



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

State of West Virginia
Contract

Order Date: 09-02-2022

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

Order Number:	CCT 0506 2990 MCH2300000002 1	Procurement Folder:	1061164
Document Name:	MULTI-TIERED WEB-BASED RESOURCE AND E-REFERRAL SYSTEM	Reason for Modification:	
Document Description:	MULTI-TIERED WEB-BASED RESOURCE AND E-REFERRAL SYSTEM		
Procurement Type:	Central Sole Source		
Buyer Name:	Crystal G Hustead		
Telephone:	(304) 558-2402		
Email:	crystal.g.hustead@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2022-09-02
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-09-01

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: VS0000040377 Aunt Bertha, a Public Benefit Corporation 3429 EXECUTIVE CENTER DR SUITE 100 AUSTIN TX 78731 US Vendor Contact Phone: 5127508480 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	Not Entered			#3	Not Entered			#4	Not Entered			Requestor Name: Christine L Basham Requestor Phone: (304) 356-4930 Requestor Email: christine.l.basham@wv.gov 23 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	Not Entered																				
#3	Not Entered																				
#4	Not Entered																				

INVOICE TO	SHIP TO
PURCHASING DIRECTOR 304-356-4116 HEALTH AND HUMAN RESOURCES BPH - MATERNAL & CHILD HEALTH 350 CAPITOL ST, RM 427 CHARLESTON WV 25301-3714 US	PURCHASING DIRECTOR 304-356-4116 HEALTH AND HUMAN RESOURCES BPH/MCH - RESEARCH UNIT 350 CAPITOL ST, RM 427 CHARLESTON WV 25301-3714 US

Total Order Amount: \$465,000.00

Purchasing Division's File Copy
ENTERED

PURCHASING DIVISION AUTHORIZATION DATE: <i>Tanya H 9/12/2022</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: <i>John S. Grouse</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION DATE: <i>Melvin J Skiles</i> SEP 16 2022 ELECTRONIC SIGNATURE ON FILE
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Extended Description:

THE VENDOR, AUNT BERTHA, A PUBLIC BENEFIT CORPORATION, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES, INTO A CONTRACT FOR A SOCIAL SERVICE RESOURCE AND REFERRAL PLATFORM PER THE TERMS AND CONDITIONS, AND THE VENDOR'S QUOTE DATED 07/07/2022, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81161501	0.00000		0.000000	\$75,000.00
Service From	Service To	Manufacturer		Model No	
2022-09-02	2023-09-01				

Commodity Line Description: Enterprise + Platform

Extended Description:

Enterprise + Platform

One (1) Customer Branded Staff Site and One (1) Customer Branded Community Site

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	81161501	0.00000		0.000000	\$105,000.00
Service From	Service To	Manufacturer		Model No	
2022-09-02	2023-09-01				

Commodity Line Description: Customer Success and Technical Project Management

Extended Description:

Customer Success and Technical Project Management

Implementation support, ongoing customer success management, and technical project management.

Hands on implementation management, including project scoping, project plan development, meeting scheduling and facilitation

Best practices and guidance around KPIs and outcomes

Project plan management

weekly PM calls, starting with Project Kickoff, continuing through Go-Live Readiness and Optimization Planning

Hands on technical configuration support, including subdomains, system integrations design and troubleshooting

System administrator training

Assessment design

Rollout schedule development

Rollout support and execution (including workflow scoping, training and optimization for each location)

Unlimited webinar training + train the trainer course

CB0 engagement best practices

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
3	81161501	0.00000		0.000000	\$285,000.00
Service From	Service To	Manufacturer		Model No	
2022-09-02	2023-09-01				

Commodity Line Description: Community Engagement
Trusted Network+Solution
for Enterpr

Extended Description:

Community Engagement Trusted Network+ Solution for Enterprise Customers

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 (1) year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), 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 two (2) 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.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **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 of 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.

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

Vendor must maintain:

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

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

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

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

☒ **Cyber Liability Insurance** in an amount of: \$3,000,000.00 per occurrence.

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

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

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

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

9. WORKERS' COMPENSATION INSURANCE: 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 of 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

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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) Chris Dunkin, Director, Government Markets

(Printed Name and Title) Chris Dunkin, Director, Government Markets

(Address) 3429 Executive Center Drive, Suite 100

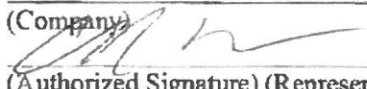
(Phone Number) / (Fax Number) (512) 750-9490 (phone) / 512-308-6846 (fax)

(email address) cdunkin@findhelp.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.

Aunt Bertha, a Public Benefit Corporation

(Company) 

(Authorized Signature) (Representative Name, Title)

Chad Denton, CFO July 7, 2022

(Printed Name and Title of Authorized Representative) (Date)

(512) 913-8180 (phone) 512-308-6846 (fax)

(Phone Number) (Fax Number)

cdenton@findhelp.com

(Email Address)

Order Form and Government Customer Subscription Terms

Customer: West Virginia Department of Health and Human Resources ("Customer")

Address: 350 Capitol Street, Suite 206

City, State, Zip: Charleston, West Virginia 25301

Upon execution of this Order Form, Customer and Aunt Bertha, a Public Benefit Corporation ("Aunt Bertha", also doing business as findhelp and findhelp.org) will be parties to a legally binding contract consisting of this order form ("Order Form") and the attached State and Local Government Entity Subscription Services Customer Agreement and the separately executed State of West Virginia Addendum to Vendor's Standard Contractual Terms, Federal Funds Addendum, (collectively, the "Agreement"). Capitalized terms used in this Order Form will have the same meaning as set forth in the Terms.

1. **Subscription Term:** Initial Subscription Term: August 1, 2022 through March 31, 2025.

2. **Services and Fees.** The following selections indicate the Services being subscribed to by the Customer. Customer agrees to pay for the following Services provided by Aunt Bertha:

Platform Services	Fees
<div data-bbox="375 1020 399 1052">✓</div> Enterprise+ Platform One (1) Customer Branded Staff Site and One (1) Customer Branded Community Site	<p>\$193,725 to be invoiced:</p> <p>\$75,000 Year One</p> <p>\$75,000 Year Two</p> <p>\$43,725 for the Seven Months of Year Three.</p>
Additional Services	Fees
<div data-bbox="375 1398 399 1430">✓</div> Customer Success and Technical Project Management Implementation support, ongoing customer success management, and technical project management. <ul style="list-style-type: none"> • Hands on implementation management, including project scoping, project plan development, meeting scheduling and facilitation • Best practices and guidance around KPIs and outcomes • Project plan management • Weekly PM calls, starting with Project Kickoff, continuing through Go-Live Readiness and Optimization Planning • Hands on technical configuration support, including subdomains, system integrations design and troubleshooting • System administrator training • Assessment design • Rollout schedule development • Rollout support and execution (including workflow scoping, training and optimization for each location) • Unlimited webinar training + train the trainer course • CBO engagement best practices 	<p>\$225,385 to be invoiced</p> <p>\$105,000 Year One</p> <p>\$95,000 Year Two</p> <p>\$55,385 Seven Months of Year Three</p>
<div data-bbox="375 1692 399 1724">✓</div> Community Engagement Trusted Network+ Solution for Enterprise Customers	<p>\$736,115 to be invoiced:</p> <p>\$285,000 Year One</p> <p>\$285,000 Year Two</p> <p>\$166,115 Seven Months of Year Three</p>

Optional

Additional Services

See Appendix A

The Platform Services Fees and API Services Fees are, collectively, the "Subscription Fees."

Total Fees For the Above-Ordered Services for the Initial Subscription Term
(2 Years and 7 Months) \$1,185,265

3. Scope of Use Customer is purchasing a subscription license for above-identified Aunt Bertha Services to be used within the scope by Customer and Authorized Customer Users (all Customer designated employees and contracted personnel, who are located in, and will limit their access to the Site, from within the United States) who Customer determines need access to Customer's staff Site and Customer's branded public facing Site for Community Users for Customer's operations offered within the state of West Virginia, and as is standard with all Aunt Bertha projects national coverage for Aunt Bertha provided Data, including CBO related programs and information, is included, and the public facing site is intended for public access throughout the United States.

4. Invoice Schedule Customer will be invoiced upon execution of this agreement for the subscription and implementation (one-time) fees and other services fees due and for the first year of the Initial Subscription Term. After the Initial annual invoice, an invoice will be sent at the beginning of each following twelve-month period, or for the remainder of the then remaining part of the Initial Subscription Term if less than twelve-months remaining. Subscription Services (any items with recurring fees) added during a Subscription Term will be invoiced at an amount prorated to the Customer's next occurring annual invoice date, and all other items will be invoiced as mutually agreed in writing.

The authorized representatives of the parties have executed this Agreement effective as of the last day signed by a party.

West Virginia Department of Health and
Human Resources
("Customer")

Aunt Bertha, a Public Benefit Corporation
("Aunt Bertha")

By: Jackie Newson

By: Chad Denton

Name: Jackie Newson

Name: Chad Denton

Title: Program manager

Title: CFO

Date: July 7, 2022

Date: July 7, 2022

Thank you from the entire team at

Ok

Althea Greenhouse



Our Mission: Connecting all people in need
and the programs that serve them (with dignity and care).

Appendix A: Services Rate Sheet

The services listed below are for additional optional services (unless selected on the Order Form) and their corresponding rates. These services are supplemental and not required for an initial launch and are available to serve customers for ongoing needs and initiatives during and after go-live. We can provide estimated fees for any of the below services. Travel and related travel expenses (subject to Customer pre-authorization) apply for any onsite visits and trips outside of onsite training included in Implementation Fee.

Service	Rate
Branded Mobile App for a Community Site (iOS or Android)	\$10,000 per year.
Live Search Help	\$500 per month.
Data Warehouse Access	\$1,000 per month as a stand alone.
Premium Reports & Insights	\$1,500 per month (includes Data Warehouse Access)
Enterprise API Available to use within a Customer System ("System")	Price to be quoted after discussing and understanding use case.
Marketplace for Goods & Services Fulfillment	Varies based upon the transaction type and the Marketplace Supplier, subject to separate ordering and terms
Custom Development	\$225 per hour.
Non-standard Integrations and After Hours Technical Support	\$150 per hour.
Ongoing Support & Services	Customer Success Manager/Project Management - \$135 per hour Technical Advisor/Project Management - \$150/hour Community Engagement Support - \$135 per hour Reporting Services - \$150 per hour Executive Advisor - \$250 per hour
Professional Services	Priced based on scope of work
Additional Staff Trainings	Virtual Staff Trainings: \$250 per training. Onsite Staff Trainings: \$250 per training + Travel and Expenses.

Our Mission: Connecting all people in need
and the programs that serve them (with dignity and ease).

State and Local Government Entity Customer Subscription Services Agreement Terms

The parties agree this Customer Agreement will only apply to the extent permissible and not prohibited by laws of the State of West Virginia, in which the Customer (a state or local public governmental entity) is located and any applicable United States federal law:

Overview of Aunt Bertha Services and Options:

Aunt Bertha, a Public Benefit Corporation ("Aunt Bertha" also d/b/a findhelp and findhelp.org) provides subscription licensing options for Aunt Bertha's commercially available technology platform (including software as a service, functionality, integrations, and data sharing and communication options) for use and configuration by Customer and Customer's self-designated authorized users. Within the platform, Customer is able to set up and manage the Customer's own administrative users and other authorized users and may elect to use various automated configuration options and functionality within the subscribed Services. Aunt Bertha's standard Services do not require Aunt Bertha personnel to access Customer's sensitive data within the Services. Aunt Bertha personnel shall have no responsibility to enter any Customer data or send or receive any data on behalf of the Customer, all such options are available for use and configuration by Customer and Customer's Authorized Users. Without express written agreement by an authorized representative of Aunt Bertha, Customer agrees not to request or require Aunt Bertha to enter, receive, or request any data on behalf of the Customer.

In the event Customer may request potential customized options for professional services and unique deliverables that Aunt Bertha may be able to provide, our Aunt Bertha team will communicate and engage in good faith efforts to arrive at a mutually acceptable Statement of Work for any additional customer-specific requirements and deliverables that are outside the parameters of the current functionality and configurations available to our Customers within the Aunt Bertha Services. Such additional services would, for example, be to assist the Customer with customer specific needs and requirements, including dedicated staff augmentation, extra customized training, including for example Customer-specific additional security and screening requirements and processes, subcontractor use, and dedicated personnel.

1. DEFINITIONS

"Aunt Bertha" means Aunt Bertha, a Public Benefit Corporation, also doing business as findhelp and findhelp.org.

"Aunt Bertha API" means Aunt Bertha's application programming interface and any accompanying or related documentation, source code, executable applications and other materials made available by Aunt Bertha, including, without limitation, through its developer website and via the Platform.

"Aunt Bertha Marks" means Aunt Bertha®, and Aunt Bertha's other product and service names, trademarks, service marks, branding and logos made available for use in connection with the Services pursuant to this Agreement.

"Authorized Customer User" means, collectively Customer and any of Customer's individual employees, agents, or contractors accessing or using the Services on Customer's behalf under the rights granted to Customer pursuant to this Agreement.

"Community Based Organization" or "CBO" means an organization or program that provides community, social, or other services to individuals that is listed on the Site.

"Community User" means a member of the general public (not an Authorized Customer User) who accesses the Site.

"Confidential Information" means any and all non-public information disclosed by one party to the other party pursuant to this Agreement in any form or medium, whether oral, written, graphical or electronic, that has been identified as confidential or that by the nature of the circumstances surrounding disclosure ought reasonably to be treated as confidential.

"Customer Affiliate" is defined as a company which controls, is controlled by or is under common control with Customer where "control" is defined as the power to direct the management and policies of the entity in question, whether by contract, ownership of voting securities, or otherwise. A Customer Affiliate shall only be considered such for so long as such control exists.

"Customer Content" means the data, media and content submitted, stored, posted, displayed, or otherwise transmitted by Customer and Authorized Customer Users to Aunt Bertha through the Service, but does not include any data collected by Customer through use of or in connection with the Services. For clarity, Customer Content does not include Community User data or any other Non-Customer Originated Data.

"Data" means the Customer Content, Seeker Data, and Non-Customer Originated Data as it is made generally available by Aunt Bertha to Community Users and Aunt Bertha's general customer base.

"Documentation" means text and/or graphical documentation provided to Customer in accordance with this Agreement, whether in electronic or printed format, that describe the generally available features, functions and operation of the Services, and which are designed to facilitate use of the Services.

"Materials" mean collectively all the text, Non-Customer Originated Data, information, software, graphics, photographs and more, including the Documentation, the Platform and Aunt Bertha API through which Aunt Bertha offers the Services. Materials include any and all intellectual property embodied in the Materials including the Aunt Bertha Marks. Materials does not include Customer Content.

"Non-Customer Originated Data" means Aunt Bertha's vast database of content that Aunt Bertha continuously collects and stores based upon its own database of content and pursuant to separate content agreements with third parties, including its Community Users.

"Open Source Software" means all software that is available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that approved by the Open Source Initiative (www.opensource.org).

"Order Form" means the ordering documents for Services purchased from Aunt Bertha that are mutually agreed upon and executed hereunder by the parties from time to time. These Customer Terms and Conditions shall be deemed incorporated into each Order Form entered between the parties (collectively, the 'Agreement').

"Platform" means a "white labeled" presentation of the Site that may be licensed by Customer pursuant to an Order Form, subject to the terms of this Agreement.

"Seeker" means the specific individual that is the subject of any referral, assessment, note, survey, or similar activity performed on or using the Site or Services.

"Seeker Data" means information about a Seeker that is processed or created by, or entered into, the Site or Services by anyone. For avoidance of doubt, forms, assessments, surveys, and similar content created by Authorized Customer User to collect such information is not Seeker Data.

"Services" means any and all services, tools, software, content, applications and functionalities as may be provided by Aunt Bertha to Customer under this Agreement, including access to and use of the Platform and the Aunt Bertha API, which is offered on a subscription basis, and the Data as presented to Aunt Bertha's general customer base through the Platform including access to and use by way of such Platform and API further described in the Order Form depending upon the Services subscribed by the Customer pursuant to the Order Form. Services include the API License, the Platform License and any or all other services purchased pursuant to an Order Form.

"Site" means, collectively, the sites located at the URL: www.findhelp.com, findhelp.org, as well as all associated sites linked or directed thereto by Aunt Bertha, its subsidiaries and affiliated companies, whether as presented to end users by Aunt Bertha or as presented by the Customer pursuant to and subject to a Platform License.

"Subscription Term" means each period of time that Customer has subscribed to the Services stated in an Order Form, or extension. Unless otherwise agreed in writing, each Subscription Term will be for consecutive twelve-month periods from acceptance by Aunt Bertha of the applicable Order Form for the Services.

"System" means, in the event that an API License is granted in the Order Form, the Customer managed software system that is listed in the Order Form with which the licensed API is permitted to interact.

"User Terms" means the "Aunt Bertha Privacy Policy" located at <https://company.findhelp.com/privacy/> and the "End User Terms of Service" located at <https://company.findhelp.com/terms/>.

2. PLATFORM LICENSE; AND API LICENSE; RELATED INTELLECTUAL PROPERTY RIGHTS, UNIQUE DELIVERABLES

2.1. **Platform License.** If Customer purchases a license to the Platform pursuant to the Order then this Section 2.1 will apply. All rights to use the Platform are subject to Customer's subscription to and payment for applicable Platform

Services that are agreed pursuant to an Order Form. In consideration of Customer's payment of applicable Fees, subject to the terms and conditions of this Agreement, including but not limited to Section 3 below, Aunt Bertha hereby grants to Customer and its Authorized Customer Users a non-exclusive, non-transferable, non-sublicensable, within the USA only, revocable right and license during the Subscription Term (i) to access, input and interact with the Data within the Platform and (ii) to use, reproduce, transmit, publicly perform, publicly display, copy, process, and measure the Data solely (1) within the Platform and to the extent required to enable the ordinary and unmodified functionality of the Platform as described in the online descriptions, and (2) for the Customer's internal business use (together "*Platform Purpose*"). Customer hereby acknowledges that the license hereunder is solely being provided for the Platform Purpose and not to modify or to create any derivatives based on the Data. Customer will take all reasonable measures to restrict the use of the Platform to prevent unauthorized access, including the scraping and unauthorized exploitation of the Data. Community Users who are not Authorized Customer Users do not require a separate license to be purchased on such Community User's behalf by Customer. A Community User is granted the right to access general public capabilities of the Site when the Community User agrees to (and maintains compliance with) Aunt Bertha's then current User Terms.

2.2. API License. If Customer purchases an API license pursuant to the Order Form, then this Section 2.2 will apply. All rights to use the Aunt Bertha API are subject to Customer's subscription to and payment for applicable API Services that are agreed pursuant to an Order Form. In consideration of Customer's payment of applicable Fees, subject to the terms and conditions of this Agreement, including but not limited to Section 3 below, Aunt Bertha hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, within the USA only, revocable right and license during the Subscription Term to: (i) access, use and make calls for real time transmission and reception of Data and information to the Aunt Bertha API, in object code form only; (ii) access, input, transmit, and interact with the Data solely for use with and within the System; and (iii) use, process, and measure the Data solely to the extent required to enable the display of the Data for "System End Use," as defined in the following sentence (together, the "*API Purpose*"). The Authorized Customer Users are permitted read only access to the Data solely as and how the Data is presented to such Authorized Customer Users within the System and only within the USA (the "*System End Use*"). Customer hereby acknowledges that the license hereunder is solely being provided for the API Purpose and not to modify or to create any derivatives based on the Data. Customer shall ensure that the Authorized Customer Users will not access the Aunt Bertha API other than within the System and within the scope of use granted herein. Customer agrees that (w) Customer will not persist or cache any Data; (x) display of the Data in the System will be based on real-time API use; (y) Customer will use all reasonable efforts restrict the use of the System so as to prevent unauthorized access, including the scraping and unauthorized exploitation of the Data; and (z) Customer will install updates to the API that Aunt Bertha makes available from time to time within thirty (30) days of Aunt Bertha making an update generally available to its customer base.

2.3 Intellectual Property Understandings: Unique Deliverables. Customer shall own all right, title and interest to any unique Deliverables (as defined in this section) and Aunt Bertha agrees to grant to Customer a perpetual, non-exclusive, non-transferable, royalty-free license to use Aunt Bertha's Background IP (defined below), Utilities, and Residual IP solely for Customer to use the Deliverables, subject to the following:

- (i) each party will retain all Intellectual Property Rights that it owned or controlled prior to the effective date of this Agreement or that it develops or acquires from activities independent of the Services performed under this Agreement ("*Background IP*"),
- (ii) Aunt Bertha will retain all right, title and interest in and to all Intellectual Property Rights in or related to the Services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software or development tools used in performing the Services (collectively, the "*Utilities*"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates or output which are developed, created or otherwise used by or on behalf of Aunt Bertha in the course of performing the Services or creating the Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or data of Customer (collectively, the "*Residual IP*"), even if embedded in the Deliverable, and
- (iii) Customer use of software, online services, or software-enabled services in connection with the Services is pursuant to the terms of the applicable licensing software and cloud computing/platform terms.

As used herein, "Deliverables" means the work product or tangible embodiment of specifically agreed services that are (i) prepared or performed by Aunt Bertha or its subcontractors uniquely and exclusively for a Customer and (ii) specifically

identified in a signed Statement of Work as Deliverables expressly for the sole benefit and use of the named Customer. "Intellectual Property Rights" means rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications.

3. RESTRICTIONS

3.1. Materials. Customer shall not, and shall not permit any Authorized Customer Users to: (i) copy or duplicate any of the Materials in any form, regardless of technique (e.g., screen-scraping, downloading, printing or otherwise) except as permitted in this Agreement and the Documentation; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Materials is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Materials, or attempt to do any of the foregoing, and Customer acknowledges that nothing in the Agreement will be construed to grant Customer any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Materials, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Aunt Bertha; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Materials; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Materials; (vi) use any Open Source Software in connection with any of the Materials in any manner that requires, pursuant to the license applicable to such Open Source Software, that any of the Materials be (1) disclosed or distributed in source code form, (2) made available free of charge to recipients, or (3) modifiable without restriction by recipients; (vii) assign, sublicense, sell, resell, lease, rent, disseminate, distribute, or otherwise transfer, make available, or convey, or pledge as security or otherwise encumber, Customer's rights granted hereunder; (viii) host, save, preserve, memorialize, aggregate, collect, compile, or otherwise retain or store any of the Materials (or any copy thereof); (ix) use the Materials in any manner not expressly authorized by this Agreement, or (x) use the Materials, or Aunt Bertha API to create or benefit from any service that is competitive with the Platform or any other Aunt Bertha service. Customer's use of any of the Materials will comply with all applicable laws, statutes, regulations or rules and Customer will not use any of the Materials in connection with any illegal activities. All copies of the Materials in Customer's possession, or any part thereof, shall be identified by title, shall reproduce Aunt Bertha's copyright notice (if any) and proprietary legend (if any), and shall be marked confidential (to the extent that the Materials are marked confidential or otherwise identified to be confidential by Aunt Bertha). For purposes of this Agreement, any copy (e.g. cached representation) of all or any portion of the Materials shall be treated in the same manner as the Material itself, and all obligations as to Materials as set forth in this Agreement, with respect to copies of such Materials, shall survive indefinitely. Each Party shall comply with any and all laws and regulations of any and all countries, states, or other jurisdictions that apply to the use and display of the Materials.

3.2. Authorized Customer Users. Customer acknowledges and agrees that, as between Customer and Aunt Bertha, Customer shall be responsible for all acts and omissions of Authorized Customer Users, and any act or omission by an Authorized Customer User which, if undertaken by Customer would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Customer. Customer shall ensure that all Authorized Customer Users are aware of the provisions of this Agreement as applicable to such Authorized Customer User's use of the Services and shall cause Authorized Customer Users to comply with such provisions. Aunt Bertha reserves the right to establish a maximum amount of storage and a maximum amount of data that Customer or its Authorized Customer Users may store within, or post, collect, or transmit on or through the Services. No Customer Affiliate will have any right to use the Services unless and until the Customer expressly purchases a license to use the Services in an Order Form. If Customer expressly purchases a license to the Services for Customer Affiliates, such Customer Affiliates may use the Services purchased on behalf of and for benefit of Customer or Customer Affiliates as set forth on the Order Form in accordance with the terms of this Agreement. Customer shall at all times retain full responsibility for Customer Affiliate's compliance with the applicable terms and conditions of the Agreement. Customer Affiliates' individual employees, agents, or contractors accessing or using the Services (subject to payment for use rights pursuant to an Order) on Customer Affiliates' behalf under the rights granted to Customer or Customer Affiliates pursuant to this Agreement shall be "Authorized Customer Users" for purposes of the Agreement.

3.3. Customer Accounts. It is the responsibility of Customer to obtain and maintain all Customer equipment and services needed for access to and use of the Services and pay all charges related thereto. It is also Customer's responsibility to maintain the confidentiality of password(s), including any password of a third-party site that Aunt Bertha may allow

Customer to use to access the Services, and Customer is responsible for all activities that occur using such account passwords. Should Customer believe any password or security for the Services has been breached in any way, Customer must immediately notify Aunt Bertha. Customer shall not share account passwords, let others access or use the Customer account or do anything else that might jeopardize the security of the Customer account passwords. Customer shall notify Aunt Bertha if account passwords are lost, stolen, if Customer is aware of any unauthorized use of account passwords on the Services or if Customer is aware of any other breach of security in relation to the Services.

3.4. **Suspension.** Aunt Bertha reserves the right, in its reasonable discretion, to temporarily suspend access to and use of the Services: (i) during planned downtime for upgrades and maintenance to the Services (Aunt Bertha will generally provide notice of such planned downtime on the support pages applicable to the Services); (ii) during any unavailability caused by circumstances beyond Aunt Bertha's reasonable control, such as, but not limited to, acts of God, acts of government, acts of terror or civil unrest, technical failures (including, without limitation, inability to access the Internet), or acts undertaken by third parties; or (iii) if Aunt Bertha suspects or detects any malicious software connected to Customer's account or use of the Services by Customer or Authorized Customer Users.

4. DELIVERY

4.1. **Credentials.** In order to use and access the Platform, Authorized Customer Users must obtain login credentials. Customer may not share its credentials with any third party, shall make commercially reasonable efforts to keep such credentials and all login information secure and shall use the credentials as Customer's sole means of accessing the Services.

4.2. **Data.** Data will be provided in the form and format that Aunt Bertha makes such Data available to its general customer base for the applicable Services. Any technical changes to the format, frequency, and volume of Data delivered requested or required by Customer shall not be binding on Aunt Bertha without the prior written consent of Aunt Bertha, which may be withheld for any reason but shall not be unreasonably withheld.

4.3. **Site.** In order to access certain password-restricted areas of the Site and to use certain Services and Materials offered on and through the Site, Customer must ensure the successful registration of a user account for each of its Authorized Customer Users with Aunt Bertha. To register an account, each of its Authorized Customer Users must submit a working email address and a preferred password through the account registration page on the Site.

5. IMPLEMENTATION AND ACCEPTANCE

Aunt Bertha will provide and implement the Services for the options as specified and on each mutually agreed Customer Order Form or Statement of Work in a timely manner in accordance with a mutually agreed implementation workplan. Unless otherwise agreed in writing between the Customer and Aunt Bertha on the specific Order or Statement of Work, for any implementation of Services or other deliverables for which Aunt Bertha is responsible, Aunt Bertha will notify each Customer as applicable of the completion of the deliverable. Within thirty (30) days of the date that the Customer receives a notification (which may be in the form of an invoice) from Aunt Bertha that the deliverable is complete (Submitted Deliverable), the Customer may:

- a. accept the Submitted Deliverable as complete, which acceptance will be deemed to have occurred in the event Customer provides no response to Aunt Bertha within thirty days after the notice from Aunt Bertha;
- b. accept the Submitted Deliverable as partially complete along with an explanation to Aunt Bertha as to the non-accepted portion;
- c. decline to accept the Submitted Deliverable and provide a written explanation to Aunt Bertha of the reasons for the non-acceptance; or,
- d. request more time from Aunt Bertha to allow Customer to discuss and consider the Submitted Deliverable.
- e. Within a time period that may not exceed thirty (30) days of the date that Aunt Bertha receives the non-acceptance from Customer of an entire or partial Submitted Deliverable, Aunt Bertha will have the opportunity to rework and resubmit or otherwise resolve the deliverable to Customer, and Customer will then follow the process above for a new Submitted Deliverable.

Customer will test the Services to confirm that it performs as described in the Documentation. Customer will notify Aunt Bertha of any material failures of the Services to properly function and perform in conformance to the Documentation and Aunt Bertha will promptly correct or resolve any such material failures to the extent within with the control and

responsibility of Aunt Bertha at no additional cost. Customer will test any resubmitted deliverable to determine whether the failure has been corrected. The Services or other deliverable will be understood to have achieved "Acceptance" (still retaining any warranty and any additional ongoing obligations) on the date per the above process unless Customer provides Aunt Bertha written notice to the contrary per the above.

5. CUSTOMER CONTENT AND PERFORMANCE DATA

5.1. Customer Content. Customer shall retain all right, title and interest in and to the Customer Content. Customer hereby grants to Aunt Bertha the right to use the Customer Content during the Subscription Term for purposes of making available the Services to Customer.

5.2. Performance Data. Customer hereby grants to Aunt Bertha the right to collect and use data related to the use of and calls to the Aunt Bertha API (the "Performance Data") so as to analyze the performance of the Aunt Bertha API in order to improve its operation. None of this data will be the data of any Authorized Customer User or of the Customer except to the extent necessary for evaluation of the performance of the Aunt Bertha API and associated systems. The Performance Data will never include any personally identifiable information of an Authorized Customer User or of the Customer.

6. FEES AND PAYMENT

6.1. Fees. Customer agrees to pay all applicable fees ("Fees") related to the Implementation and use of the Services as set forth on the applicable Order Form (after approval by Customer's authorized representative which may be in the form of a formal Purchase Order from Customer clearly referencing and approving the Order Form from Aunt Bertha), including a subscription Fee as set forth in the Order Form for access to the Services.

6.2. Payment. Customer shall pay to Aunt Bertha the undisputed Fees in accordance with the payment terms in the Order Form within thirty (30) days of Customer's receipt of such Invoice from Aunt Bertha. The parties agree that the applicable state law on prompt payments by will apply if different from this payment term.

7. TERM AND TERMINATION

7.1. Subscription Term. The Subscription Term will renew for consecutive periods of time (each a Subscription Term) equal to the initial twelve-month Subscription Term upon mutual written agreement of the parties prior to the end date the then current Subscription Term. The subscription fee pricing during any consecutive future Subscription Term will remain unchanged from the immediately prior Subscription Term unless Aunt Bertha has provided written notice to Customer, of which email is acceptable, of a pricing increase at least sixty (60) days before the end of such prior Subscription Term, in which case the pricing increase will be effective upon any mutually agreed renewal and thereafter; provided however that no such pricing increase shall occur until after expiration of the then current Subscription Term.

7.2. Customer Cancellation. Customer may cancel a subscription at any time by emailing notice of the date of such cancellation to Aunt Bertha at support@findhelp.com. In the event of such cancellation by Customer, no refunds of Fees shall be provided and Customer shall be responsible for paying any balance due on Customer's account. Customer agrees that Aunt Bertha may charge any unpaid fees to Customer's provided payment method and/or send Customer an invoice for such unpaid fees. Customer agrees and acknowledges that upon the effective date of such a cancellation, (i) Aunt Bertha may immediately suspend the Customer account; and (ii) Fees will not continue to accrue, but Customer will not receive any refunds of Fees already paid; (iii) Aunt Bertha reserves the right to delete all Customer Content and any other data in the normal course of operation.

7.3. Termination for Convenience. Either party may terminate this Agreement at any time for convenience with at least sixty (60) days prior written notice of such termination. In the event that Aunt Bertha terminates the Agreement for convenience pursuant to this Section 7.3, Customer shall be entitled to a refund of all prepaid, unused subscription Fees (calculated for the days remaining prepaid, if any, in the current Subscription Term from the termination date) paid by Customer to Aunt Bertha (the "Refund"), which Refund Aunt Bertha shall pay to Customer within thirty (30) days of the effective date of termination.

7.4. Termination for Material Breach. Either party may terminate this Agreement if the other party ceases the conduct of active business. In addition, either party may terminate this Agreement in the event that the other party materially breaches any other terms and conditions of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice from the other party describing such breach.

7.5. Termination for Bankruptcy or Insolvency. In the event either party voluntarily files a petition in bankruptcy or has such a petition involuntarily filed against it (which petition is not discharged within thirty (30) days after filing) or is placed in a receivership or reorganization proceeding or is placed in a trusteeship involving an insolvency, the other party may terminate this Agreement by giving a written termination notice, which termination shall become effective upon receipt.

7.6. Effects of Termination. Upon expiration or termination of this Agreement, Customer's right to receive and use any Services pursuant to the terms of this Agreement shall cease immediately, Customer shall no longer access the Services, and Customer shall not circumvent any security mechanisms contained therein. Any termination shall be without prejudice to any other rights or remedies that each party may have against the other party with respect to any default under this Agreement, nor will such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under this Agreement. Upon expiration or termination of this Agreement, and within thirty (30) days of the date of expiration or termination, Customer shall destroy all Materials in its possession and provide a certificate to Aunt Bertha signed by a duly authorized representative certifying such destruction.

8. ELECTRONIC COMMUNICATIONS

Customer consents to receiving electronic communications from Aunt Bertha. These electronic communications may include notices about applicable fees and charges, transactional information and other information concerning or related to the Services. These electronic communications are part of Customer's relationship with Aunt Bertha. Subject to the notice requirements in Section 18.1, Customer agrees that any notices, agreements, disclosures or other communications sent by Aunt Bertha to Customer electronically will satisfy any legal communication requirements, including that such communications be in writing.

9. PRIVACY AND CONFIDENTIALITY

9.1. Privacy Policy. The Aunt Bertha Privacy Policy sets forth how Aunt Bertha may use Customer Information.

9.2. Confidentiality. Customer and Aunt Bertha agree as follows with respect to Confidential Information: (i) to use Confidential Information disclosed by the other party only for the purposes described herein; (ii) to not reproduce Confidential Information of the other party, and to hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (iii) to not create any derivative work from the Confidential Information of the other party; (iv) to restrict access to the Confidential Information of the other party to its personnel, agents, and/or consultants, who have a need to have access and who have been advised of and have agreed in writing to treat such Confidential Information in accordance with this Agreement; and (v) to return or destroy all Confidential Information disclosed by the other party that is in its possession upon termination or expiration of the Subscription Term. Notwithstanding the foregoing, the obligations contained in this paragraph will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing party without restriction. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (g) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (h) to establish a party's rights under the Agreement, including to make such court filings as it may be required to do.

9.3. HIPAA. In addition, under certain circumstances, Customer and its Authorized Customer Users may be presented with the ability to send referrals or inquiries directly to CBOs and other entities and individuals that are also users of the Site and the Services. If Customer is a "covered entity" or "business associate" as those terms are defined in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), at 45 CFR 160.103, Customer is responsible for ensuring that disclosures that Customer or its Authorized Customer Users make, including through the Services, to any CBO or other entity or individual comply with HIPAA requirements.

9.4 Personally Identifiable Information and Sensitive Personally Identifiable Information. Each party will be responsible to comply with each party's respective obligations related to Protected Health Information and Sensitive Personally

Identifiable Information as defined under applicable federal and state law. In addition, under certain circumstances, Customer and its Authorized Customer Users may be presented with the ability to send such information through referrals or inquiries and engage in other forms of data exchange and requests for data directly (and indirectly via user-selected options to transmit via text or email) to and from other users (individuals and/or entities) of the Site and the Services and the findhelp.org technology platform. Customer is responsible for ensuring that any data entry and sharing (through direct or indirect communication or through requests do do) that Customer or its Authorized Customer Users may make to, or request from, any other user or entity complies with applicable federal and state laws. For the avoidance of doubt, Aunt Bertha is not a business associate of any CBO or any individual user and does not sign a "business associate agreement" with any CBO or any individual user. As between Customer and Aunt Bertha, Customer is solely responsible for entering into a business associate agreement or other agreement with any entity or individual if, in Customer's sole interpretation and discretion, one is necessary to disclose or receive information to or from that entity or individual. As between Aunt Bertha and Customer, Customer agrees that it takes responsibility for (i) access to and use of the Services and the Documentation, by Customer, Authorized Customer Users, or other third parties accessing the Services or Documentation on Customer's behalf, (ii) ensuring that Customer's and Authorized Customer Users' use of the Services conforms with applicable federal and state laws and regulations, including, but not limited to HIPAA, and complies with all of Customer's applicable internal policies and procedures, including policies related to the collection of appropriate consent from individuals for the use or disclosure of personal information and Protected Health Information (as that term is defined in HIPAA) and of sensitive or other personally identifiable information subject to other federal and state laws of the United States; and (iii) for the reliability, integrity, legality, and accuracy and appropriateness of Authorized Customer Users' use of the Services and decision-making related thereto. Customer understands and agrees that the Services are only to be used and accessed within the United States. While Aunt Bertha may provide functionality as a part of the Services to assist with collecting consent from individuals, it is solely the Customer's decision to use or not use such functionality, and any such decision by Customer will not be interpreted to make Aunt Bertha responsible for Customer's failure to comply with its responsibilities under applicable federal and state laws.

10. LINKS TO THIRD-PARTY SITES

Aunt Bertha may provide links on the Services to third-party sites. Aunt Bertha is not obligated to review any third-party sites that Customer visits through a link to from the Services, Aunt Bertha does not control any of the third-party sites, and is not responsible for any of the third-party Services (or the products, services, or content available through any of them). Aunt Bertha does not endorse or make any representations about such third-party sites, any information, software, products, services, or materials found there or any results that may be obtained from using them. Customer's access of any third-party sites shall be entirely at Customer's own risk and Customer shall follow the privacy policies and terms and conditions for those third-party sites. Certain areas of the Services may allow Customer to interact and/or conduct transactions with one or more third-party sites, and, if applicable, allow Customer to configure its privacy settings in that third-party site account to permit Customer's activities on the Services to be shared with Customer's contacts in Customer's third-party site account.

11. UNAUTHORIZED ACTIVITIES RELATED TO THE SITE

11.1. Permitted Purpose. Use of the Services shall be solely for the Platform Purpose or API Purpose, as the case may be (the "Permitted Purposes"). Any other use of the Services beyond the Permitted Purposes is prohibited and, therefore, constitutes unauthorized use of the Services. By way of example and not limitation, Customer shall not, and shall not allow its Authorized Customer Users to use the Services in any of the following ways: (i) in a manner that violates any local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law; (ii) to stalk, harass, or harm another individual; (iii) to impersonate any person or entity or otherwise misrepresent Customer's affiliation with a person or entity; (iv) to interfere with or disrupt the Services or servers or networks connected to the Services; (v) to use any data mining, robots, or similar data gathering or extraction methods in connection with the Services; or (vi) to attempt to gain unauthorized access to any portion of the Services or any other accounts, computer systems, or networks connected to the Services, whether through hacking, password mining, or any other means.

11.2 Use of the Services. Customer and its Authorized Customer Users are entirely responsible for the content of, and any harm resulting from, any Customer Content or other content posted or uploaded by Customer or such Authorized Customer Users to the Services, regardless of whether the Customer Content in question constitutes text, graphics, audio files, information, or computer software. By using the Services, Customer warrants that: (i) the uploading, downloading,

copying and use of the Customer Content will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark or trade secret rights, of any third party; (ii) the Customer Content does not contain or install any viruses, worms, malware, Trojan horses or other harmful or destructive content; (iii) the Customer Content is not spam, is not machine- or randomly-generated, and does not contain unethical or unwanted commercial content designed to drive traffic to third party sites or boost the search engine rankings of third party sites, or to further unlawful acts (such as phishing) or mislead recipients as to the source of the material (such as spoofing); (iv) the Customer Content does not contain threats or incite violence towards individuals or entities, and does not violate the privacy or publicity rights of any third party; (v) the Customer Content is not getting advertised via unwanted electronic messages such as spam links on newsgroups, email lists, other blogs and web sites, and similar unsolicited promotional methods; (vi) the Customer Content is not named in a manner that misleads readers into thinking that Customer is another person or company; (vii) the Customer Content does not include racially, ethnically, obscene, sexually explicit or otherwise offensive language or use the Services to discuss, incite illegal activity or promote hatred against individuals or groups based on race, ethnic origin, religion, disability, gender, age, veteran status, sexual orientation, or gender identity. Customer shall ensure that all Authorized Customer Users shall be at least 13 years of age. If any Authorized Customer Users are not 18 years of age they shall have permission of parent. In addition, Customer agrees to not in any way, directly or indirectly, by contract or otherwise, block or restrict any other Aunt Bertha customer or CBO from obtaining any Seeker Data made available by Aunt Bertha through the Site or Services.

12. SPECIFIC TERMS FOR CBOs (only applicable if Customer (or a department of Customer) may elect to use the CBO account functionality in the Aunt Bertha Services)

12.1. Customer CBO. In addition to all of the other terms in this Agreement, Customers who are CBOs, and the Authorized Customer Users who use the Services on the CBO's behalf are subject to the additional requirements described in this Section 12. By claiming a CBO on Aunt Bertha's Site as required herein, either through the workflow maintained at <https://www.findhelp.com/claims> or through any other method that may now or in the future become available, Customer represents and warrants that Customer is authorized to act on its own behalf, and on the behalf of the CBO, and its Authorized Customer Users (collectively "**Customer CBO**"), and to bind Customer CBO to the terms of this Agreement. CBOs and their Authorized Customer Users are granted access to certain functionality through the Site to help the CBO with intake management, appointment scheduling, communication and other tasks related to individuals who are seeking services from them ("**CBO Tools**"). CBO Tools and their use by Authorized Customer Users are subject to all terms of this Agreement, in addition to any supplemental terms related to specific functionality described in this Section 12.

12.2. Referrals. Customer understands that by using the Services, the Customer CBO will be granted access to referrals and inquiries made by or on behalf of Community Users of the Services who may be seeking help from the Customer CBO. These referrals are content generated by and are the exclusive property of the Community Users who submit them. Aunt Bertha has and is able to grant Customer the limited license described in this Agreement, to use any inquiry or referral only for the purpose of making further contact with the Community Users who submitted it, or the individual who is the subject of the inquiry or referral. The Customer CBO is not permitted to use any inquiry or referral for any other purpose, unless that purpose is explicitly authorized by Aunt Bertha, the Community Users who submitted it, or the individual who is the subject of the inquiry or referral. Obtaining consent from the appropriate individual(s) for any other use of referrals or inquiries is the responsibility of Customer. Customer agrees that between the Customer CBO and Aunt Bertha, the Customer CBO is solely liable for its use of any referrals or inquiries sent to it, whether or not such use is explicitly authorized by this Agreement. Aunt Bertha reserves the right, but does not have any obligation, to terminate this Agreement according to the terms of Section 7, if the Customer CBO is misusing referrals or inquiries from other Community Users.

12.3. Modifications. By claiming the Customer CBO, Customer will be granted access to make modifications or updates to the information on the Site related to the Customer CBO. Any information about the Customer CBO that Customer uploads to the Site is Customer Content and is subject to all other terms of this Agreement related to Customer Content. In certain circumstances, Customer may be granted the functionality to reply directly to a referral or inquiry made by Community Users that represent a health care or care management organization. If Customer makes use of this functionality, Customer agrees to grant the Community Users, and the organization that the Community Users represents, if any, a non-exclusive, perpetual, irrevocable, and royalty-free license to use Customer's reply for the

purposes of maintaining or updating medical or other records held by such Community Users, and for any other purpose related to the care of or providing services to the individual who is the subject of the referral or inquiry. This license will survive the termination of this Agreement for any reason.

12.4. Consent. Aunt Bertha is aware that some CBOs provide services to individuals where the records related to those services are subject to the privacy requirements established in 42 CFR Part 2 – Confidentiality of Substance Use Disorder Patient Records. If the Customer CBO provides such services, Customer agrees that the Customer CBO is solely liable for maintaining compliance with 42 CFR Part 2, including but not limited to collecting proper written or electronic consent from any individual where such consent is necessary to further disclose that individual's information for any purpose. While Aunt Bertha may provide Customer with communication tools related to the services that the Customer CBO provides, it is the Customer CBO's responsibility to ensure that those tools, and any other CBO Tools, are used in compliance with all applicable laws and regulations, including 42 CFR Part 2.

13. AUNT BERTHA'S PROPRIETARY RIGHTS

13.1. Aunt Bertha Marks. "Aunt Bertha" is a trademark that belongs to Aunt Bertha, a Public Benefit Corporation. Other trademarks, names and logos on the Services are the property of their respective owners. Unless otherwise specified in this Agreement, all Materials, including the arrangement of them on the Services are the sole property of Aunt Bertha, a Public Benefit Corporation. All rights not expressly granted herein are reserved. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license holder. Customer will not remove or alter Aunt Bertha Marks that may be included with any Materials.

13.2. Aunt Bertha Materials and Intellectual Property. The Materials are provided to Customer under a non-exclusive license and not in connection with a sale. Other than the non-exclusive license granted to Customer for the Permitted Purpose hereunder, Aunt Bertha retains all right, title and interest, including all copyright, patent, trade secret and other intellectual property rights, in and to the Aunt Bertha API, Non-Customer Originated Data and Materials.

13.3. Aggregated Statistics. To assist with the functioning of the Aunt Bertha Services technology platform, and improve the platform for all users and expand the use of the platform, Aunt Bertha may monitor Customer's use of the Services and use data and information related to such use and the Customer Content in an aggregate and anonymous manner, including to compile statistical and performance information related to the provision and operation of the Services ("Aggregated Statistics"). As between Aunt Bertha and Customer, all right, title and interest in the Aggregated Statistics and all intellectual property rights therein, belong to and are retained solely by Aunt Bertha. Customer hereby acknowledges that Aunt Bertha will be compiling Aggregated Statistics based on the Customer Content input into the Services and Customer agrees that Aunt Bertha may (i) make such Aggregated Statistics publicly available, and (ii) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify Customer or Customer Confidential Information. Aunt Bertha retains all rights not expressly granted herein.

13.4. Suggestions and Feedback. If Customer and any of Customer's users may elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to Aunt Bertha in connection with or related to the Aunt Bertha (findhelp) Site, Platform, Aunt Bertha API, or Services (including any related Technology), Aunt Bertha will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any such information or materials in any manner. In order to cooperate with governmental requests, to protect Aunt Bertha's systems and customers, or to ensure the integrity and operation of Aunt Bertha's business and systems, Aunt Bertha may access and disclose any information we consider necessary or appropriate, including but not limited to user contact details, IP addresses and traffic information, usage history, and posted content. If Aunt Bertha makes any suggestions on using the Services, Customer is responsible for any actions Customer may take based on any such suggestions.

13.5. Exchange of Seeker Data. To strengthen connections between Seekers and helper organizations such as Customer and to enhance the continuity of social care delivered to Seekers, Aunt Bertha supports functionality within the Site and Services for Authorized Customer Users to view a given Seeker's history of referrals completed on or through the Site or Services. This functionality is made possible by Aunt Bertha customers and other helper organizations agreeing to exchange Seeker Data with each other through Aunt Bertha. Customer wishes to use this functionality. Therefore, Customer agrees Aunt Bertha may store, process, and disclose Seeker Data submitted by Authorized Customer Users in

order to facilitate the exchange of Seeker Data with participating helper organizations, solely for purposes of delivering social care to the Seeker to whom the data pertains. While Customer may disconnect itself from the functionality that allows the exchange of Seeker Data with other helper organizations, the rights granted to Aunt Bertha under this paragraph are non-exclusive and irrevocable as to any Seeker Data exchange prior to such disconnection. Customer is responsible for ensuring Authorized Customer Users only query or use Seeker Data from the Site or Services because Customer is providing services to the Seeker to whom the Seeker Data pertains at the time of the query or use. Customer will not query or use Seeker Data for any other purpose.

14. INDEMNITY

14.1. Aunt Bertha Intellectual Property Indemnity. Aunt Bertha will defend at its expense any cause of action brought against Customer, to the extent that such cause of action is based on a claim that the Services, as delivered by Aunt Bertha to Customer, infringe a United States patent, copyright, or trade secret of a third party. Aunt Bertha will pay those costs and damages finally awarded against Customer pursuant to any such claim or paid in settlement of any such claim if such settlement was approved in advance by Aunt Bertha. Customer may retain its own counsel at Customer's own expense. Aunt Bertha shall have no liability for any claim of infringement based on: (i) Services which has been modified by parties other than Aunt Bertha where the infringement claim would not have occurred in the absence of such modification; (ii) Customer's use of the Services in conjunction with data where use with such data gave rise to the infringement claim; or (iii) Customer's use of the Services outside the permitted scope of the Agreement. Should the Services become, or in Aunt Bertha's opinion is likely to become, the subject of a claim of infringement, Aunt Bertha may, at its option, (iv) obtain the right for Customer to continue using the Services, (v) replace or modify the Services so it is no longer infringing or reduces the likelihood that it will be determined to be infringing, or (vi) if neither of the foregoing options is commercially reasonable, terminate the access and use of the Services. Upon such termination, Customer shall cease accessing the Services and Aunt Bertha will refund to Customer, as Customer's sole remedy for such license termination, the subscription Fees paid by Customer for the terminated license for the past twelve months. TO THE EXTENT PERMITTED BY STATE LAW, THIS SECTION STATES THE ENTIRE LIABILITY OF AUNT BERTHA WITH RESPECT TO ANY CLAIM OF INFRINGEMENT REGARDING THE SERVICES.

14.2. Indemnification Procedures. The parties obligations as set forth in this Section 14 are subject to the other party, to the extent allowed under applicable state law: (i) giving the indemnifying party prompt written notice of any such claim or the possibility thereof; (ii) giving the indemnifying party sole control over the defense and settlement of any such claim; and (iii) providing full cooperation to the indemnifying party in good faith in the defense of any such claim.

15. WARRANTIES

15.1. Warranty Disclaimer. THE SITE, THE SERVICES, AND MATERIALS ARE PROVIDED "AS IS" AND "WITH ALL FAULTS". CUSTOMER AND AUTHORIZED CUSTOMER USERS ASSUME THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SITE. AUNT BERTHA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND (EXPRESS, IMPLIED OR STATUTORY) WITH RESPECT TO THE SITE, THE SERVICES AND THE MATERIALS, WHICH INCLUDES BUT IS NOT LIMITED TO, ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AUNT BERTHA MAKES NO WARRANTY THAT THE SITE OR SERVICES WILL MEET CUSTOMER REQUIREMENTS OR THAT THE SITE OR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE OR THAT DEFECTS IN THE SITE OR SERVICES WILL BE CORRECTED. AUNT BERTHA MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SITE OR SERVICES OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SITE OR SERVICES. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER THROUGH THE SITE OR FROM AUNT BERTHA (OR ITS AFFILIATES, SUBSIDIARIES, LICENSORS OR AGENTS) SHALL CREATE ANY WARRANTY. AUNT BERTHA DISCLAIMS ALL EQUITABLE INDEMNITIES, ADDITIONALLY, AND NOT IN LIMITATION OF THE FOREGOING, OTHER THAN AS EXPRESSLY SET FORTH HEREIN, AUNT BERTHA DOES NOT WARRANT THE ACCURACY OR CORRECTNESS OF ANY DATA PROVIDED UNDER THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT IT HAS NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN.

15.2. Warranties. Notwithstanding the above warranty disclaimers, Aunt Bertha warrants that the Services (i) will run substantially in accordance with their Documentation; and (ii) will be performed in a professional and workmanlike manner, consistent with industry standards. Each Party represents and warrants to the other that it has the full corporate

right, power, and authority to enter into this Agreement. Customer represents and warrants to Aunt Bertha that its use of the Services, including the Data, shall be conducted in accordance with applicable laws, rules or regulations, industry standards and this Agreement.

15.3 Additional Warranties. Aunt Bertha warrants that it will continue to take appropriate and reasonable measures to provide for the security, availability, and proper function of the Services, including backup and disaster recovery for the systems within the control and responsibility of Aunt Bertha; and, during the term of this agreement (including consecutive renewals), Aunt Bertha will maintain compliance with the requirements for its current HITRUST certification (or equivalent alternative). Aunt Bertha will also keep records of all personnel with such IT systems access and Aunt Bertha shall promptly report any breach of its IT systems or data that relates to Customer or Customer's data that is stored within the Aunt Bertha's systems and shall inform Customer of its investigation and mitigation of any such breach. Both parties will take industry standard precautions to protect login information, prevent malicious software transmissions, prevent unauthorized access to the IT systems, prevent access to unauthorized information within the IT systems, timely terminate personnel access when not needed, and other reasonable administrative, technical, and physical safeguards.

16. LIMITATION OF LIABILITY. THE FOLLOWING TERMS ONLY APPLY TO THE EXTENT, IF ANY, PERMITTED UNDER APPLICABLE STATE LAW AND FEDERAL LAW:

16.1. Disclaimer of Damages. IN NO EVENT WILL CUSTOMER, AUNT BERTHA (OR ITS AFFILIATES, SUBSIDIARIES, LICENSORS OR AGENTS) BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

16.2. Liability Cap. SUBJECT TO SECTION 16.3, THE CUMULATIVE LIABILITY OF CUSTOMER, AUNT BERTHA (OR ITS AFFILIATES, SUBSIDIARIES, LICENSORS OR AGENTS) FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION BASED IN CONTRACT, TORT, OR STRICT LIABILITY, WILL NOT EXCEED THREE (3X) THE TOTAL AMOUNT OF ALL FEES PAID TO AUNT BERTHA BY CUSTOMER OR ON CUSTOMER'S BEHALF DURING THE TWELVE (12)-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

16.3. Exclusions. THE LIMITATIONS SET OUT IN SECTIONS 16.2 DO NOT APPLY OR LIMIT A PARTY'S LIABILITY WITH RESPECT TO (A) FEES DUE BY CUSTOMER FOR USE OF MATERIALS OR SERVICES, (B) SECTION 9.2 ("CONFIDENTIALITY"), (C) CUSTOMER'S MISAPPROPRIATION OF MATERIALS (INCLUDING DATA), SERVICES OR OTHER INTELLECTUAL PROPERTY, OR (D) SECTION 14 ("INDEMNITY"). IN ADDITION, THE LIMITATION OF LIABILITY IN SECTION 16.2 FOR ALL CLAIMS ARISING FROM OR RELATING TO THE PRIVACY OR SECURITY OF PROTECTED HEALTH INFORMATION OR PERSONALLY IDENTIFIABLE INFORMATION OR SENSITIVE PERSONALLY IDENTIFIABLE INFORMATION SHALL BE INCREASED TO FIVE TIMES (5X) THE TOTAL AMOUNT OF FEES PAID TO AUNT BERTHA BY CUSTOMER OR ON CUSTOMER'S BEHALF DURING THE TWELVE (12)-MONTH PERIOD PRIOR TO THE ACT, OMISSION OR EVENT GIVING RISE TO SUCH LIABILITY, NOTWITHSTANDING ANY LANGUAGE THEREIN TO THE CONTRARY.

17. LOCAL LAWS; EXPORT CONTROL

Aunt Bertha controls and operates the Services from its headquarters in the United States of America and the entirety of the Services may not be appropriate or available for use in locations outside of the United States of America. If Customer or Authorized Customer Users use the Services or Services outside the United States of America (provided such use has been permitted in writing), Customer and Authorized Customer Users are solely responsible for following applicable local laws.

18. GENERAL

18.1 Notice. Any legal notice necessary under this Agreement and any notice by a party to the other party in the event of a breach of this Agreement will be in writing and delivered by personal delivery, documented overnight courier, confirmed email, or certified or registered mail with return receipt requested, and will be deemed given upon personal delivery, one (1) day after deposit with an overnight courier, and five (5) days after deposit in the mail, or upon confirmation of receipt of email. Any notice of material breach will clearly define the breach including the specific contractual obligation that has been breached. Notices will be sent to Customer at Customer's address set forth on the Order Form. Notices to Aunt Bertha will be sent to:

Aunt Bertha, a Public Benefit Corporation
Attn: Legal
3616 Far West Blvd. 117-454
Austin, Texas 78731

Either party may change its address by sending a notice under this Section.

18.2. Independent Contractor. The parties are independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by this Agreement. Neither party shall make any warranties or representations on behalf of the other party. Nothing in this Agreement shall be deemed or construed to create a joint venture or partnership between Customer and Business Associate. The parties agree that neither party is acting or expected to act as an agent of Customer under the federal common law of agency [45 C.F.R. § 160.402]. Accordingly, each party shall have no vicarious liability for any federal HIPAA violations of the other party.

18.3 Training. Customer is responsible to ensure that all Customer Authorized Users are appropriately trained and capable of using the Services. Customer will engage in commercially reasonable efforts to comply with this obligation. Customer understands that any if additional training services or other optional services may be helpful, Customer will need to purchase such services at the then applicable rates of Aunt Bertha. If at any time in the future the Customer determines additional personally-provided training may be helpful in the future, the parties will communicate in good faith to establish a training program subject to Customer agreeing to the then current costs for available online training and or for on-site training and travel expenses, if any. If Aunt Bertha determines that the Customer is inordinately or excessively utilizing the standard subscription support services provided directly to Customer by individual staff members of Aunt Bertha, Aunt Bertha will have the option to recommend that the Customer purchase additional training services and other services as may be appropriate for the Customer's designated Authorized Users to more efficiently and effectively use the Aunt Bertha Services. If Customer declines to receive and participate in good faith in such recommended services, Aunt Bertha may prospectively set reasonable limits on the amount and manner in which Customer may request and Aunt Bertha may provide such support services to be performed by individual staff members of Aunt Bertha to Customer.

18.4. Governing Law. The state law for the State of West Virginia, in which the Customer is established as a public governmental entity and applicable U.S. federal law, without regard to the choice or conflicts of law provisions, will govern this Agreement. Foreign laws do not apply. Any disputes relating to this Agreement, the Site or the Services will be heard in the appropriate state and federal courts located in the Customer's State.

(i) Each Party Responsible for the Party's Own Legal Fees. In the event of any dispute or controversy between the Parties in connection with or related to this Agreement or this Addendum, or in connection with the interpretation or enforcement of any provision hereof or thereof, each party in such dispute or controversy will be responsible for its own legal fees (including attorneys' fees).

(ii) For any mediation or for any judicial action that may be brought in a state or federal court under this Agreement, each party also agrees to consent to agree to allow the other party to be represented by counsel of its own choosing, whether from the state where the judicial proceeding occurs or from any other state on the United States, pursuant to a pro hac vice or similar request to the maximum extent as may be allowed by any applicable court or forum.

(iii) Electronic Participation. To the maximum extent allowable and possible under the applicable rules and laws and to minimize each party's costs and expenses, the parties agree to use their best efforts to allow all dispute resolution (mediation or other legal proceedings) proceedings to occur through electronic means and for each

party to participate remotely by electronic means whenever such option is available instead of the physical presence of any or all parties at any particular location for any such proceeding.

18.5. Severability and Reformation. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

18.6. Force Majeure. Each party shall have no liability to the other party for any delay or failure to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of such party. Such causes shall include, but are not limited to, acts of God, floods, pandemic, fires, loss of electricity or other utilities, or delays by third parties in providing required resources or support.

18.7. Survival. The Ownership (Section 5), Proprietary Rights (Section 13), Indemnities (Section 14), Warranties (Section 15), Limitation of Liability (Section 16) and General (Section 18) provisions shall survive any termination of the Agreement.

18.8. Restricted Rights. Use of any software provided by Aunt Bertha hereunder by or for the United States Government is conditioned upon the Government agreeing that the software is subject to Restricted Rights as provided under the provisions set forth in FAR 52.227-19. If applicable, Customer shall be responsible for assuring that this provision is included in all agreements with the United States Government and that the software, when accessed by the Government, is correctly marked as required by applicable Government regulations governing such Restricted Rights as of such access.

18.9. Modifications to the Services. Aunt Bertha will endeavor to provide at least fifteen days advance notice of any changes in the Services platform. However, Aunt Bertha may change or modify the Services at any time with immediate effect (a) for legal, regulatory, fraud and abuse prevention, or security reasons; (b) to change existing features or add additional features to the Services (where this does not materially adversely affect Customer's use of the Services); or (c) to restrict items or activities that Aunt Bertha deems disruptive, unsafe, inappropriate, or offensive. Customer's continued use of the Services after the effective date of any change will constitute acceptance of that change. If any change is unacceptable to Customer, Customer agrees not to use the changed item and Customer may discontinue use of that part of the Services. Aunt Bertha will notify Customer of changes by electronically postings on applicable customer support webpages, to the applicable Services site to which the change relates, by sending an email notification, or by other electronic means or via other methods, including to any email addresses Customer provides. Customer is responsible to ensure that all of Customer's contact information is up to date and accurate and regularly monitored.

[End of Customer Subscription Terms]

Thank you from the entire team at



Our Mission: Connecting all people in need
and the programs that serve them (with dignity and ease).

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

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

Vendor: Aunt Bertha, a Public Benefit Corporation (also doing business as findhelp and findhelp.org)

Contract/Lease Number ("Contract"): CCT MCH2300000001

Commodity/Service: Subscription Services to Aunt Bertha's Technology Platform (see Vendor's Order Form and Subscription Terms)

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

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

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

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

State: WV DHHR

By: Althea Greenhowe

Printed Name: Althea Greenhowe

Title: Procurement Specialist, Sr

Date: July 8, 2022

Vendor: Aunt Bertha, a Public Benefit Corporation

By: Chad Denton

Printed Name: Chad Denton

Title: CFO

Date: July 7, 2022

FEDERAL FUNDS ADDENDUM

2 C.F.R. §§ 200.317 – 200.327

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

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

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

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

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

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

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

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

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

FEDERAL FUNDS ADDENDUM

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

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

1. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:

(2 C.F.R. § 200.321)

- a. The State confirms that it has taken all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Those affirmative steps include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.
- b. Vendor confirms that if it utilizes subcontractors, it will take the same affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

2. DOMESTIC PREFERENCES:

(2 C.F.R. § 200.322)

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

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

- b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.
- c. Definitions: For purposes of this section:
 - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. BREACH OF CONTRACT REMEDIES AND PENALTIES:

(2 C.F.R. § 200.327 and Appendix II)

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

4. TERMINATION FOR CAUSE AND CONVENIENCE:

(2 C.F.R. § 200.327 and Appendix II)

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

5. EQUAL EMPLOYMENT OPPORTUNITY:

(2 C.F.R. § 200.327 and Appendix II)

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

6. DAVIS-BACON WAGE RATES:

(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that if this Contract includes construction, all construction work in excess of \$2,000 will be completed and paid for in compliance with the Davis–Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must:

- (a) pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (b) pay wages not less than once a week.

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

7. ANTI-KICKBACK ACT:

(2 C.F.R. § 200.327 and Appendix II)

Vendor agrees that it will comply with the Copeland Anti-KickBack Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Accordingly, Vendor, Subcontractors, and anyone performing under this contract are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The State must report all suspected or reported violations to the Federal awarding agency.

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(2 C.F.R. § 200.327 and Appendix II)

Where applicable, and only for contracts awarded by the State in excess of \$100,000 that involve the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Vendor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

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

Vendor agrees that if this contract exceeds \$150,000, Vendor is to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

The State will not award to any vendor that is listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

Vendors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

13. PROCUREMENT OF RECOVERED MATERIALS

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

Vendor agrees that it and the State must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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

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

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

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

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

State of West Virginia

Purchasing Division

By: Althea Greenhowe

Printed Name: Althea Greenhowe

Title: Procurement Specialist, Sr

Date: July 8, 2022

Vendor Name:

Aunt Bertha, a Public Benefit Corporation

By: [Signature]

Printed Name: Chad Denton

Title: CFO

Date: July 7, 2022

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

W. Va. CSR § 148-1-5

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

W. Va. Code St. R. § 148-1-5

§ 148-1-5. Remedies.

Currentness

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

5.2. Contract Cancellation.

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

5.2.1.a. The vendor agrees to the cancellation;

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

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

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

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

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

5.2.1.g. The contract was awarded in error.

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

the vendor with 30 days' notice of the cancellation.

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

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

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

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

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

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

5.4. Suspension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.6. Damages.

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

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

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

Credits

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

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

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

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

Prevailing Wage Determination

- ☒ - Not Applicable Because Contract Not for Construction
- ☐ - Federal Prevailing Wage Determination on Next Page