



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

State of West Virginia Master Agreement

Order Date: 07-20-2022

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:	CMA 0439 0439 EBA2300000002 1	Procurement Folder:	1070177
Document Name:	EBA71080 IP SERVICES	Reason for Modification:	
Document Description:	EBA71080 IP SERVICES		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2022-07-15
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-07-14

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: VC0000093889 LTN GLOBAL COMMUNICATIONS INC 7090 COLUMBIA GATEWAY DR STE 100 COLUMBIA MD 21046 US Vendor Contact Phone: 850-980-3271 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			Requestor Name: Cecil Dale Malcomb Requestor Phone: (304) 254-7858 Requestor Email: dmalcomb@wvpublic.org 23 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
CHIEF FINANCIAL OFFICER EDUCATIONAL BROADCASTING 124 INDUSTRIAL PARK RD BEAVER WV 25813 US	PURCHASING ADMINISTRATOR EDUCATIONAL BROADCASTING 600 CAPITOL ST CHARLESTON WV 25301-1223 US

Purchasing Division's File Copy

Total Order Amount:

Open End

ENTERED

PURCHASING DIVISION AUTHORIZATION

DATE: *Murphy 7/20/2022*
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM

DATE: *John S. Gray*
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION

DATE: *7/28/2022*
ELECTRONIC SIGNATURE ON FILE

Extended Description:

Emergency Purchase:

As per Section 9:22 - outlined in W. Va. Code 5A-3-15

Central Master Agreement:

This Open-End Contract constitutes the acceptance of a contract made by and between the State of West Virginia by the Purchasing Director for the Agency, the West Virginia Educational Broadcasting Authority and the Vendor: LTN Global communications Inc. for the open end contract for IP-based broadcast delivery services per the attached documentation.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	83111601				0.000000
	Service From	Service To			

Commodity Line Description: BROADCAST OVER IP SERVICES

Extended Description:

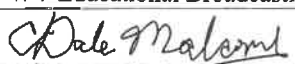
IP Services As per Pricing Page

WV-96
1/1/2019

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 Educational Broadcasting Authority

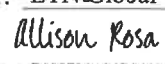
By: 

Printed Name: Dale Malcomb

Title: Purchasing Coordinator

Date: 7/7/2022

Vendor: DeFi Global Communications Inc

By: 

Printed Name: Allison Rosa

Title: Legal Counsel

Date: 7/6/2022

LTN Global Communications Master Service Agreement

This Master Service Agreement ("Agreement") sets forth the terms and conditions by which the customer identified below (the "Customer") agrees to procure and receive from LTN Global Communications, Inc. ("LTN") (each a "Party" and collectively the "Parties" to this Agreement) the Services (as defined below).

Customer Information:

Effective Date 7/6/2022

Customer Name WV Educational Broadcasting Authority

Customer Representative Dale Malcomb

Phone (304) 254-7858

Billing Address 600 Capitol St
Charleston, WV 25301

Email dmalcomb@wvpublic.org

Services

LTN provides a range of managed media services, including on-site and/or centralized event production, digital and broadcast workflow services (e.g., closed captioning, standards conversion, graphics, ad insertion and others) and media transport and delivery.

This Agreement shall serve as a master agreement between the parties with additional terms and conditions applying to the services set forth on one or more orders on the form attached hereto as Schedule A (each, an "Order," and the services set forth in the applicable Order, the "Services"). Capitalized terms not defined herein shall be defined in the applicable Order. Each Order must be signed by Customer prior to commencement of the Services and upon Customer's execution shall also represent Customer's agreement to purchase the particular Services and Equipment (as such term is defined below) and pay the corresponding fees outlined in such Order for the term and scope specified therein, including, without limitation, any recurring monthly fees, charges, or costs. The Parties acknowledge and agree that (i) each Order shall be deemed to incorporate the terms and conditions of this Agreement, (ii) except as otherwise provided and mutually agreed to in an Order, the terms and conditions of this Agreement shall prevail over any inconsistent terms and conditions set forth in any Order.

Term

The term of this Agreement shall begin on the Effective Date noted above and the provision of Services shall be initiated as set forth in the applicable Order. Any right licensed to Customer by LTN, however, shall only become effective once installation and implementation of the necessary Equipment and Services is complete (the "Activation Date"). This Agreement shall remain in effect for so long as an Order is outstanding and, if no Orders are outstanding, until either Party gives ninety (90) days prior written notice of its intention to terminate this Agreement. Notwithstanding the foregoing, either Party may terminate this Agreement as follows: (i) immediately upon written notice to the other Party if (a) the other Party ceases to function as a going concern or to conduct operations in the normal course of business, or (b) proceedings in bankruptcy or insolvency are instituted by or against the other Party, or a receiver is appointed, or if any substantial part of the assets of the other Party become subject to attachment, sequestration, or other type of comparable proceeding, and such proceeding is not vacated or terminated within sixty (60) days after its filing; or (ii) if one Party commits a material breach of any of the terms or conditions of this Agreement and does not cure such breach within thirty (30) days after receipt of written notice given by the other Party (subject to LTN's rights to terminate for non-payment as provided in this Agreement). Upon termination of this Agreement, Customer shall pay LTN for all amounts due for Services during term of and up through the termination date under this Agreement or the expiration or termination date specified in the applicable Order, whichever is later, as well as for any remaining expenses incurred through the date of termination. Upon termination or expiration of this Agreement, LTN shall cease all work under this Agreement and any Order unless the Parties otherwise agree in writing. Immediately upon the termination of this Agreement, each Party shall return to the other Party all tangible copies of the other Party's Confidential Information (as defined below) then in such Party's possession or control. Moreover, upon termination for any reason, the rights granted to Customer by LTN shall cease immediately and Customer shall immediately surrender and return to LTN all Equipment and other property owned by LTN that has been provided to Customer. Accordingly, in the event that Customer does not return all such Equipment and other LTN property within thirty (30) days of the date of termination (regardless of the circumstances giving rise to termination), LTN shall have the right to take immediate possession of such Equipment and other LTN property. Moreover, Customer acknowledges and agrees that it shall be responsible for the payment of all recurring fees attributable to use of the Equipment until its return. If Customer does not return all Equipment and property in its original condition (reasonable wear and tear expected) within thirty (30) days of the date of termination (regardless of the circumstances giving rise to termination), Customer shall be responsible for the replacement value of such property. Except as stated below or as expressly required by law, in the event of termination of this Agreement, neither Party shall be liable to the other Party because of such termination for compensation, reimbursement, or damages on account of the loss of prospective profits or anticipated sales or on account of expenditure, inventory, investments, leases, or commitments in connection with the business or goodwill of LTN or Customer. Termination shall not, however, relieve either Party of obligations incurred prior to termination.

Payment Terms & Conditions

1. Subject to the general terms and conditions of this Agreement, specific pricing and payment terms for Customer shall be reflected in an applicable Order to this Agreement. In addition, Customer shall be responsible for the following expenses incurred by LTN while it performs the Services for Customer under this Agreement: (i) the fees for project management services that LTN may provide to Customer, (as designated in advance by

- LTN and as mutually agreed to by the Parties.), (ii) the cost of any Equipment or third party hardware or software acquired for Customer (as designated in advance by LTN and mutually agreed to by the Parties as a part of any procurement services to be provided by LTN and set forth in the applicable Order), (iii) shipping and insurance expenses for any Equipment provided under this Agreement, and (iv) the other specific expenses set forth in any Order. Such reasonable and customary expenses will be billed to Customer at actual cost and shall be paid within 30 days of LTN's invoice. LTN shall otherwise invoice Customer for expenses incurred as a result of performing Services in the manner otherwise noted for the Services in accordance with this Agreement.
2. Payment terms, pricing, and Agreement ratification by LTN are subject to LTN approval of Customer credit. Accordingly, Customer agrees to provide LTN upon its reasonable request such information with respect to Customer's ability to pay the Service and Equipment fees, charges, and costs as LTN deems reasonably necessary or appropriate. Customer will also fill out the attached credit report for such purposes.
 3. All set-up and installation fees detailed in an Order are due prior to implementation of the Services and shall be remitted when Customer submits to LTN the specific location, address, and contact information for each Site ordered. LTN shall have no obligation to implement the Services until LTN has received the corresponding set-up and installation fee(s) as set forth in an Order.
 4. Billing will commence, and recurring monthly charges for the Services shall begin for each Service (s) designated on an Order once Equipment is installed and connected to the network (as determined by LTN). Customer certifies that they have verified for LTN both the availability of bandwidth at their site, as may be suitable for LTN Equipment, as well as availability of video source and related equipment which will feed the IP Video Channel (as defined below) into the LTN network, prior to their request for delivery of the Equipment to Customer site. Recurring monthly charges for the Services shall begin for each Site(s) designated on an Order as a receive Site, once the Service is activated. Customer acknowledges and agrees that it is responsible for the full payment of all recurring fees for the full term specified in the applicable Order. Any non-recurring fee for new Services in an Order will be the then applicable LTN fees for the corresponding service term. Moreover, for any Services provided after the identified initial term in an Order or after the first twelve (12) months following the Effective Date of this Agreement (if no initial period is specified in the Order), all charges and fees shall be billed and payable on a monthly basis.
 5. All Equipment to be provided by LTN shall be delivered at Customer's expense.
 6. Except as set forth herein or unless otherwise agreed to by the Parties, full payment for all amounts due hereunder is due within thirty (30) days of the date of LTN's invoice. Invoices issued to Customer shall reflect the costs, fees, and charges in advance for the upcoming month for all Services (e.g., September 1 billing for October's service is due and payable September 30). Payment shall be made via electronic funds transfer to a bank account designated by LTN or by such other payment arrangement agreed to by LTN in the applicable Order.
 7. All prices are in U.S. Dollars and exclude all taxes, tariffs, duties, or government fees of any nature levied on the Services or Equipment provided or on payments made under this Agreement, which shall be the responsibility of Customer. LTN shall invoice Customer for any taxes, tariffs, duties, or government fees for which LTN is responsible to collect on the relevant invoices, unless and until Customer provides LTN with a copy of a tax exemption certificate (as applicable).
 8. ITEM REMOVED.
 9. In addition to any other rights and remedies available to LTN, LTN reserves the right to suspend the Services if Customer's account becomes more than forty-five (45) days past due. Suspension of service does not alleviate Customer's obligation to pay past, current, or future charges incurred hereunder. Moreover, LTN may charge reconnection fees for the Services. If Customer's account becomes more than sixty (60) days past due, then notwithstanding any provision of this Agreement to the contrary, LTN shall have the right to terminate the Agreement, which shall become effective immediately upon providing Customer with notice of termination.
 10. LTN has the sole right to modify, upgrade, or change the Equipment or the technology utilized in connection with the Services in any manner it deems appropriate and to use such modified Equipment or technology in the provision of Services.

Services Provisions

1. Local Access at each Site. In accordance with LTN specifications (as provided by LTN from time to time) and unless expressly agreed to by the Parties, Customer shall be responsible for installing the Equipment and providing the local access (i.e., local access is a connection to the Internet) at each Site. At a minimum, Customer acknowledges and agrees that receipt of Services requires local access to be a continuously available and uncontested connection that meets at least "Business Grade" service specifications. In addition, this local access connection must allow adequate bandwidth (as tested and certified by LTN) for the video channels transmitted on LTN's network in IP format ("IP Video Channels") at all times. Customer understands and acknowledges that quality of the LTN Service performance may be negatively impacted by the lack of quality of the local loop connection provided by Customer.
2. Site Readiness. If the Services include event production services that require LTN equipment and staff to be on site, Customer will prepare the event venue and site prior to the event as requested by LTN.
3. Equipment. For the purposes of this Agreement, the "Equipment" means the hardware and any other equipment and software of LTN (as set forth in the applicable Order, and which may include any updates, modifications, or revisions thereto), including, without limitation, Access Appliances (as defined in the applicable Order), LTN servers, and any other hardware or software that is provided by LTN. In connection with the foregoing, Customer will ensure that it provides proper rack space and power and otherwise makes available all reasonably necessary environmental conditions for the Equipment, including, without limitation, temperature control and fire suppression. Customer shall also keep the Equipment in a reasonably secure location with access to the Equipment restricted only to authorized personnel. In the event of any malfunction or problems with the Equipment, Customer will immediately notify LTN. The Equipment will not be moved to a different location except with the prior written notice to LTN. Unless otherwise agreed, however, Customer acknowledges and agrees that except as specifically set forth in an Order LTN is not responsible for the procurement of any equipment, software, or hardware of any kind.
4. Self-service Features. Customer understands that certain Equipment and LTN website features allow Customer to enable, change, or pause Services ("Self-service Features") and hereby acknowledges and agrees that Customer will be solely responsible for any losses or additional fees incurred in connection with its use of the Self-service Features.
5. IP Addresses. Unless otherwise agreed, Customer will provide an IP address for each and every Access Appliance at all the Sites. However, in the event that LTN provides the IP address (es), any IP addresses provided by LTN, shall remain, at all times, the property of LTN and/or its suppliers and shall be non-transferable. Customer shall also have no right to use any IP addresses of LTN upon termination or expiration of this Agreement.

(including federal arbitration law). The arbitrator's decision shall follow the plain meaning of the relevant documents and shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction. The arbitrator's power to award damages shall be limited by the terms of this Agreement, and no arbitration award may provide a remedy beyond those permitted under this Agreement. Any award providing a remedy not permitted under this Agreement will not be valid and shall be vacated. No claim may be brought as a class action, combined or consolidated with any other proceedings, nor may any proceeding be pursued in a representative capacity or on behalf of a class. Neither Party may act as a class representative or participate as a member of a class of claimants with respect to any claim. Notwithstanding the foregoing, LTN may, without waiving any remedy under this Agreement, seek interim or provisional or other legal, injunctive, or equitable relief from any court of competent jurisdiction to enforce the payment obligations due and owing by Customer pursuant to this Agreement or to protect or enforce LTN's Confidential Information, Equipment or other intellectual proprietary or proprietary information, regardless of the mediation and arbitration requirements.

4. Representations & Warranties.

- a. LTN represents and warrants to Customer that it is authorized to enter into this Agreement and to perform its obligations under this Agreement and that LTN owns, will own, or otherwise has sufficient rights to provide the Services in accordance with this Agreement.
- b. Customer represents and warrants to LTN that any content provided, transmitted, displayed, or made available on or through the Services (i) does not violate any applicable law, statute, ordinance, or regulation; (ii) does not include any viruses, Trojan horses, worms, time bombs, cancelbots, back doors, trap doors, timers, clocks, counters, or other computer programming defects or other limiting designs, instructions, routines, or other harmful or other disruptive components; or (iii) does not violate any proprietary, intellectual property, or privacy right of any third party. Customer also represents and warrants that (x) it is authorized to do business under the rules of the state or country in which it is incorporated; (y) it is authorized to enter into this Agreement and to perform its obligations; and (z) the execution of this Agreement and the performance of its obligations hereunder do not and will not violate any agreements to which it is a party or by which it is bound.

5. **WARRANTY DISCLAIMER.** EXCEPT AS SET FORTH ABOVE, LTN EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES UNDER THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT THAT MAY APPLY. WITHOUT LIMITING THE FOREGOING, LTN DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SERVICES OR EQUIPMENT IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. MOREOVER, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT (i) LTN DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, (ii) LTN IS NOT RESPONSIBLE FOR AND SHALL HAVE NO LIABILITY FOR HARDWARE, SOFTWARE, EQUIPMENT, OR OTHER ITEMS OR SERVICES MANUFACTURED BY ANY PERSONS OTHER THAN LTN, OR (iii) THAT LTN MAY NOT CORRECT ANY AND ALL DEFECTS TO THE SERVICES. CUSTOMER SHALL ASSUME THE ENTIRE RISK AS TO THE RESULTS OF ACCESSING AND USING THE SERVICES.

6. Proprietary Rights.

- a. Customer hereby grants to LTN (and its affiliate(s)) the non-exclusive, worldwide, royalty free, fully paid-up, sublicensable (through multiple tiers) right and license to use, reproduce, reformat, modify, adapt, transmit, store, and distribute any content provided or made available by Customer in connection with the Services.
- b. Commencing on the Activation Date, LTN hereby grants to Customer the non-exclusive, non-transferable right and license to access the Equipment solely as necessary for Customer to access and use the Services during the term of the applicable Order. LTN reserves all other rights. Accordingly, Customer shall not (i) disassemble, decompile, or otherwise reverse engineer the Equipment or any other software, technology, or other Confidential Information (as defined below) of LTN, or otherwise attempt to learn the source code, structure, algorithms, or ideas underlying the software, (ii) alter, modify, or create derivative works of the Equipment or any other software, technology, or other Confidential Information of LTN, (iii) attempt to disable any security devices or codes incorporated in the Equipment or any other software, technology, or other Confidential Information of LTN, (iv) use the Equipment or any other software, technology or other Confidential Information of LTN for any other purpose other than in connection with use of the Services as permitted by this Agreement, or (v) allow others to do any of the foregoing.
- c. Unless otherwise specified in this Agreement, the Parties agree that the intellectual property provided by either Party is and shall remain at all times the property of the supplying Party. Use of either Party's intellectual property, unless permitted or authorized by this Agreement or with the prior written consent of supplying Party, is expressly prohibited. LTN is and shall remain the owner of all intellectual property rights in any materials and technology that are (i) owned by LTN prior to the effective date of the applicable Order, including, without limitation, the Equipment, (ii) methodologies, concepts, know-how, processes, expertise, technology, software and research that are reusable from client to client and project to project, including those developed, conducted or refined under this Agreement, and (iii) any and all improvements to the foregoing ("LTN IP"). In addition, Customer acknowledges that the Equipment constitutes and contains Confidential Information of LTN. Customer shall not remove, erase, tamper with or fail to preserve any copyright, trademark, or other proprietary notice associated with such Equipment. Customer may, from time to time, provide suggestions, comments for enhancements or functionality or other feedback ("Feedback") to LTN. Customer agrees that the Feedback is LTN IP and hereby assigns to LTN all right, title and interest (including all intellectual property rights) in the Feedback.
- d. Each Party agrees to use the Confidential Information of the other Party only in furtherance of its obligations under this Agreement. Accordingly, except as permitted under this Agreement, neither Party shall disclose any Confidential Information of the other Party to any third party without the other Party's prior written consent, unless required to do so by court order or other operation of law (but in such event the party shall provide to the disclosing Party reasonable prior notice of such order or request in order to enable the disclosing party to challenge or limit such disclosure). Each Party shall take reasonable measures to prevent the disclosure or unauthorized use of Confidential Information of the other Party. Each Party shall ensure that each of its employees and approved contractors or other representatives who work on or have access to the Confidential Information of the other Party signs or abides by a confidentiality agreement that substantially conforms to this section and is advised of the confidentiality obligations and other applicable obligations of this Agreement. "Confidential Information" means any information belonging to a Party (or its affiliate(s)) that (i) is marked as "Confidential" and/or "Proprietary" within thirty (30) days of disclosure to the other Party; provided, however, provided, however, that

If Customer desires to change the IP address at any Site, regardless of whether the IP address was designated by Customer or allocated to Customer by LTN, Customer must submit in writing the IP address change request and agree to pay to LTN the then-current IP address change fee for each Site.

6. Support. LTN (or its affiliate(s)) will operate a support desk for Customer to report Service interruptions. In addition, Customer related entities (for example affiliates; partners; clients) which receive Sites and house an LTN Access Appliance may call into the support desk to report Service interruptions caused by problems with their receive channel or the Access Appliance. Unless otherwise agreed, however, LTN will not provide support directly to, nor interface with, Customer's end users, clients, or business partners.
7. Customer Obligations.
 - a. Customer shall reasonably cooperate with LTN and any designated LTN personnel in the process of information gathering, design, implementation, integration, and testing and the delivery of the Services. Customer agrees to ensure that all Receive Sites and end users of the Services will agree to cooperate with LTN.
 - b. Customer agrees that it and its end users will not use the Services to interfere with or disrupt other users of LTN's services, including any network users, network services, or network equipment.
 - c. Customer agrees to keep LTN informed as to any problems encountered with the Equipment or the Services.
 - d. Prior to use by LTN or in connection with the Services, Customer shall obtain at its sole expense all necessary licenses, consents, rights, and clearances required for LTN to use any content displayed, transmitted, or made available through the Service ("Customer Content"), including, without limitation, consents from any individual(s) regarding his or her name, picture, or other identifying information or the transfer of any personal data (as defined in Article 4 of the European Union's General Data Protection Regulation) or any other personally identifiable information to countries outside or into the governing law jurisdiction identified below. Moreover, Customer acknowledges and agrees that Customer is solely responsible for its content and the content of any and all of its end users (including, without limitation, any content hosted by Customer or its end users on behalf of third parties). LTN shall have no liability or responsibility whatsoever for the content of any transmissions or communications transmitted or otherwise disseminated via the Services. As LTN provides only connectivity services, Customer acknowledges and agrees that Customer is solely responsible for the Customer Content and the content of any and all of its end users (including, without limitation, any content hosted by Customer or its end users on behalf of third parties). LTN shall have no liability whatsoever with respect to any content displayed, transmitted, or available through the Services.
8. Compliance with Law. Customer agrees that its use of the Services, and LTN agrees that its provision of the Services, will respectively at all times during the term of this Agreement comply with all applicable governmental laws, statutes, regulations, and ordinances.
9. Restrictions & Right to Monitor. LTN reserves the right not to accept an Order for particular content or to display, transmit, provide access to, or transport particular Customer content or an IP Video Channel at its sole discretion. LTN also reserves the right to investigate directly or indirectly through an affiliate(s) potential breaches or violations by Customer of the terms and conditions of this Agreement and/or Customer's failure to fulfill its obligations under this Agreement. Moreover, Customer agrees to allow LTN (or its affiliate(s)) to monitor the IP Video Channels at its Network Operations Center (NOC) or other LTN designated locations, for the purpose of management and monitoring of the Services provided to Customer. Customer further understands and agrees that LTN will be monitoring each Access Appliance or other Equipment on a continuous basis to ensure the operation and performance of Services. In addition, LTN reserves the right to terminate or suspend the Services and/or remove Customer or its end users' content from the Services if LTN (i) determines, in its sole discretion, that LTN (or its affiliate(s)) could be subject to liability; or (ii) receives notice from anyone that Customer's or Customer's end users' use of the Services or content may violate any rights, laws, or regulations. LTN's actions or inaction under this section shall not constitute review or approval of Customer's or Customer's end users' use of the Services or content.
10. Provision of Services. Customer acknowledges that LTN has the right to control and direct the means, manner, and method by which the Services are performed. Moreover, Customer acknowledges and agrees that from time to time, LTN may engage affiliates, independent contractors, consultants, or subcontractors to assist LTN in performing the Services under this Agreement. LTN agrees that it shall be responsible for any breach by its affiliate, independent contractor, consultant, or subcontractor of an obligation owed by LTN pursuant to the terms and conditions of this Agreement. LTN also has the right to perform the Services for others during the term of this Agreement, and Customer acknowledges and agrees that this is a non-exclusive engagement.

General Terms & Conditions

1. Assignability. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party, such consent not to unreasonably be withheld; provided, however, that either Party may assign its rights and obligations under this Agreement and any Order entered into hereunder (i) to the successor to all or substantially all of the business or assets to which this Agreement relates, whether by sale, merger, operation of law or otherwise, or (ii) to an Affiliate. "Affiliate" means, with respect to a Party, any entity, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such Party. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with"), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through ownership of voting securities or by contract or otherwise. Each and all of the provisions hereof shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.
2. Governing Law. This Agreement shall be construed and enforced in accordance with, and shall be governed by, the laws of the United States and of the State of Maryland without regard to its principles of conflicts of laws.
3. Dispute Resolution. Any claim arising out of or relating to performance under this Agreement that cannot be resolved by the Parties pursuant to informal mediation (lasting no more than thirty (30) days) between them, shall be settled by final and binding arbitration before a single arbitrator and pursuant to the American Arbitration Association's Commercial Arbitration Rules and Procedures, as amended by the terms of this Agreement. The arbitrator selected shall have experience with and knowledge of the subject matter of the claim and dispute. The arbitration shall take place in a mutually agreed upon location and conducted in strict confidence. Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration, and the arbitration and all related proceedings and discovery will take place pursuant to a protective order entered by the arbitrator that adequately protects the confidential nature of the Parties' proprietary and confidential information. The arbitrator shall apply the substantive law of the State of Maryland (exclusive of its choice of law principles), or if applicable, U.S. federal law

LTN's trade secrets or non-public, sensitive, or proprietary information relating to LTN's business, products, or services, plans, designs, costs, prices, data, names, finances, marketing plans, business opportunities, personnel, formulas, methods, techniques, processes, computer programs, codes, research, and know-how, whether having existed, now existing, or to be developed or created in the future, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing will be deemed Confidential Information of LTN even if not so marked or identified. LTN's Confidential Information includes, without limitation, the Services, LTN IP, and the terms of this Agreement. "Confidential Information" shall not include information that (i) is or becomes generally known or available by publication, commercial use, or otherwise through no fault of the receiving Party; (ii) is already rightfully in the receiving Party's possession without restriction prior to its receipt from the disclosing Party; (iii) is independently developed or learned by the receiving Party if not a breach of this Agreement; or (iv) is lawfully obtained by the receiving Party from a third party that has the right to make such disclosure.

- e. Notwithstanding anything herein, Customer acknowledges and agrees that LTN (or its affiliate(s)) retains the right to use, without any obligation to account to Customer, any generalized knowledge, ideas, concepts, techniques, methodologies, practices, processes, and know-how related to the Customer or the Customer's engagement that may be acquired by LTN's (or its affiliate(s)) personnel in the performance or implementation of the Services or in the installation of the Equipment and that are retained in intangible form in the unaided memory of the personnel of LTN.
- f. A breach of this section will constitute a material breach of this Agreement and shall entitle the non-breaching Party to seek, in addition to any other remedy available at law or in equity, and without the necessity of posting a bond, equitable and injunctive relief as well as money damages to protect its interest herein.

7. Indemnification.

- a. Each Party shall indemnify, hold harmless, and defend the other Party, its affiliates and their respective directors, officers, employees, agents, and representatives, from and against any and all actions, disputes, proceedings, claims, damages, expenses, liabilities, losses and costs, including reasonable fees of attorneys and other professionals, (collectively, "Losses") arising out of or relating to third party claims resulting from (i) any breach of this Agreement by the indemnifying Party or (ii) any claim against a Party for personal injury or tangible property damage directly attributable to the willful misconduct or gross negligence of the other Party arising out of performance under this Agreement.
- b. Customer shall defend, indemnify, and hold LTN and its affiliates, directors, officers, employees, agents, and representatives harmless from and against any and all Losses to the extent they are caused by or arise out of or in connection with (a) the application or content of Customer's transmissions utilizing the Equipment, or (b) any content generated, displayed, provided, or made accessible or available by Customer or any of its end users of the Services, or any modifications or edits made thereto as requested by Customer.
- c. LTN shall defend, indemnify, and hold Customer and its affiliates, directors, officers, employees, agents, and representatives harmless from and against any and all Losses to the extent arising from a third party claim against Customer as a result of LTN not possessing sufficient intellectual property rights to provide the Services (and so long as such claim does not relate to the content generated, displayed, provided, or made accessible or available by Customer or any of its end users of the Services). If the use of Services by Customer has become, or in LTN's opinion is likely to become, the subject of any claim of infringement, LTN may, at its option and expense, (i) procure for Customer the right to continue using the Services or Equipment as set forth hereunder, (ii) replace or modify the Services or Equipment to make it non-infringing so long as the Services or Equipment has at least equivalent functionality; (iii) substitute an equivalent for the Services or Equipment or (iv) if options (i)-(iii) are not reasonably practicable, terminate this Agreement. This Section 7(c) states LTN's entire obligation and Customer's sole remedies in connection with any claim regarding the intellectual property rights of any third party.
- d. A Party shall be entitled to the indemnification set forth above provided that, in each case, the indemnifying Party shall have (i) received from the indemnified Party written notice of said claims within 15 days of obtaining knowledge thereof, (ii) received from the indemnified Party the right to control and direct the investigation, defense, or settlement of such claims (so long as any settlement or resolution of a claim includes the consent of the indemnified Party, which shall not be unreasonably withheld, if such settlement or resolution would cause the indemnified Party to undertake any action, assume any liability, pay any monies, acknowledge any wrongdoing, or have a judgment entered against it), and (iii) received the cooperation and reasonable assistance of indemnified Party.
- e. Notwithstanding anything to the contrary in this Section 7, LTN will have the right to undertake the defense of any claim asserted against it (for which indemnification by Customer is owed) at Customer's expense in the event that (i) Customer fails to assume the defense of such claim, (ii) LTN reasonably determines that an adverse outcome could be material to LTN's business, (iii) there are conflicts between LTN's and Customer's interests in such litigation, or (iv) LTN reasonably believes that Customer does not have the financial resources needed to satisfy its indemnification obligation in the event of an adverse outcome, provided that any settlement of such claim by LTN will be subject to the consent of Customer, not to be unreasonably withheld. Moreover, notwithstanding the indemnification obligations herein, Customer and LTN shall each maintain during the term of this Agreement insurance coverage commensurate with the indemnification responsibilities set forth herein.


- 8. Limitations of Liability. UNDER NO CIRCUMSTANCES SHALL LTN (OR ITS AFFILIATE(S)) BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTIES FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE OF EQUIPMENT OR SERVICES, OR DAMAGES TO BUSINESS OR REPUTATION ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY ASPECT OF THIS AGREEMENT WHETHER IN CONTRACT OR TORT OR OTHERWISE, AND WITHOUT REGARD TO WHETHER OR NOT NOTICE OR ADVICE OF THE POSSIBILITY OF SUCH DAMAGES HAS BEEN GIVEN. In addition, LTN (and its affiliate(s)) will not be responsible for any damages, losses, expenses, or costs that Customer suffers as a result of: (i) any interruption or failure of the Services; (ii) the use or review of any information, data, or materials (including reaction to any opinions or content displayed or expressed therein) obtained via the Services; (iii) any loss of data or content due to delays, non-deliveries, mis-deliveries, or Service interruptions; (iv) anything beyond the reasonable control of LTN, including, but not limited to, any Customer responsibility or any interruption or failure of a third party's services, software, equipment or network; (v) any unauthorized use or modification of the Services or combination of the Services with other services or equipment; (vi) viruses, worms, Trojan horses, or other undesirable data or software; or (vii) the attempt by unauthorized users (e.g., hackers) to obtain access to Customer's data, content, website, computers, or networks. Notwithstanding the foregoing, LTN's (or its affiliate(s)) total liability under this Agreement shall in no case exceed the recurring charges paid to it by Customer for the

Services during the prior three month period. LTN (and its affiliate(s)) shall also not be liable for failure to perform its obligations under this Agreement to the extent such failure is due to causes beyond its commercially reasonable control, including but not limited to, acts of God, war, terrorist acts, insurrection, riot, embargoes, acts of civil or military authorities, fire, floods, accidents, strikes, or shortages of transportation, facilities, fuel, energy, labor or materials, externally caused transmission interference or irreparable facility failure. Customer acknowledges that it has accepted this limitation of liability for the Services provided hereunder and understands that the price of the Services would be higher if LTN were requested to bear additional liability for damages.

9. Independent Contractors. The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint-venturers or agents. Neither Party has any right or authority to incur, assume, or create, in writing or otherwise, any warranty, liability, or other obligation of any kind, express or implied, in the name of or on behalf of the other Party.
10. Notices. All notices and other communications in connection with this Agreement shall be to Customer at the facsimile number, email address, or address listed above and to LTN at LTN Global Communications, Inc., 7090 Columbia Gateway Drive, Suite 100, Columbia, MD 21046, USA, attention: President, email address yjavadi@ltnglobal.com, attention: President. Notices and other communications in writing may be sent by registered or certified air mail, postage prepaid, by express courier service, service fee prepaid, or by e-mail or facsimile transmission (with confirmation of receipt by the machine, recipient, or recipient's account). Customer consents to receiving notices and other communications through electronic or written means. All notices and other communications in writing shall be deemed received (i) immediately upon delivery, if hand-delivered, (ii) five (5) business days after posting, if delivered by mail, (iii) the next business day after delivery to express courier service, if delivered by express courier service, or (iv) the day following transmission, if delivered by e-mail or facsimile (provided there is confirmation of receipt).
11. Publicity. Except as set forth above, neither Party shall issue any press release or other public statement regarding the subject matter hereof unless the other Party has previously approved it in writing. Notwithstanding the foregoing, either Party may make such disclosure as may be required by applicable law, including securities laws. Customer further agrees to make reasonable efforts to assist LTN in the development of mutually approved press releases and case studies. Except for the foregoing, neither party shall have the right to use the other Party's trademarks or trade names without prior consent.
12. Entire Agreement. This Agreement, together with any attached Order(s), constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all previous or contemporaneous negotiations, correspondence, and agreements, whether written or oral, with respect to the subject matter hereof. This Agreement may be amended only in writing signed by both Parties. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. If a court of competent jurisdiction declares any provision of this Agreement void, illegal, or unenforceable, the remainder of this Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the Parties shall use their best efforts to replace the invalid or unenforceable provisions by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision. Any failure by any Party hereto to enforce any term of this Agreement shall not be considered a waiver of that Party's right thereafter to enforce each and every item and condition of this Agreement. The provisions of this Agreement concerning LTN's ownership of its proprietary rights, confidentiality, indemnity, disclaimers of warranty, limitations of liability, termination, and governing law shall survive the termination of this Agreement with respect to matters under this Agreement.

The Parties have caused this Agreement to be executed by their respective duly authorized representative as of the Effective Date.

Customer Name: WV Educational Broadcasting Authority



Signature

Name: Dale Malcomb

Title: Purchasing Coordinator

Accepted and agreed to by:

LTN Global Communications, Inc.

DocuSigned by:



D68078A1A1D6413...

Allison Rosa

Legal Counsel

GENERAL TERMS AND CONDITIONS:

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

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

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

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

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

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

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

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

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

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

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

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

☒ **Term Contract**

Initial Contract Term: The Initial Contract Term will be for a period of one year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

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 zero (0) 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:

☐ the contract will continue for _____ years;

☐ the 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).

☐ **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:** Contract Term specified in _____

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

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

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

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

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

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

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

7. REQUIRED DOCUMENTS: All of the items checked in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **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.

☐☐☐☐

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.

Revised 04/01/2022

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

Vendor must maintain:

☐ **Commercial General Liability Insurance** in at least an amount of: _____ per occurrence.

☐ **Automobile Liability Insurance** in at least an amount of: _____ per occurrence.

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

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

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

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

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

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

☐☐☐☐

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

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

10. [Reserved]

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

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

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

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

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

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

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

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

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

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

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

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

24. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

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

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

27. ASSIGNMENT: Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.

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

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

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

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

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

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

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

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

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

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

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. NO DEBT CERTIFICATION: 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. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

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

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

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

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

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

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

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

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

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

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

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

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

46. ISRAEL BOYCOTT: Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

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

(Name, Title) Tony Geronimos, Senior Director of Sales

(Printed Name and Title) Tony Geronimos, Senior Director of Sales

(Address) 7090 Columbia Gateway Dr, Suite 100, Columbia MD 21046

(Phone Number) / (Fax Number) 850.980.3271

(email address) tony.geronimos@ltnglobal.com

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

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

LTN Global Communications, Inc.

DocuSigned by:

(Company)
Allison Rosa

(Authorized Signature) (Representative Name, Title) Allison Rosa Legal Counsel 7/6/2022

(Printed Name and Title of Authorized Representative) (Date)
603-505-1371 603-505-1371

(Phone Number) (Fax Number)
allison.rosa@ltnglobal.com

(Email Address)

WV-96
1/1/2019

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

State Agency, Board, or Commission (the "State"): WV Educational Broadcasting Authority

Vendor: LTN Global Communications Inc

Contract/Lease Number ("Contract"): EB Ar71080 CMA EBA2300000002

Commodity/Service: 83111601, Telecommunication signal enhancement network services

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.

**REQUEST FOR QUOTATION
EBAr71080, IP-based Broadcast Delivery Solution**

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the West Virginia Educational Broadcasting Authority dba WV Public Broadcasting (Agency) to establish an open-end contract for an IP-based broadcast delivery solution.
- 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 Item” or “Contract Items”** means the list of items identified in Section 3.1 below and on the Pricing Pages.
 - 2.2 “Pricing Pages”** means the schedule of prices, estimated order quantity, and totals contained in wvOASIS or attached hereto as Exhibit A, and used to evaluate the Solicitation responses.
 - 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. GENERAL REQUIREMENTS:

- 3.1 Contract Items and Mandatory Requirements:** Vendor shall provide Agency with the Contract Items listed below on an open-end and continuing basis. Contract Items must meet or exceed the mandatory requirements as shown below.

Vendor must provide the following for all items:

- A. All items must be pre-configured:
 - a. Must be pre-activated for site connectivity
 - b. Must be pre-tested for audio/video delivery
 - c. Vendor cannot charge for test time
- B. Must provide 24/7/365 monitoring
 - a. Audio/video feed reliability
 - b. Connectivity reliability
- C. Must provide Agency management capabilities
- D. Must provide 24/7/365 support
- E. Must have maximum latency of 200 ms end-to-end
- F. Must have a minimum guaranteed up time of 99.999%
 - a. Failure of Agency’s Internet circuits shall not apply
 - b. Failure of Agency’s equipment shall not apply

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EBar71080, IP-based Broadcast Delivery Solution**

3.1.1 Contract Item #1 – Transport of originating broadcast stream

3.1.1.1 Hardware and software:

- 3.1.1.1.1** Vendor must provide all hardware and software necessary to implement their services
- 3.1.1.1.2** Equipment will be returned to the Vendor within thirty (30) calendar days of contract termination
- 3.1.1.1.3** Must have a minimum of one gigabit ethernet port
- 3.1.1.1.4** Video interfaces must include a minimum of one (1) reference and four (4) BNC ports for HDSDI in/out
- 3.1.1.1.5** Must include encoding/decoding software
- 3.1.1.1.6** Hardware, software, and firmware upgrades/updates must be provided by Vendor at no additional costs

3.1.1.2 Vendor must provide a dedicated network for stream delivery

- 3.1.1.2.1** Network latency must be less than 200ms end-to-end.
- 3.1.1.2.2** Network must have a guaranteed up-time of at least 99.999%
- 3.1.1.2.3** Network must secure and capable of encrypting/decrypting broadcast feeds from end-to-end

3.1.1.3 Ingest services must be active 24/7/365

3.1.1.4 Vendor must provide a live confidence return feed for feed monitoring

3.1.1.5 Ingest of broadcast feeds into the vendor network (Ingress)

- 3.1.1.5.1** Must support at least a 1080p broadcast stream
- 3.1.1.5.2** Must support a minimum of 10 MB bandwidth per stream
- 3.1.1.5.3** Minimum of one (1) ingest point that is up 24/7/365
- 3.1.1.5.4** Ability to use portable “packs” (as described in sections 3.1.3 and 3.1.4) to deliver live video

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through the Vendor network in lieu of a satellite truck

3.1.1.5.5 Must support multiple feeds simultaneously.

Existing possible ingest points:

3.1.1.5.5.1 WSWP, Agency location
124 Industrial Park Rd
Beaver, WV 25813

3.1.1.5.5.2 WVPB, Agency location
600 Capitol St
Charleston, WV 25301

3.1.1.5.5.3 WNPB, Agency location
191 Scott Ave
Morgantown, WV 26508

3.1.1.5.5.4 Portable “pack” as described in sections 3.1.3 and 3.1.4

3.1.2 Contract Item #2 - Delivery of Ingress (originating) feeds to destinations (Egress).

3.1.2.1 Hardware and software:

3.1.2.1.1 Vendor must provide all hardware and software necessary to implement their services

3.1.2.1.2 Equipment will be returned to the Vendor within thirty (30) calendar days of contract termination

3.1.2.1.3 Must have a minimum of one gigabit ethernet port

3.1.2.1.4 Video interfaces must include a minimum of one (1) reference and four (4) BNC ports for HDSDI in/out

3.1.2.1.5 Must include encoding/decoding software

3.1.2.1.6 Hardware, software, and firmware upgrades/updates must be provided by Vendor at no additional cost

3.1.2.2 Egress services must be active 24/7/365

3.1.2.3 Ability to add additional egress destinations on short notice:

3.1.2.3.1 Vendor must be able to add an additional egress destination within a maximum of fourteen (14) calendar days

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3.1.2.3.2 Fourteen-day time frame is based upon no delays caused by unusual issues at the new egress destination

3.1.2.4 Current destinations:

WSWP, Beckley WV (Agency station)
124 Industrial Park Rd
Beaver, WV 25813
WVPB, Charleston / Huntington WV (Agency station to be added later)
600 Capitol St
Charleston, WV 25301
WNPB, Morgantown WV (Agency station to be added later)
191 Scott Ave
Morgantown, WV 26508
WSAZ, Huntington WV
645 5th Ave
Huntington, WV 25701
WDTV, Bridgeport WV
5 Television Dr
Bridgeport, WV 26330
WOAY, Oak Hill WV
7113 Legends Hwy
Oak Hill, WV 25901
WVVA, Bluefield / Beckley WV
3052 Big Laurel Hwy
Bluefield, WV 24701
Fox 9, Stubenville OH / Wheeling WV
9 Red Donley Plaza
Mingo Junction, OH 43938

3.1.3 Contract Item #3 – Portable “pack” to originate broadcast streams from remote locations – purchase

3.1.3.1 Vendor must provide all hardware and software necessary to implement their services

3.1.3.2 Must have a minimum of one gigabit ethernet port

3.1.3.3 Video interfaces must include a minimum of one (1) reference and four (4) BNC ports for HDSDI in/out

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3.1.3.4 Must include encoding/decoding software

3.1.3.5 Hardware, software, and firmware upgrades/updates must be provided by Vendor at no additional cost

3.1.3.6 Multiple encode and decode options must be available

3.1.3.7 Must support both SD and HD feeds

3.1.3.8 Must be capable of encrypting/decrypting feeds

3.1.3.9 Must include 24/7/365 support

3.1.4 Contract Items #4-8 – Portable “pack” to originate broadcast streams from remote locations – rental. Hardware and software specifications are the same as section 3.1.3

3.1.4.1 Contract Item #4: One Day Rental – hardware

3.1.4.1.1 Vendor must provide the cost to rent a portable pack as described in section 3.1.3 for a twenty-four (24) hour period

3.1.4.1.2 Rental shall begin upon receipt of the equipment, not at time of shipping

3.1.4.2 Contract Item #5: One Week Rental – hardware

3.1.4.2.1 Vendor must provide the cost to rent a portable pack as described in section 3.1.3 for a seven (7) day period

3.1.4.2.2 Rental shall begin upon receipt of the equipment, not at time of shipping

3.1.4.3 Contract Item #6: One Month Rental – hardware

3.1.4.3.1 Vendor must provide the cost to rent a portable pack as described in section 3.1.3 for a thirty (30) day period

3.1.4.3.2 Rental shall begin upon receipt of the equipment, not at time of shipping

3.1.4.4 Contract Item #7: Rental hourly usage rate, one source and one destination (drop)

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- 3.1.4.4.1** Usage rate shall cover the hourly cost of using Vendor's network and services with portable equipment
- 3.1.4.4.2** Rate shall be for one source (Ingress) feed and one destination (Egress drop)

3.1.4.5 Contract Item #8: Rental hourly usage rate, per additional destination (drop)

- 3.1.4.5.1** Usage rate shall cover the hourly cost of using Vendor's network and services with portable equipment
- 3.1.4.5.2** Rate shall be for additional destinations (Egress drops)

4. CONTRACT AWARD:

- 4.1 Contract Award:** The Contract is intended to provide Agencies with a purchase price on all Contract Items. The Contract shall be awarded to the Vendor that provides the Contract Items meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.
- 4.2 Pricing Pages:** Vendor should complete the Pricing Pages by completing the included Excel spreadsheet, Exhibit A. Vendor should complete the Pricing Pages in their entirety as failure to do so may result in Vendor's bids being disqualified.

The Pricing Pages contain a list of the Contract Items and estimated purchase volume. The estimated purchase volume for each item represents the approximate volume of anticipated purchases only. No future use of the Contract or any individual item is guaranteed or implied.

Vendor should electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address: DMalcomb@WVPublic.Org.

5. ORDERING AND PAYMENT:

- 5.1 Ordering:** Vendor shall accept orders through wvOASIS, regular mail, facsimile, e-mail, or any other written form of communication. Vendor may, but is not

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required to, accept on-line orders through a secure internet ordering portal/website. If Vendor has the ability to accept on-line orders, it should include in its response a brief description of how Agencies may utilize the on-line ordering system. Vendor shall ensure that its on-line ordering system is properly secured prior to processing Agency orders on-line.

- 5.2 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6. DELIVERY AND RETURN:

- 6.1 Delivery Time:** Vendor shall deliver standard orders within fourteen (15) working days after orders are received. Vendor shall deliver emergency orders within ten (10) working day(s) after orders are received. Vendor shall ship all orders in accordance with the above schedule and shall not hold orders until a minimum delivery quantity is met.

- 6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if orders will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the delayed order, and/or obtaining the items ordered from a third party.

Any Agency seeking to obtain items from a third party under this provision must first obtain approval of the Purchasing Division.

- 6.3 Delivery Payment/Risk of Loss:** Standard order delivery shall be F.O.B. destination to the Agency's location. Vendor shall include the cost of standard order delivery charges in its bid pricing/discount and is not permitted to charge the Agency separately for such delivery. The Agency will pay delivery charges on all emergency orders provided that Vendor invoices those delivery costs as a separate charge with the original freight bill attached to the invoice.

- 6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced, or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

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6.5 Return Due to Agency Error: Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7. VENDOR DEFAULT:

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

- 7.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.
- 7.1.2 Failure to comply with other specifications and requirements contained herein.
- 7.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.
- 7.1.4 Failure to remedy deficient performance upon request.

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

- 7.2.1 Immediate cancellation of the Contract.
- 7.2.2 Immediate cancellation of one or more release orders issued under this Contract.
- 7.2.3 Any other remedies available in law or equity.

8. MISCELLANEOUS:

8.1 No Substitutions: Vendor shall supply only Contract Items submitted in response to the Solicitation unless a contract modification is approved in accordance with the provisions contained in this Contract.

8.2 Vendor Supply: Vendor must carry sufficient inventory of the Contract Items being offered to fulfill its obligations under this Contract. By signing its bid, Vendor certifies that it can supply the Contract Items contained in its bid response.

REQUEST FOR QUOTATION
EBar71080, IP-based Broadcast Delivery Solution

- 8.3 Reports:** Vendor shall provide quarterly reports and annual summaries to the Agency showing the Agency's items purchased, quantities of items purchased, and total dollar value of the items purchased. Vendor shall also provide reports, upon request, showing the items purchased during the term of this Contract, the quantity purchased for each of those items, and the total value of purchases for each of those items. Failure to supply such reports may be grounds for cancellation of this Contract.
- 8.4 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: Tony Geronimos
Telephone Number: 850.980.3271
Fax Number:
Email Address: tony.geronimos@gmail.com

Exhibit A, Pricing Page
EBA71080, IP-based Broadcast Delivery Solution

Item	Description	Vendor's Description	Unit of Measure	Req. Qty.	Unit Cost	Extended Cost
1	Transport of originating broadcast stream per section 3.1.1	LTN Transport: Full Time Channel - Inbound Feed (Tx) Monthly	each		\$ 350.00	\$
2	Delivery of originating feeds to destinations per section 3.1.2	LTN Transport: Full Time Channel - Outbound Feed (Rx) Monthly	each		\$ 350.00	\$
3	Purchase of portable pack per section 3.1.3	Dual LTN LEAF Flypack with HD embedded encoder and HD embedded decoder in each (Supports 1 TX and 1 RX transmission with second unit as backup/cold spare). Includes case.	each		\$ 10,000.00	\$
4	One day rental of portable pack per section 3.1.4.1	LTN Leaf Flypack, 1 day rental	each		\$ 1,000.00	\$
5	One week rental of portable pack per section 3.1.4.2	LTN Leaf Flypack, 1 week rental	each		\$ 2,000.00	\$
6	One month rental of portable pack per section 3.1.4.3	LTN Leaf Flypack, 1 month rental	each		\$ 4,000.00	\$
7	Rental hourly usage rate, one source and one destination (drop) per section 3.1.4.4	Service for a single channel from one source to one drop (6-50 Mbps stream)	each		\$ 200.00	\$
8	Rental hourly usage rate, additional destination (drop) per section 3.1.4.5	Additional drops (additional sites, monitoring drops)	each		\$ 60.00	\$

Total Bid Amount:

\$

DocuSigned by:

Allison Rosa

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Vendor Signature

7/6/2022

Date

Allison Rosa

Legal Counsel

Printed Name and Title