althea Greenhowe
Title: Procurement Spec, Sr
Date: 4-15-2022

Vendor: Collaborative Fusion, Inc.

By: *Nicholas Meeks*
Printed Name: Nicholas Meeks

Title: Executive VP & CFO

Date: April 14, 2022 | 11:13:05 EDT

Public Health Emergency Notification System

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of WV Department of Health and Human Resources (DHHR), Bureau for Public Health (BPH), Center for Threat Preparedness (CTP) to establish a contract for managing the service to provide automated notifications of public health and medical emergency callouts and other critical information to members of various emergency and health preparedness response teams and public health partners throughout the State. The service must be capable of delivering messages throughout various communication mediums and provide the ability for staff from any of 55 local health department (LHD) agencies, specific DHHR Offices, and other select partners to place inbound calls to the service. The successful bidder must have enough capacity to provide 24 hours a day, 7 days a week, 365 days a year, including holidays, (24/7/365) management of the service with minimal interruption.

Note: The contract awarded as a result of this solicitation may be funded in whole or in part with Federal Funds and thus this solicitation and its resulting awarded contract are subject to the requirements of Attachment 1: Provisions Required for Federally Funded Procurements. -

NOTE: The WVDHHR has developed an EEOP Utilization Report and it is available at: <http://intranet.wvdhhr.org/ops/EEO/forms/H1.5%20Utilization%20Report%20and%20EEO%20policy.pdf>

Background:

One of the critical capacity requirements of the Centers for Disease Control's (CDC) Public Health Emergency Preparedness initiative is to provide a method of rapid notification and communication for public health partners in an emergency. The type of emergency will determine who must be notified and what specific instruction must be given to a selected group. Because hundreds of personnel could potentially be involved in each notification, automation technology must be used to select who will be notified and what instructional message will be sent, to process and send the actual notification result. This will ensure that the appropriate personnel receive messages in a timely and efficient manner. West Virginia has been using a Rapid Notification System for over twelve (12) years.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

2.1 **"Contract Services"** means managing the service to provide automated notification of public health and emergency callouts and other critical information to members of various emergency and health preparedness response teams and public health partners throughout the State as more fully described in these specifications.

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2.2 "Pricing Page" means the pages, contained wvOASIS upon which Vendor should list its proposed price for the Contract Services.

2.3 "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

3. QUALIFICATIONS: Vendor, or Vendor's staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications:

3.1. The successful vendor must have three (3) years minimum experience with rapid notification as evidenced by website information, business license, and/or other proof. Documentation demonstrating the Vendor meets this experience requirement should be included with the bid. This information will be required prior to award.

4. MANDATORY REQUIREMENTS:

4.1 Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below.

4.1.1 In addition to the notification requirements described above, the service selected will also serve as the emergency alerting vehicle for dissemination of important alerts and warnings, including CDC's Health Alert Network (HAN) messages. Information for alerting will be imported from existing databases or spreadsheets with remote update capability or will be separately built and loaded into the system from every West Virginia county as well as the Center for Threat Preparedness itself.

4.1.2 The service selected must meet the following criteria: Must comply with all applicable Public Health Information Network (PHIN) certification requirements as articulated in the CDC Partner Communication and Alerting (PCA) Guide. The PCA Guide can be found at: [https://www.cdc.gov/phin/resources/guides/documents/PCA Guide v1 3 .pdf](https://www.cdc.gov/phin/resources/guides/documents/PCA_Guide_v1_3.pdf)

4.1.3 Continuous and uninterrupted availability of this service is critical. While it will not necessarily be used on a daily basis, the service must continuously be available for use in times of need. Accordingly, the service must be distributed across multiple call centers utilizing different telephone

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and bandwidth providers within the United States to minimize the likelihood that an outage in any geographic area or affecting a single provider would affect service availability. Security measures must be deployed to ensure all possible safeguards are in place to protect data in storage at each of the locations. The service must be able to automatically route calls over the least congested networks to ensure rapid message delivery. The service must have redundancy or servers in different geographical locations.

- 4.1.4** The successful vendor must include unlimited inbound or outbound calls in their bid. In addition, the system database must allow for unlimited names/contact information to be included. The current estimated number of names/contact information is sixty (60) organizations and sixteen-thousand-five-hundred (16,500) users. These numbers will fluctuate depending on many variables, including scope and acuity of the incident, length of time the incidents plays out and other factors. Vendor will provide the agencies needs whether it be less or greater than the current estimates.
- 4.1.5** The successful vendor shall agree to work with the current vendor (Juvare) to ensure a timely, accurate, and complete transition of the project operations. The successful vendor selected must import existing data from the West Virginia Public Health Alert System (WVPHAlert), the incumbent emergency notification system (all call groups from each user location in counties and State) into the new system within thirty (30) calendar days of contract award effective start date. If the incumbent system is not available to export existing call group data from the state and LHDs, then the successful vendor must rebuild all the call groups from each of those agencies within thirty (30) calendar days of contract award effective start date. This would include personal interaction with staff from each of the agencies and any technical assistance needed.
- 4.1.6** The successful bidder shall ensure the new system is fully operational within thirty (30) calendar days of contract award effective start date.
- 4.1.7** The successful bidder shall cooperate with the agency and any subsequent vendor should the contract, which is the subject of this RFQ, be terminated,

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and to deliver any and all electronic files, documentation, and associated work products to the Agency within thirty (30) days of receipt of notice of contract termination. The format for exporting data from the terminated vendor's current system to the new successful bidders' system will be provided upon award.

- 4.1.8** The successful bidder's service must provide for secure transmission of notification messages and report results back to the West Virginia State Center for Threat Preparedness or other designated facility. The service center must also have multiple points of communication from contact requests including, the internet (with or without a Virtual Private Network (VPN)), a dedicated dial-up line, and a private peering network).
- 4.1.9** Each of the following service functionalities are mandatory requirements of the successful bidder:
 - 4.1.9.1** Must have the capability to send notifications rapidly via multiple communication mediums utilizing assigned roles; (Must be able to use both "land lines" and mobile phone, fax, instant messaging, and Simple Mail Transmission Protocol (SMTP) Short Message Service (SMS) messaging such as email, alphanumeric papers and other wireless devices.)
 - 4.1.9.2** Must be capable of delivering customized messages, both the content and the delivery mechanism, to each individual, and in the case of voice messages using a text-to-speech engine to dynamically create the messages.
 - 4.1.9.3** Must have the ability to send the notification to one device and if there is no answer within a specified timeframe, as determined by the type of incident, send the notification to the next device listed in the user's profile. This includes being able to select which phone device the message is being sent to (i.e. cell phone vs. work phone vs. home phone). This process must continue until contact attempts for all listed devices defined in the user's profile are exhausted. The message initiator must

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have the ability to require the system to continue contact attempts until contact is successful.

- 4.1.9.4** Must allow the user's profile to contain delivery device preference order based on at least two self-defined timeframes; (Example: Call pager first on Monday – Friday, 8:00 A.M. – 5:00 P.M. EST and home phone first at all other times. Call mobile phone second at all times.)
- 4.1.9.5** Must be able to deliver notifications based on prioritization of individuals/roles (i.e. send to those in more authority first, then other users.)
- 4.1.9.6** Must have the capacity to notify predefined groups and “on-the-fly” ad-hoc groups, not only by name, but by all fields (i.e. roles, agency worked for, geographic location, and political jurisdiction).
- 4.1.9.7** Must have the capacity to notify ‘subgroups’ (i.e. group(s) within a group.)
- 4.1.9.8** Must have the capacity to select individuals even if they are not in a group or subgroup.
- 4.1.9.9** Must have capability of multiple administrators; three hundred fifty (350) at a minimum.
- 4.1.9.10** System must allow for agency control over the number and type of call groups, when necessary.
- 4.1.9.11** Must initiate a broadcast directly from another application through an Application Program Interface (API) protocol solution (supplied by the successful vendor) so that contact data can be maintained in another system and broadcasts can be initiated directly from another application. This process should be provided through a web-services API using a standards-based SOA (service oriented architecture). In

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addition to initiating the broadcast, the API should also handle cancellation and status of the notification.

- 4.1.9.12** Must allow for the activation of alerts via the Internet or telephone; security must be in place to only permit a notification request from specific, predefined phone numbers and systems user identification accounts. Additionally, a log of notification requests from any source, successful or not, must be maintained in the system (not through manual logging) and made available as an automated report.
- 4.1.9.13** System must provide immediate receipt confirmation for each notification. Results of the notification and confirmation must be available through live, on-line inquiry and through historical reports.
- 4.1.9.14** For emergency notification, notification recipients must have the capability of replying to the call or calling back into the system (not to a person) and reporting their availability for emergency response. The system must be able to record their responses and include their availability in reports back to the sender. The service must be able to receive at least twenty-five (25) inbound calls per minute. The service must have no set number of outbound calls or messages to receive per minute.
- 4.1.9.15** Must provide the capability to access reports via both the internet and fax. Reports must be available in real-time for emergency notification and within user-defined time periods for non-emergency notifications, allowing for ongoing status reports of those notified. Reports will include calling results and time of results, such as individual reached, message left, no-answer, number out-of-service, etc., and, for emergency notification, will include responder reported availability.
- 4.1.9.16** Must have capability for the sender to schedule notification to be sent at a later time and/or date.

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- 4.1.9.17** Must allow for multiple layers of authorization/authority. Multiple authorized users may be able to send a non-emergency notification via e-mail or fax, but only those with approved authority can send emergency notifications.
 - 4.1.9.18** Must be able to have multiple layers of administrator rights as to what access is given. (i.e. view, change, add, and notify rights determined by the State office).
 - 4.1.9.19** Must have the capability of producing reports identifying costs for use by notification event, individual sender, and/or organization.
 - 4.1.9.20** Must have the ability to send multiple notifications at the same time to the same or different recipients.
 - 4.1.9.21** Must have the ability to provide login audit tracking.
 - 4.1.9.22** Must have the ability to maintain privacy of all contact information through access control where only administrators with appropriate rights can view or update recipient and contact information.
 - 4.1.9.23** Must have the ability to customize the telephone number display (caller identification (ID) for voice messages and the email addresses for text messages.
 - 4.1.9.24** Must have the ability to override call-blocking.
 - 4.1.9.25** Must have the ability to leave a message when a voice-delivered message reaches an answering machine or voicemail.
- 4.1.10** Support for the successful bidder's services must be available 24 hours a day, 7 days a week, 365 days a year, including holidays, (24/7/365) via telephone and the Internet.

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- 4.1.11** Due to the emergency use of this system, routine maintenance, system upgrades or emergency repairs for system degradation or failure must be managed in as expeditious a process as possible. Routine maintenance and system upgrades must be done outside the hours of 6:00am – 6:00pm EST Monday through Friday (unless system maintenance can be completed in a phased approach without loss of system integrity). Agency must be notified in advance of routine maintenance and system upgrades. Emergency interventions must be initiated immediately (within one hour) upon discovery of a problem and every effort must be made to complete repairs or provide appropriate temporary system-wide solutions until permanent repairs can be completed, as quickly as possible with a minimum of system disruption/downtime. Problem resolution must be applied when the resolution/solution is found and not wait to be applied during a scheduled routine update.
- 4.1.12** The successful bidder must include three (3) levels of training.
- 4.1.12.1** Initial training: The successful bidder must provide on-site training on the use of the bidder's service/system for up to three hundred fifty (350) administrators at a minimum. This training must be completed within thirty (30) calendar days of contract award effective start date. Training facilities with computers will be provided by the State in or near Charleston, WV. Training materials will become the property of the State to copy at will for additional users.
 - 4.1.12.2** Update training: The successful bidder must provide training when updates or changes are made to the system, if those changes mandate new ways to operate the systems. This training can be provided via web training, CD, DVD, or other electronic media as approved by the Agency.
 - 4.1.12.3** New User training. The successful bidder must provide a way for later added users to obtain Initial training, such as web training, CD, DVD, or other electronic media as approved by the Agency.

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4.1.13 WVDHHR's Responsibilities To Contract:

4.1.13.1 The Center for Threat Preparedness will collaborate with the vendor and will serve as the point of contact. Additionally, they will:

4.1.13.1.1 Meet by the end of Week 1 of the first year of the contract with the vendor to develop project plan.

4.1.13.1.2 Provide vendor with contact person/address/phone number for each LHD and other agency that has call groups to be loaded into system (or built).

4.1.13.1.3 Provide location for training, with computers for use.

4.1.13.1.4 Meet quarterly with vendor to discuss project status, receive updates on technological or contract upgrades/revisions.

4.1.13.1.5 Provide drills/exercises to test system's performance.

4.1.14 Deliverables, Scope of Work and Timeframe:

4.1.14.1 YEAR 1

4.1.14.1.1 Deliverable 1: By the end of Week 1 of the first year of the contract: Vendor will meet with CTP to set up implementation strategy. This portion of the deliverable can be accomplished by in-person meeting, a telephone conference call, or "web ex" type presentation. Vendor will then meet with Notification System Workgroup (State developed) to initiate implementation process. An in-person meeting must be conducted in Charleston, WV with CTP staff.

4.1.14.1.2 Deliverable 2: By end of Week 4 of the first year of the contract: Vendor will develop/implement State and Local Health components of Notification System.

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This will include development of capacity to push messages/information to State and Local Health-developed call groups as well as internal and overall message management capability. This also includes the provision of the vendor-supplied API Protocol, described under Section 4.1.9.11.

- 4.1.14.1.3 Deliverable 3: By end of Week 4 of the first year of the contract: Vendor will complete data transfer (call groups) from incumbent system -OR- complete building and import of new State and LHD call groups into Notification System.
- 4.1.14.1.4 Deliverable 4: By end of Week 4 of the first year of the contract: Vendor will develop initial user training curriculum/delivery mechanism and complete initial user training for State and LHDs as described above in this document in Section 4.1.12.
- 4.1.14.1.5 Deliverable 5: By end of Week 4 of the first year of the contract: Vendor will complete “dry run” performance tests and correct any residual issues. This will be executed and evaluated on site in Charleston, WV. System will be initialized and placed in-service. Vendor presence will be required in Charleston, WV during the performance test and initiation of the system.
- 4.1.14.1.6 Deliverable 6: Week 4 - through the end of contract: Vendor will maintain system in “ready” state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.

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- 4.1.14.1.7** Deliverable 7: Week 4 – through the end of contract: Technical assistance will be performed as needed upon contact by State or Local staff at an estimated 15 hours of technical assistance per month.

4.1.14.2 Optional Renewal YEAR 2

- 4.1.14.2.1** Deliverable 1: By end of month 3 of the second year of the contract: Vendor will develop user update training curriculum/delivery mechanism for all users as described above in this document in Section 4.1.12. Training to be provided via 2 “web ex” presentations or 1 reproducible DVD.
- 4.1.14.2.2** Deliverable 2: By end of month 3 of the second year of the contract: Vendor will complete new user training for State and LHDs as described above in this document in Section 4.1.12. Training to be provided via 2 “web ex” presentations or one reproducible DVD.
- 4.1.14.2.3** Deliverable 3: Throughout contract period: Vendor will maintain system in “ready” state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.
- 4.1.14.2.4** Deliverable 4: Throughout contract period: Technical assistance will be performed as needed upon contact by State or Local staff at an estimated 10 hours of technical assistance per month.

4.1.14.3 Optional Renewal YEAR 3

- 4.1.14.3.1** Deliverable 1: By end of month 3 of the third year of the contract: Vendor will develop user update training

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curriculum/delivery mechanism for all users as described above in this document in Section 4.1.12. Training to be provided via 2 “web ex” presentations or 1 reproducible DVD.

4.1.14.3.2 Deliverable 2: By end of month 3 of the third year of the contract: Vendor will complete new user training for State and LHDs as described above in this document in Section 4.1.12. Training to be provided via 2 “web ex” presentations or one reproducible DVD.

4.1.14.3.3 Deliverable 3: Throughout contract period: Vendor will maintain system in “ready” state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.

4.1.14.3.4 Deliverable 4: Throughout contract period: Technical assistance will be performed as needed upon contact by State or Local staff at an estimated 5 hours of technical assistance per month.

4.1.14.4 Optional Renewal YEAR 4

4.1.14.4.1 Deliverable 1: By end of month 3 of the fourth year of the contract: Vendor will develop user update training curriculum/delivery mechanism for all users as described above in this document in Section 4.1.12. Training to be provided via 2 “web ex” presentations or 1 reproducible DVD.

4.1.14.4.2 Deliverable 2: By end of month 3 of the fourth year of the contract: Vendor will complete new user training for State and LHDs as described above in this

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document in Section 4.1.12. Training to be provided via 2 "web ex" presentations or one reproducible DVD.

4.1.14.4.3 Deliverable 3: Throughout contract period: Vendor will maintain system in "ready" state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.

4.1.14.4.4 Deliverable 4: Throughout contract period: Technical assistance will be performed as needed upon contact by State or Local staff at an estimated 5 hours of technical assistance per month.

4.1.14.5 Vendor should provide with its bid a copy of any hardware or software licensing and/or support terms and conditions to which the State of West Virginia or the Agency must agree to or accept, either in writing or digitally, in order to order and receive the commodities or services offered as part of this Contract. Written terms will be required prior to the award of any contract resulting from this solicitation. Failure to provide additional terms and conditions may result in disqualification of the vendor's

5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

Bids will be evaluated based on Total Bid Amount. Contract Award will be made for Year 1 costs only, with subsequent Years' costs added only upon agreed and approved renewal change order.

5.2 Pricing Page: Vendor should complete the Pricing Page by filling out the cost of each deliverable listed on the Pricing Pages per Year and any deliverables with a zero price should be listed as such. Vendor should complete the Pricing Page in full as

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failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. Vendors can download the electronic copy of the Pricing Pages from the wvOASIS Vendor Self Service (VSS) website. If responding with a paper bid, Vendors should download and/or print the assembled CRFQ document (with the highest version number) from wvOASIS and insert their unit price and total price for each line item.

Vendor should type or electronically enter the information into the Pricing Page to prevent errors in the evaluation.

6. **PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.
7. **PAYMENT:** Vendor shall invoice for Contract Service Deliverables provided in arrears and shall submit no more than one invoice monthly. Agency shall pay upon receipt of invoice as shown below and on the Pricing Pages for all Contract Service Deliverables performed and accepted under this contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

Year 1, Deliverables 1 – 5: Total cost of completed Deliverables accepted by Agency.
Year 1, Deliverables 6 – 7: Monthly cost of Deliverables accepted by Agency.

Year 2, Deliverables 1 – 2: Total cost of completed Deliverables accepted by Agency.
Year 2, Deliverables 3 – 4: Monthly cost of Deliverables accepted by Agency.

Year 3, Deliverables 1 – 2: Total cost of completed Deliverables accepted by Agency.
Year 3, Deliverables 3 – 4: Monthly cost of Deliverables accepted by Agency.

Year 4, Deliverables 1 – 2: Total cost of completed Deliverables accepted by Agency.
Year 4, Deliverables 3 – 4: Monthly cost of Deliverables accepted by Agency.

Vendor must submit invoices to the Agency at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. The invoices must be in a form approved by the Agency and shall include a monthly activity log. Vendor will be responsible for payment of all subcontracts, staff, and any other support staff contracted to provide services. State law forbids payment of invoices prior to receipt of services. The Agency reserves the right to reject any or all invoices for which proper documentation has not been

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provided. Vendor will be notified of deficiencies within fifteen (15) days of receipt of the invoice.

8. TRAVEL: Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.

9. FACILITIES ACCESS: Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:

9.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.

9.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.

9.3. Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.

9.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.

9.5. Vendor shall inform all staff of Agency's security protocol and procedures.

10. VENDOR DEFAULT:

10.1. The following shall be considered a vendor default under this Contract.

10.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.

10.1.2. Failure to comply with other specifications and requirements contained herein.

10.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

10.1.4. Failure to remedy deficient performance upon request.

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10.2. The following remedies shall be available to Agency upon default.

10.2.1. Immediate cancellation of the Contract.

10.2.2. Immediate cancellation of one or more release orders issued under this Contract.

10.2.3. Any other remedies available in law or equity.

11. MISCELLANEOUS:

11.1. Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: _____
Telephone Number: _____
Fax Number: _____
Email Address: _____

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	Emergency Notification System - Year 1/Deliverable 1				\$0.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 1/Deliverable 1: Specifications Item 4.1.14.1.1: By the end of Week 1 of the first year of the contract: Vendor will meet with CTP to set up implementation strategy. This portion of the deliverable can be accomplished by in-person meeting, a telephone conference call, or WebEx (or equal) type presentation. Vendor will then meet with Notification System Workgroup (State developed) to initiate implementation process. An in-person meeting must be conducted in Charleston, WV with CTP staff.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	Emergency Notification System - Year 1/Deliverable 2				\$0.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 1/Deliverable 2: Specifications Item 4.1.14.1.2: By end of the first month of the first year of the contract: Vendor will develop/implement State and Local Health components of Notification System. This will include development of capacity to push messages/information to State and Local Health-developed call groups as well as internal and overall message management capability. This also includes the provision of the vendor-supplied API Protocol, described under Section 4.1.9.11.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
3	Emergency Notification System - Year 1/Deliverable 3				\$0.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 1/Deliverable 3: Specifications Item 4.1.14.1.3: By end of the first month of the first year of the contract: Vendor will complete data transfer (call groups) from incumbent system -OR- complete building and import of new State and LHD call groups into Notification System.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
4	Emergency Notification System - Year 1/Deliverable 4				\$500.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 1/Deliverable 4: Specifications Item 4.1.14.1.4: By end of the first month of the first year of the contract: Vendor will develop initial user training curriculum/delivery mechanism and complete initial user training for State and LHDs as described above in this document in Section 4.1.12.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
5	Emergency Notification System - Year 1/Deliverable 5				\$0.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description :	Year 1/Deliverable 5: Specifications Item 4.1.14.1.5: By end of the first month of the first year of the contract: Vendor will complete dry run performance tests and correct any residual issues. This will be executed and evaluated on site in Charleston, WV. System will be initialized and placed in-service. Vendor presence will be required in Charleston, WV during the performance test and initiation of the system.
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
6	Emergency Notification System - Year 1/Deliverable 6				\$46,421.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description :	Year 1/Deliverable 6: Specifications Item 4.1.14.1.6: From the first day of the second month of the first year of the contract through the end of contract (first year): Vendor will maintain system in "ready" state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
7	Emergency Notification System - Year 1/Deliverable 7				\$843.36

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description :	Year 1/Deliverable 7: Specifications Item 4.1.14.1.7: From the first day of the second month of the first year of the contract through the end of contract (first year): Technical assistance will be performed as needed upon contact by State or Local staff at a minimum not to exceed quantity of 15 hours of technical assistance per month (vendor may provide more hours in any month as part of this deliverable, but must provide at least 15 hours, and may not charge for any hours in addition to the 15).
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
8	Emergency Notification System - Year 2/Deliverable 1				\$250.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description :	Year 2/Deliverable 1: Specifications Item 4.1.14.2.1: By end of the third month of the second year of the contract: Vendor will develop user update training curriculum/delivery mechanism for all users as described above in this document in Section 4.1.12. Training to be provided via 2 WebEx (or equal) presentations or 1 reproducible DVD.
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
9	Emergency Notification System - Year 2/Deliverable 2				\$250.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 2/Deliverable 2: Specifications Item 4.1.14.2.2: By end of the third month of the second year of the contract: Vendor will complete new user training for State and LHDs as described above in this document in Section 4.1.12. Training to be provided via 2 WebEx (or equal) presentations or one reproducible DVD.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
10	Emergency Notification System - Year 2/Deliverable 3				\$46,421.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 2/Deliverable 3: Specifications Item 4.1.14.2.3: Throughout contract period (Year two): Vendor will maintain system in "ready" state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
11	Emergency Notification System - Year 2/Deliverable 4				\$562.20

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 2/Deliverable 4: Specifications Item 4.1.14.2.4: Throughout contract period (Year 2): Technical assistance will be performed as needed upon contact by State or Local staff at a minimum not to exceed quantity of 10 hours of technical assistance per month (vendor may provide more hours in any month as part of this deliverable, but must provide at least 10 hours, and may not charge for any hours in addition to the 10).

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
12	Emergency Notification System - Year 3/Deliverable 1				\$250.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 3/Deliverable 1: Specifications Item 4.1.14.3.1: By end of the third month of the third year of the contract: Vendor will develop user update training curriculum/delivery mechanism for all users as described above in this document in Section 4.1.12. Training to be provided via 2 WebEx (or equal) presentations or 1 reproducible DVD.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
13	Emergency Notification System - Year 3/Deliverable 2				\$250.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description :	Year 3/Deliverable 2: Specifications Item 4.1.14.3.2: By end of the third month of the third year of the contract: Vendor will complete new user training for State and LHDs as described above in this document in Section 4.1.12. Training to be provided via 2 WebEx (or equal) presentations or one reproducible DVD.
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
14	Emergency Notification System - Year 3/Deliverable 3				\$46,421.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description :	Year 3/Deliverable 3: Specifications Item 4.1.14.3.3: Throughout contract period (Year 3): Vendor will maintain system in "ready" state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
15	Emergency Notification System - Year 3/Deliverable 4				\$281.16

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description :	Year 3/Deliverable 4: Specifications Item 4.1.14.3.4: Throughout contract period (Year 3): Technical assistance will be performed as needed upon contact by State or Local staff at a minimum not to exceed quantity of 5 hours of technical assistance per month (vendor may provide more hours in any month as part of this deliverable, but must provide at least 5 hours, and may not charge for any hours in addition to the 5).
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
16	Emergency Notification System - Year 4/Deliverable 1				\$250.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description :	Year 4/Deliverable 1: Specifications Item 4.1.14.4.1: By end of the third month of the fourth year of the contract: Vendor will develop user update training curriculum/delivery mechanism for all users as described above in this document in Section 4.1.12. Training to be provided via 2 WebEx (or equal) presentations or 1 reproducible DVD.
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Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
17	Emergency Notification System - Year 4/Deliverable 2				\$250.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 4/Deliverable 2: Specifications Item 4.1.14.4.2: By end of the third month of the fourth year of the contract: Vendor will complete new user training for State and LHDs as described above in this document in Section 4.1.12. Training to be provided via 2 WebEx (or equal) presentations or one reproducible DVD.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
18	Emergency Notification System - Year 4/Deliverable 3				\$46,421.00

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 4/Deliverable 3: Specifications Item 4.1.14.4.3: Throughout contract period (Year 4): Vendor will maintain system in "ready" state, constantly monitoring for any operational irregularity and be prepared to respond to ensure constant availability of system. Vendor will support its use during notifications or information exchanges and drills and provide system upgrades and maintenance as required.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
19	Emergency Notification System - Year 4/Deliverable 4				\$281.16

Comm Code	Manufacturer	Specification	Model #
93131802			

Extended Description : Year 4/Deliverable 4: Specifications Item 4.1.14.4.4: Throughout contract period (Year 4): Technical assistance will be performed as needed upon contact by State or Local staff at a minimum not to exceed quantity of 5 hours of technical assistance per month (vendor may provide more hours in any month as part of this deliverable, but must provide at least 5 hours, and may not charge for any hours in addition to the 5).

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.