



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

State of West Virginia
Master Agreement

Order Date: 07-18-2022

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

Order Number:	CMA 0511 2672 BMS2300000001 1	Procurement Folder:	999526
Document Name:	PDL/PPL/HCPADL/SMAC SERVICES	Reason for Modification:	
Document Description:	PDL/PPL/HCPADL/SMAC SERVICES		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2023-01-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2023-12-31

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: 000000102111 CHANGE HEALTHCARE PHARMACY SOLUTIONS INC 45 COMMERCE DR STE 5 AUGUSTA ME 99999 US Vendor Contact Phone: 999-999-9999 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>No</td><td></td><td></td></tr><tr><td>#3</td><td>No</td><td></td><td></td></tr><tr><td>#4</td><td>No</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	No			#3	No			#4	No			Requestor Name: Kelly (Jimmy) Dowden Requestor Phone: (304) 356-4861 Requestor Email: jimmy.k.dowden@wv.gov 23 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	No																				
#3	No																				
#4	No																				

INVOICE TO	SHIP TO
PROCUREMENT OFFICER: 304-352-4286 HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US	PROCUREMENT OFFICER: 304-352-4286 HEALTH AND HUMAN RESOURCES BUREAU FOR MEDICAL SERVICES 350 CAPITOL ST, RM 251 CHARLESTON WV 25301-3709 US

Total Order Amount:

Open End

Purchasing Division's File Copy

ENTERED

PURCHASING DIVISION AUTHORIZATION
DATE: *Tara K 7/20/2022*
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
DATE: *John S. Gray 7/27/2022*
ELECTRONIC SIGNATURE ON FILE

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

Extended Description:

THE VENDOR, CHANGE HEALTHCARE PHARMACY SOLUTIONS INC, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES (DHHR), BUREAU FOR MEDICAL SERVICES (BMS), INTO AN OPEN-END CONTRACT FOR PREFERRED DRUG LIST (PDL), PREFERRED PRODUCT LIST (PPL), HIGH-COST PHYSICIAN-ADMINISTERED DRUGS LIST (HCPADL), AND STATE MAXIMUM ALLOWABLE COST (SMAC) SERVICES FOR THE WEST VIRGINIA MEDICAID PROGRAM PER THE TERMS AND CONDITIONS, SPECIFICATIONS, BID REQUIREMENTS, AND THE VENDOR'S BID DATED 05/18/2022, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	85131701				0.000000
	Service From	Service To			
	2023-01-01	2023-02-28			

Commodity Line Description: PDL/PPL/HCPADL/ SMAC Startup Costs-Year 1

Extended Description:

Lump Sum Cost for Initial Startup Costs
2 Month Startup.

Service Period: 01/01/2023-02/28/2023.

Total Cost: \$0.00

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
2	85131701				0.000000
	Service From	Service To			
	2023-03-01	2023-12-31			

Commodity Line Description: Annual Not To Exceed Costs-Year 1

Extended Description:

Annual Not To Exceed Costs-Year 1 (10 Months)

Service Period: 03/01/2023-12/31/2023

Total Costs: \$512,357.53

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
3	85131701				0.000000
	Service From	Service To			
	2023-03-01	2023-12-31			

Commodity Line Description: Additional Services Hourly Rate-Year 1

Extended Description:

Additional Services (all inclusive hourly rate)
Year One (1) Hourly Rate (10 months):
\$174.9249

Service Period: 03/01/2023-12/31/2023

July 6, 2022

Via email:

Dan Hardin
Senior Vice President
Change Healthcare Pharmacy Solutions, Inc.
dhardin@changehealthcare.com

Re: Solicitation RFQ #BMS2200000002
PDL, PPL, HCPADL, and SMAC Services

Mr. Hardin,

The State of West Virginia has received your firm's bid in response to the above identified solicitation. In that solicitation, your firm suggested alterations to various provisions of the State's General Terms and Conditions. Modified provisions include Sections 8, 27, 30, and 36. The State is willing to accept those proposed changes, except for the proposed changes to the term entitled "30. PRIVACY, SECURITY, AND CONFIDENTIALITY". After conferring with the end user agency, the State hereby expressly rejects the proposed changes to the term entitled "30. PRIVACY, SECURITY, AND CONFIDENTIALITY" pursuant to the authority granted the Purchasing Division in W. Va. CSR § 148-1-6.4.2.

Please indicate your acknowledgement of this action below and returning this form to me so that this contract can be moved forward for processing and award.

Sincerely,



Crystal Husted
Senior Buyer
West Virginia Purchasing Division

Acknowledged by:



Dan Hardin
Senior Vice President & General Manager

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 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 three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

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

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for _____ years;

☐ the contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited.

Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney

General's Office (Attorney General approval is as to form only).

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** Contract Term specified in _____

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

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

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

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

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

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

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

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

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

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

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

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

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☒ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

☒ Pharmacists (RPh or PharmD)

☒ Physicians (MD or DO)

☐

☐

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: \$1,000,000.00 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: \$1,000,000.00 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.

☒ ***THE STATE OF WV MUST BE LISTED AS ADDITIONAL INSURED ON INSURANCE CERTIFICATE

☒ ***CERTIFICATE HOLDER SHOULD READ AS FOLLOWS:
WV DHHR
350 CAPITOL ST, RM 251, CHARLESTON, WV 25301

☐

☐

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

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

10. [Reserved]

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

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☒ Liquidated Damages Are Not Included in this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. NO DEBT CERTIFICATION: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

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

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

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

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

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

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

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

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

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

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

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

43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a 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.

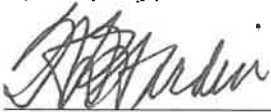
CERTIFICATION AND SIGNATURE

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.

Change Healthcare Pharmacy Solutions, Inc.

(Company)



(Authorized Signature) (Representative Name, Title)

Dan Hardin, Senior Vice President and General Manager 5/18/22

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

207-622-7153/ 207-623-5125

(Phone Number) (Fax Number)

dhardin@changehealthcare.com

(Email Address)

GENERAL TERMS AND CONDITIONS

Change Healthcare Pharmacy Solutions, Inc. (Change Healthcare) submits the following exceptions that relate to the State of West Virginia's RFQ Terms and Conditions. If awarded the business, Change Healthcare looks forward to negotiating a mutually agreeable Agreement with the State of West Virginia Bureau of Medical Services. Change Healthcare's initial comments on the State's terms and conditions are outlined below in response to Sections 8, 27, 30, and 36.

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 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 three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

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

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that:

☐ the contract will continue for _____ years;

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

☐ **One-Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** Contract Term specified in _____

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

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

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

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

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

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

6. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not

constitute 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.

☒ Pharmacists (RPh or PharmD)

☒ Physicians (MD or DO)

☐

☐

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: \$1,000,000.00 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: \$1,000,000.00 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.

☒ *****THE STATE OF WV MUST BE LISTED AS ADDITIONAL INSURED ON INSURANCE CERTIFICATE**

☒ *****CERTIFICATE HOLDER SHOULD READ AS FOLLOWS:**

WVDHHR

350 CAPITOL ST, RM 251, CHARLESTON, WV 25301

☐

☐

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.

Change Healthcare's Professional Liability (E&O) and Cyber policies are included in one policy. The policy covers any third parties for our negligence, errors, etc., and as such, West Virginia would be covered as a third party. Change Healthcare would not name West Virginia as an additional insured on this policy. For General Liability and Auto, West Virginia can be named as an additional insured.

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.

Change Healthcare requests the right to transfer the Agreement based on stock sale, merger, or other corporate reorganization.

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>.

Change Healthcare requests mutual confidentiality provisions to cover Change Healthcare's confidential and proprietary information with standard protections and exclusions.

Change Healthcare requests for the carve out of PII and PHI from the definition of Confidential.

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 50-1-1 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.

Change Healthcare requests to limit the indemnity obligation to third-party claims resulting from (1) Change Healthcare's fraud or intentional misconduct, or (2) injuries to person or tangible property damage while Change Healthcare is at the State's premises performing the services. Change Healthcare also requests inclusion of our standard indemnification requirements and exclusions.

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@wy.gov.

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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 § SA-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 § SA-3-56. As used in this section:
- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
 - b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process.
 - c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
 - 1. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
 - 2. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.
42. **PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code§ 5-19-1 et seq., and W. Va. CSR§ 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the

contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

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

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

43. **INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code§ 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the Vendor must submit to the Agency a 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§ SA-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 § SA-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

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SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of Bureau for Medical Services (BMS) to establish an open-end contract for Preferred Drug List (PDL), Preferred Product List (PPL), High-Cost Physician-Administered Drugs List (HCPADL), and State Maximum Allowable Cost (SMAC) services for the West Virginia Medicaid Program. The contract awarded pursuant to this RFQ will apply to both fee-for-service (FFS) and managed care organization (MCO) programs for PDL/PPL/HCPADL/SMAC services. Currently, pharmacy benefits are provided under the FFS Program, but medical/dental services are provided both by MCOs and the FFS Program. BMS reserves the right to include the MCO populations in these services if pharmacy benefits should be provided by MCOs during the life of the contract awarded pursuant to this RFQ.

As of January 09, 2022, there were 624,685 members enrolled in the Medicaid FFS pharmacy program. As of January 09, 2022, there were 508,135 members enrolled in the three (3) MCO's for medical/dental coverage, leaving a total of 116,550 in FFS.

BMS is currently a member of the Sovereign States Drug Consortium (SSDC). The SSDC (<https://www.rxssdc.org/>) negotiates supplemental drug rebates and rebates for non-drug products. The status of drugs on the PDL is determined by considering the cost of drugs net of the rebates afforded by membership in the SSDC. BMS and/or BMS Fiscal Agent invoices and collects Federal, non-drug, and/or supplemental drug rebates.

This solicitation may be funded in whole or in part with Federal Funds and thus this solicitation and its resulting awarded contract are subject to the requirements of Attachment 1: Federal Funds Addendum.

NOTE: THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES (WVDHHR) HAS DEVELOPED AN EEOP UTILIZATION REPORT AND IT IS AVAILABLE AT:

<http://www.wvdhhr.org/pdfs/H1.5%20Utilization%20Report%20and%20EEO%20policy.pdf>

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

2.1 "Contract Services" means PDL, PPL, High-Cost Physician-Administered Drugs, and SMAC services including clinical review services, contract administration,

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supplemental drug and product rebate support, reporting, pharmacy newsletter, and other services required to support the BMS PDL, PPL HCPADL, and SMAC pricing for drugs and products as more fully described in these specifications.

2.2 “Pricing Page” means the page, contained in wvOASIS upon which Vendor should list its proposed price for the Contract Services.

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

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

Note: Vendor shall provide documentation to indicate they have the capability to provide staff meeting these qualifications. This documentation should be included with the bid but must be provided prior to award.

3.1 A minimum of five (5) years of experience within the last ten (10) years in implementing and managing PDL and SMAC programs for a minimum of three (3) individual state Medicaid pharmacy programs. Vendor should provide documentation to support meeting this requirement with their bid but must provide the documentation prior to award. Documentation to support meeting the requirement includes, but is not limited to, listing of contracted States where this service is provided.

3.2 Vendor shall provide staff with experience in the administration of a PDL, PPL, and SMAC programs including:

3.2.1 Account manager who is a registered pharmacist, actively licensed with the Board of Pharmacy for the state in which they are employed and in good standing, with a minimum of three (3) years’ experience in the administration of Medicaid FFS and/or Medicaid MCO services included in 3.2.

3.2.2 Clinical pharmacist who is a registered pharmacist, actively licensed with the Board of Pharmacy for the state in which they are employed and in good standing, with a minimum of three (3) years’ experience in the administration of Medicaid FFS and/or Medicaid MCO services included in 3.2.

3.2.3 One physician with a Board Certification in infectious disease and expertise with drugs used in the treatment of Hepatitis C and HIV/AIDS and in good standing with the Board of Medicine or Board of Osteopathic Medicine in the

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state in which that person is licensed with a minimum of three (3) years' experience supporting the administration of Medicaid FFS or Medicaid MCO services included in 3.2.

3.2.4 One physician with a Board Certification in psychiatry and expertise with drugs used to treat mental health disorders, and in good standing with the Board of Medicine or Board of Osteopathic Medicine in the state in which they are licensed with a minimum of three (3) years' experience supporting the administration of Medicaid FFS or Medicaid services included in 3.2.

3.2.5 One physician with board certification in hematology and/or oncology, and in good standing with the Board of Medicine or Board of Osteopathic Medicine in the state in which that person is licensed with a minimum of three (3) years' experience in supporting administration of Medicaid FFS or Medicaid MCO services included in 3.2.

3.2.6 Rebate Manager with a minimum of three (3) years' experience in the administration of a Medicaid Federal drug rebate and supplemental drug rebate program.

3.2.7 SMAC pricing manager with a minimum of three (3) years' experience in the administration of a Medicaid FFS SMAC pricing program.

4. MANDATORY REQUIREMENTS:

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

4.1.1 Vendor shall provide program management and coordination by meeting on a schedule to be mutually agreed upon by all parties, as referenced in Section 4.1.4 and 4.1.5 below, or at BMS request, and providing the data files required for the management and coordination of Contract Services with BMS and/or BMS FFS fiscal agent, the Medicaid MCO vendors (if applicable), the Pharmaceutical and Therapeutics (P & T) Committee, the SSDC and its Vendor, the prior authorization Vendor, and any other business partner associated with PDL, PPL, HCPADL, and SMAC programs. The data files will be loaded in the Claims Processing System and pertinent information is to be posted on the BMS Pharmacy website.

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- 4.1.2** Vendor shall comply with all federal regulations, including confidentiality of rebate related data which can be found at https://www.ssa.gov/OP_Home/ssact/title19/1927.htm and the State Plan filed and approved by the Centers for Medicare and Medicaid Services (CMS) as stated in <https://dhhr.wv.gov/bms/CMS/SMP/Pages/WV-State-Medicaid-Plan.aspx>
- 4.1.3** Vendor shall assist BMS with writing State Plan Amendments related to the Contract Services programs.
- 4.1.4** Vendor shall be available for physical and/or virtual appearances, at no additional cost, before the West Virginia Legislature or other interested parties as requested by BMS at a maximum of five (5) times per calendar year.
- 4.1.5** Vendor shall facilitate status meetings with BMS including meeting agendas and minutes. Meeting minutes must be provided to BMS within ten (10) working days of each meeting by email, including the P & T Committee meetings, which are to be held quarterly. Status meetings will be held on an agreed upon schedule, currently bi-weekly, by BMS and the Vendor via conference call.
- 4.1.6** Vendor shall provide staff to meet the needs of BMS and BMS partners to assist in managing Contract Services programs via phone, email, and face to face meetings as needed, at no additional cost.
- 4.1.6.1** Vendor should submit with bid, but must submit prior to award, the names and resumes for staff assigned to this contract including, but not limited to account manager, clinical pharmacist, physicians, rebate manager, and SMAC pricing manager.
- 4.1.6.2** Vendor shall provide an account manager that will be available during business hours of 8:00 A.M. to 5:00 P.M. Eastern Standard Time (EST), Monday through Friday, excluding West Virginia (WV) state holidays.
<https://personnel.wv.gov/employees/benefits/pages/holidays.aspx>

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This person is responsible for the overall operations of the contracted deliverables included in this contract.

- 4.1.6.3** Vendor shall provide an account manager who shall attend P & T Committee and Drug Utilization Review (DUR) Board Meetings to offer advice to BMS on clinical and financial issues relating to the Contract Services. The P & T Committee and DUR Board are each scheduled to meet four (4) times annually in Charleston, WV or virtually as deemed necessary.
- 4.1.6.4** Vendor shall provide for the services of three (3) physicians, as outlined in Sections 3.2.3, 3.2.4, and 3.2.5 of this RFQ, actively licensed with the Board of Medicine or Osteopathic Medicine for the state in which they are employed. A minimum of one (1) physician shall attend the quarterly P & T Committee meetings and DUR Board Meetings in-person or virtually to offer advice to BMS on clinical issues relating to Contract Services and a minimum of one (1) physician shall be available by telephone and/or email to BMS during business hours of 8:00 A.M. to 5:00 P.M. EST, Monday through Friday, excluding WV state holidays.
- 4.1.6.5** Vendor shall provide for the services of a rebate manager. This individual shall be available to BMS by telephone and email during business hours of 8:00 A.M. to 5:00 P.M. EST, Monday through Friday, excluding WV state holidays. This individual is responsible for, at a minimum, completion and management of rebate contracts, reporting of contract status, contract disputes, and pricing and contract files and reports for rebate invoicing.
- 4.1.6.6** Vendor shall provide for the services of a SMAC pricing manager. This individual shall be available to BMS by telephone and email during business hours of 8:00 A.M. to 5:00 P.M. EST, Monday through Friday, excluding WV state holidays. This individual is responsible, at a minimum, for management of the SMAC program, oversight of the selection of generics, other drugs, and products to which SMAC prices will be applied, calculation and reporting of

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SMAC pricing as well as savings, providing documentation for price posting, and advising and resolving SMAC pricing disputes. The Vendor shall provide BMS by email with weekly pricing disputes and recommendations at a schedule to be mutually agreed upon by the Vendor and BMS.

- 4.1.6.7** Vendor shall complete background checks <http://www.gpo.gov/fdsys/pkg/FR-2011-02-02/pdf/2011-1686.pdf> for current and potential employees to ensure that staff meets the minimum requirement under state and federal statute and/or regulations. See Attachment A (West Virginia Business Rules) and B (West Virginia Medicaid State Plan) for State Requirements. Vendor shall not employ persons who are excluded from Medicare or Medicaid participation by the Federal Office of the Inspector General or any state Medicaid program. The exclusion database can be found at: <https://exclusions.oig.hhs.gov/>.
- 4.1.6.8** Changes in staff positions of account manager, clinical pharmacist, physicians, rebate manager and SMAC pricing manager shall be approved by BMS prior to the change.
- 4.1.6.9** Vendor participation changes for any given meeting shall be approved by BMS at least five (5) working days prior to the scheduled meeting date.
- 4.1.6.10** If contracted positions are not readily available, the Vendor shall provide a qualified backup to address any immediate needs requested by the state at no additional charge.
- 4.1.7** Vendor shall agree that any and all data provided to the Vendor by BMS or BMS partners, and any and all data collected, created, summarized, and/or aggregated, deliverables submitted to BMS or BMS partners, and reports created under the contract pursuant to this RFQ, are the sole property of BMS, intended for the purposes of supporting the Medicaid and Pharmacy programs in any manner deemed appropriate by BMS. None of these

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materials may be used by the Vendor at any time or in any manner without express written BMS approval.

- 4.1.8** Vendor shall develop and provide support for clinically sound and cost-effective recommendations to BMS and the West Virginia Medicaid P & T Committee to refine and manage the PDL and PPL.
- 4.1.9** Vendor shall facilitate meetings, present clinical and accurate cost information, develop, and distribute meeting materials such as, but not limited to, agendas, minutes, reports, and handouts for all P & T Committee meetings and provide ad hoc reports or other requested clinical and/or financial information for the DUR Board meetings throughout the year as approved by BMS. P&T Committee meeting materials shall be made available electronically to a minimum of seven (7) and a maximum of fifteen (15) P&T Committee members and a minimum of six (6) BMS staff members, two (2) weeks prior to the meeting.
- 4.1.10** Vendor shall develop and provide to a minimum of six (6) BMS staff members, Quarterly P & T Committee meeting agendas electronically for each P & T Committee meeting at a minimum of thirty-five (35) calendar days prior to meetings. Content shall be approved by BMS for release. Vendor shall also send the draft version of the PDL to BMS for review and comment with “Draft” status clearly marked thirty-five (35) calendar days prior to meeting electronically.
- 4.1.11** Vendor physician(s) and registered pharmacist(s) shall review therapeutic classes including new medications or indications as approved by the Food and Drug Administration (FDA) and present recommendations to the P & T Committee and BMS for appropriate revisions to the PDL in a live format to be mutually agreed upon by Vendor and BMS, currently on a quarterly basis.
- 4.1.12** Vendor shall provide meeting documents, including but not limited to agenda, clinical monographs, cost sheets, therapeutic drug reviews, pricing information and other pertinent information electronically to BMS and P&T Committee members fourteen (14) calendar days prior to meetings.

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- 4.1.13** Vendor shall provide meeting minutes electronically for all P & T Committee meetings. Meeting minutes will follow the current format as found on the BMS website, which can be found at:
<https://dhhr.wv.gov/bms/BMS%20Pharmacy/PharmTheraComm/Pages/P-and-T-Committee-Meetings.aspx>. Minutes are due to BMS for review no later than ten (10) working days after each P & T Committee meeting.
- 4.1.14** Vendor shall provide BMS and the P & T Committee with therapeutic class reviews that compare drugs and products, at a minimum, for efficacy, safety, side effects, dosing, indications, prescribing trends, and cost efficiencies of each drug or product class. These reviews will be delivered as monographs. Vendor should submit a monograph example with their quotation but must submit prior to award electronically or on paper.
- 4.1.14.1** Vendor shall provide to BMS and the P & T Committee members concise and systematic reviews of each therapeutic drug or product class or specific drugs or products to be presented for review by BMS or P & T Committee, including monographs, pricing information, and other pertinent information, no later than fourteen (14) calendar days prior to each P & T Committee meeting electronically.
- 4.1.14.2** Vendor shall designate to BMS and the P & T Committee the Vendor's recommendation as to preferred or non-preferred status for each drug or product within each class based on current clinical and cost data.
- 4.1.14.3** Vendor shall update and keep current all therapeutic drug and product class monographs using peer reviewed referenced materials and must grade the strength of evidence used. Monographs shall be updated at least once annually.
- 4.1.14.4** Vendor shall review new drugs, new drug formulations, or products using a schedule agreed upon by the Vendor and BMS, at a quarterly minimum.

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- 4.1.14.5** Vendor shall advise BMS, as needed, and the P & T Committee at regularly scheduled meetings, on comparative value of new drugs or drug formulations or products that fall into categories already established on the PDL, HCPADL, and PPL.
- 4.1.14.6** Vendor shall incorporate multisource drugs into the PDL, maximizing the use of the most cost-effective drugs for inclusion on the PDL.
- 4.1.14.7** Vendor shall advise BMS of new drugs appearing on the weekly reference drug data file including, but not limited to, the drug name, PDL category (if applicable), its indication, the overall value of the drug and its impact to BMS pharmacy program.
- 4.1.14.8** Vendor will provide to BMS and the members of the P & T Committee SSDC-negotiated supplemental rebates and financial analysis information for each therapeutic class or specific drugs or products under review by BMS and the P & T Committee. Drug and product rebate information shall be kept confidential as required by 42 USC 1396r-8(b)(3)(D)
<https://www.gpo.gov/fdsys/granule/USCODE-2008-title42/USCODE-2008-title42-chap7-subchapXIX-sec1396r-8/content-detail.html> or future update (s).
- 4.1.14.8.1** Vendor will provide financial information for the P & T Committee for each drug or therapeutic product class at least annually, and new drugs or products as they are reviewed by BMS or P & T Committee at least quarterly, in a format that contains at a minimum, drug or product class, drug or product name, brand or generic status, current PDL or PPL status, average quantity dispensed per prescription, net cost after all rebates per prescription.
- 4.1.14.8.2** Vendor shall incorporate SSDC negotiated pricing into its PDL and PPL business models, analyze SSDC pricing, and produce recommendations for a PDL and PPL using SSDC negotiated

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pricing on an annual basis for review of the entire PDL and any incremental pricing information as it becomes available.

4.1.14.8.3 Vendor shall keep SSDC pricing information confidential and keep SSDC pricing information separate from the Vendor's other lines of business.

4.1.14.9 Vendor shall manage BMS PDL and PPL, including but not limited to, the production of documents and data, including PDL and PPL status files needed for claims processing and PDL updates as recommended by the P & T Committee that are approved by BMS and the Secretary of the West Virginia Department of Health and Human Resources (DHHR) or PPL updates as approved by BMS.

4.1.14.10 Vendor must ensure that PDL and PPL are in compliance with all applicable Federal <https://www.medicaid.gov/medicaid/prescription-drugs/drug-utilization-review/index.html> and State <https://dhhr.wv.gov/bms/BMS%20Pharmacy/DUR/Pages/Retropective-DUR-and-Lock-In.aspx> statutes and regulations and the State Plan (Attachment B,) approved by CMS.

4.1.14.11 Vendor shall prepare the PDL and PPL documents electronically in a file format that is compatible with the West Virginia Office of Technology's supported operating platform (presently Google Workspace), <https://technology.wv.gov/Pages/default.aspx> to be displayed on BMS's <https://dhhr.wv.gov/bms/Pages/default.aspx> website for interested parties.

4.1.14.12 Vendor shall comply with the standards of BMS and BMS business partners for drug and product data-file maintenance including, but not limited to, the use of therapeutic class codes, generic sequence numbers, prior authorization requirements, injectable or other dosage form indicators, replacement or change files as desired, catch-up files, or any other drug and product data file standards required by BMS and BMS business partners.

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- 4.1.14.13** Vendor shall comply with the requirements no later than twenty-four (24) hours after the request is made of the BMS business partners for weekly, monthly, and quarterly file deliveries.
- 4.1.14.14** Vendor shall establish and maintain an interface with BMS and/or BMS fiscal agent for secure document and file exchanges on no less than a weekly basis. Neither BMS and/or BMS fiscal agent will be responsible for any charges relating to this.
- 4.1.14.15** Vendor shall comply with the requirements of BMS and BMS business partners relating to the method of file exchanges, i.e., “pushing” or “pulling” data.
- 4.1.14.16** Vendor shall apply an effective date and a unique version number for each PDL, PPL, and other business documents.
- 4.1.14.17** Vendor shall ensure the quality of all files delivered to BMS and BMS business partners to provide error-free data.
- 4.1.14.18** Vendor shall update the PDL and PPL document after each P & T Committee meeting and when changes are made to the PDL and PPL as requested by BMS, no later than twenty-four (24) hours after the request is made.
- 4.1.14.19** Vendor shall assist in development of step-care therapy and prior authorization (PA) criteria by making suggestions for step care and PA criteria to promote appropriate utilization and to enhance PDL and PPL compliance and achieve optimal savings.
- 4.1.14.20** Vendor will update the PDL and PPL document when PA criteria is changed or updated by BMS and/or the DUR Board and issue an updated version for web posting as requested by BMS and on an as needed basis, no later than one (1) business day after request is made.

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- 4.1.14.21** Vendor shall provide the PDL and PPL data files no later than twenty-four (24) hours after request is made in an electronic file format as specified by BMS.
- 4.1.14.22** Vendor will provide PDL and PPL data files in accordance with a schedule agreed upon by BMS and the Vendor, at a weekly minimum.
- 4.1.14.23** Vendor shall assist BMS by providing information and responding to inquiries regarding the PDL and PPL in a mutually agreed upon timeframe.
- 4.1.14.24** Vendor will draft letters and/or make telephone calls that respond to inquiries from providers and other interested parties concerning the PDL and PPL within five (5) working days of the receipt of the inquiry.
- 4.1.15** Vendor shall work with BMS and/or BMS fiscal agent and its SSDC partners to assist in drug supplemental and product rebate contract administration.
- 4.1.15.1** All rebate agreements or contracts shall be made between BMS and manufacturers using BMS and/or CMS approved templates which will be provided by BMS. Current templates being utilized can found in the following: Special Product Rebate Agreement (Attachment D), and Supplemental Drug Rebate Agreement (Attachment E).
- 4.1.15.2** Rebate contracts must be in an electronic file format that is compatible with West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace),
<https://technology.wv.gov/Pages/default.aspx>.
- 4.1.15.3** Vendor shall work with SSDC partners to accurately determine supplemental drug or product rebate contract data.
- 4.1.15.4** Vendor shall produce and facilitate the signing of supplemental drug rebate or product rebate contracts with manufacturers, BMS, and the WVDHHR within the quarter that the rebate offer is accepted.

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4.1.15.5 Vendor shall be responsible for oversight and tracking of all contracts and documents at all points from origin to completion.

4.1.15.6 Vendor shall assume administration of existing supplemental drug and product rebate agreements.

4.1.15.7 Vendor shall maintain BMS supplemental drug or product rebate agreements and/or contracts separately from its other clients, ensuring strict confidentiality and controls that meet Federal Requirements, which can be found at: https://www.ssa.gov/OP_Home/ssact/title19/1927.htm

4.1.15.8 Vendor shall ensure that both BMS and manufacturers receive original and/or electronically signed agreements or contracts.

4.1.15.9 Vendor shall provide electronic files in both Excel-compatible or equal (.xls) and text (.txt) as specified by BMS containing calculated drug supplemental unit rebate amounts (SURA) and non-drug unit rebate amounts (NDURA), along with additional specified information to BMS and/or BMS fiscal agent. See current Supplement Rate File Data Field information (Attachment C). Any cost related to the data exchange will not be incurred by BMS and/or BMS fiscal agent.

4.1.15.10 Vendor shall provide SURA and NDURA files, and contract files, and any other requested documents, to BMS and/or BMS fiscal agent within fifty (50) calendar days of the end of a quarter, in an electronic file format that is compatible with the West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace), <https://technology.wv.gov/Pages/default.aspx>. Reports with the following information shall accompany these files and be due within the same timeframe. Vendor shall provide report data, including but not limited to, current and prior quarter adjustment data; historical data; and contract and contract amendment data necessary for BMS to invoice manufacturers on a quarterly basis for supplemental drug rebates and product rebates in a file format that is compatible with West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace), <https://technology.wv.gov/Pages/default.aspx>.

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- 4.1.15.11** Vendor must coordinate quarterly supplemental drug rebate and product rebate submissions with submission of traditional federal drug rebates.
- 4.1.15.12** Vendor shall provide quarterly documentation to BMS and/or its designee to support supplemental drug rebate and product rebate invoicing at National Drug Code (NDC) level in an electronic file format that is compatible with West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace), <https://technology.wv.gov/Pages/default.aspx>.
- 4.1.15.13** Vendor shall ensure the accuracy of all rebate files delivered to BMS and BMS business partners. If any corrections are requested after the files are sent, the Vendor must send a corrected file within one (1) working day of request.
- 4.1.15.14** Vendor shall assist BMS and/or its designee in dispute resolution activities with manufacturers as they pertain to supplemental drug rebate or product rebate calculations and contracts.
- 4.1.15.15** Vendor shall communicate with manufacturers to resolve disputes arising from supplemental drug rebate or product rebate calculations or contract issues within five (5) working days of receipt of the dispute.
- 4.1.15.16** Vendor shall communicate directly with manufacturers regarding unpaid supplemental drug rebates or product rebates upon request by BMS.
- 4.1.15.17** Vendor shall communicate the resolution of disputes in a written document to BMS within one (1) working day of resolution.
- 4.1.16** Vendor shall assume administration of the current SMAC program as defined in section 4.1.16.1 through 4.1.16.12.4.
- 4.1.16.1** Vendor shall create, refine, and maintain the SMAC program for multiple source drug products or other drug products such as specialty drugs, and non-drug products tailored to the marketplace in West Virginia.

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- 4.1.16.2** Vendor shall submit the SMAC data in a file format that is compatible with West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace),
<https://technology.wv.gov/Pages/default.aspx>.
- 4.1.16.3** Vendor agrees to comply with BMS business rules, as seen in West Virginia Business Rules (Attachment A,) relating to file formats (i.e., NDC level data), schedules of delivery, type of files (i.e., change only, full files) for the SMAC program.
- 4.1.16.4** Vendor shall ensure the accuracy of all SMAC files delivered to BMS and BMS business partners.
- 4.1.16.5** Vendor shall provide SMAC lists for public viewing on BMS website and maintain archived versions that are available to BMS upon request within twenty-four (24) hours of request. The format for these files can be found on the BMS website
<https://dhhr.wv.gov/bms/Pages/Search.aspx?q=smac%20list>
- 4.1.16.6** Vendor shall ensure that each SMAC list submitted has an effective date and a unique version number.
- 4.1.16.7** Vendor shall update the SMAC list no less than weekly, and as SMAC changes are approved by BMS.
- 4.1.16.8** Vendor shall coordinate activities with BMS and/or BMS fiscal agent to support the implementation and updates of the SMAC list.
- 4.1.16.9** Vendor shall actively pursue opportunities for expansion of the SMAC pricing list and regularly report the Vendor's SMAC activities in a schedule to be determined by BMS, at a minimum of monthly.
- 4.1.16.10** Vendor shall collect acquisition cost data and other source information to support SMAC pricing.

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4.1.16.11 Vendor shall coordinate the addition of drugs for SMAC pricing, based on availability of generic drugs, with drugs in the same therapeutic category on the PDL and PPL to ensure that the PDL, PPL and SMAC activities result in the most cost-effective results.

4.1.16.12 Vendor shall provide outreach services to the WV Medicaid providers regarding Medicaid pharmacy pricing issues and the SMAC program.

4.1.16.12.1 Vendor shall establish and staff a toll-free telephone line and email address to be responsible for logging and responding to inquiries from providers regarding pricing issues. The toll-free telephone line must be available, at a minimum, of 8:00 A.M. to 5:00 P.M. EST, Monday through Friday. Vendor shall be the primary contact for all drug and product pricing inquiries.

4.1.16.12.2 The Vendor shall answer, log, and respond to telephone calls and/or other communicated messages from pharmacy providers and resolve disputes related to pricing.

4.1.16.12.3 Responses to providers acknowledging disputes must occur within one (1) working day of receipt.

4.1.16.12.4 Resolution of pricing disputes must be submitted to BMS and reported to the inquiring provider within ten (10) working days of the date of the complaint.

4.1.17 Vendor shall assist BMS in managing a list of High-Cost Physician-Administered Drugs exempted from MCO capitation.

4.1.17.1 This list shall include drugs selected by BMS according to, but not limited to, the following criteria:

4.1.17.1.1 Must be approved by the Federal Drug Administration (FDA) with orphan status.

4.1.17.1.2 Must exceed a Wholesale Acquisition Cost (WAC) of \$350,000.00 per member, annualized.

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- 4.1.17.2** Vendor shall assist in the formulation of HCPADL drug utilization criteria as required by BMS. Vendor may be requested to provide a summary of the drug, its indication, and any therapeutic management considerations.
- 4.1.18** Vendor shall provide a suite of reports for BMS which reflects the components necessary to manage the PDL, HCPADL, PPL, and SMAC programs and to support the supplemental drug and product rebate invoicing. All reports must be formatted for printing.
- 4.1.18.1** Vendor shall develop standard reports requested by BMS. Reports requested through this contract shall include but not be limited to, those listed below. For purposes of cost estimation, Vendors may assume a maximum of forty (40) standard reports. All reports shall be in an electronic file format that is compatible with West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace), <https://technology.wv.gov/Pages/default.aspx>.
- 4.1.18.2** Vendor shall work with BMS to develop standard reports including initial release notes with calculation methodologies and when appropriate.
- 4.1.18.3** Vendor shall deliver standard reports monthly on the fifteenth of the month or as requested by BMS within ten (10) working days of the request.
- 4.1.19** Vendor shall provide report analyses to BMS that will assist BMS in making program adjustments to improve the cost efficiency of the pharmacy program. Vendor shall host regularly scheduled meetings by conference call in order to discuss reports provided by the Vendor. These meetings will be held at a quarterly minimum.
- 4.1.20** Vendor shall submit standard reports per the terms of the contract when requested by BMS.
- 4.1.20.1** Reports shall include, but not be limited to: Monthly, Quarterly, and Annual Pharmacy Utilization for PDL and PPL and/or All Drugs Categories: Based on a rolling twenty-four (24) months of pre-rebate expenditures in graph or chart format, shall be delivered electronically monthly, quarterly, and annually, based on report:

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4.1.20.2 Average dollars paid amount per member user;

4.1.20.3 Total dollars paid;

4.1.20.4 Total dollars paid by brand and by generic;

4.1.20.5 Average generic drug prescription cost;

4.1.20.6 Average brand drug prescription cost;

4.1.20.7 Percent of generic drugs by number of prescriptions;

4.1.20.8 Average paid amount per prescription.

4.1.20.9 Summary Monthly, Quarterly, and Annual Reports to be delivered electronically, monthly, quarterly, and annually, based on report.

4.1.20.10 Monthly and State Fiscal Year Statistics - Compares the current month to the same month for the previous year. Summarizes the calendar year-to-date for the current month and previous calendar year-to-date; shall contain the total amount paid, number of users, total number of prescriptions, average prescriptions per member user, average cost per prescription; number of generic prescriptions, percentage of generic prescriptions paid compared to the overall amount paid for all prescriptions, total amount paid for generic prescriptions, average generic prescription cost, average days' supply for generic prescriptions, number of brand prescriptions, percentage of brand prescriptions paid compared to the overall amount paid for all prescriptions, total amount paid for brand prescriptions, average brand prescription cost, average days' supply for brand prescriptions. At a minimum, this report shall be delivered monthly, by the fifteenth of the month.

4.1.20.11 Top Twenty (20) Drugs by Dollars - Lists the drug description, ranking based on amount paid, comparison from the previous year for the same period, and the percentage change from the previous year period, the

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percent of the overall pharmacy expenditures for the period and the percent of the overall pharmacy expenditures for the previous year period. At a minimum, this report shall be delivered quarterly on the last day of the last month in the quarter and annually, by the last day in the calendar year.

4.1.20.12Top Twenty (20) Therapeutic Classes by Utilization - Lists the therapeutic class description, ranking based on number of prescriptions, comparison from the previous year of the same period, and the percentage change from the previous year period, the percent of the overall number of prescriptions for the period and the percent of the overall number of prescriptions for the previous year period. At a minimum, this report shall be delivered quarterly by the last day of the last month in the quarter and annually, by the last day in the calendar year.

4.1.20.13Top Twenty (20) Drugs by Utilization - Lists the drug descriptions, ranking based on number of prescriptions, comparison from the previous year for the same period, and the percentage change from the previous year period, the percent of the overall number of prescriptions for the period and the percent of the overall number of prescriptions for the previous year period. At a minimum, this report shall be delivered quarterly by the last day of the last month in the quarter and annually, by the last day in the calendar year.

4.1.20.14Top Twenty (20) Prescribing Providers – Report including data for both numbers of prescriptions prescribed and by amount paid for prescriptions prescribed: the prescriber National Provider Identifier (NPI), prescriber name, total amount of prescription costs for prescribed drugs, total number of paid prescriptions prescribed, number of members for which prescriptions were prescribed, average price of paid prescriptions prescribed. At a minimum, this report shall be delivered quarterly, by the last day of the last month in the quarter and annually, by the last day in the calendar year.

4.1.20.15Market share Summary Report - Lists the PDL and PPL therapeutic classes individually and unmanaged products collectively. This report

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shall provide the number of prescriptions for managed drugs and products within a therapeutic class, market share percentage for managed drugs and products within a therapeutic class, number of prescriptions for unmanaged drugs and products within a therapeutic class, and market share percentage for unmanaged drugs and products within a therapeutic class. At a minimum, this report must be provided quarterly by the last day of the last month in the quarter.

4.1.20.16Therapeutic Class Market Share Report - This report shall display within each therapeutic class, the drug or product name, brand, or generic status, PDL or PPL status, number of dispensed, number of paid prescriptions for the period, percentage of prescription market share within the therapeutic class, average units per prescription, pre-rebate paid amount, and average expenditures per prescription. At a minimum, this report must be provided quarterly, by the last day of the last month in the quarter.

4.1.20.17Generic Compliance Report - This report will show the total number of prescriptions of brand versus generic drugs for a specific timeframe. This report shall display the PDL managed therapeutic classes and report the number of prescriptions, number of units paid, total paid amount, generic percentage for the therapeutic class, and the generic percentage for the previous quarter. In addition, this report shall report the overall generic percentage of managed and unmanaged products. At a minimum, this report shall be provided quarterly, by the last day of the last month in the quarter.

4.1.20.18PDL and PPL Compliance Report - This report will show the percent compliance with the PDL and PPL. It shall display the PDL and PPL managed therapeutic classes and report the number of prescriptions, number of units paid, total paid amount, percentage of preferred products paid for the therapeutic class, and the percentage of preferred products paid for the previous quarter. In addition, this report shall report the overall preferred percentage of managed and unmanaged products collectively. At a minimum, this report must be provided quarterly, by the last day of the last month in the quarter.

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4.1.20.19 Weekly NDC Update Report - This report will summarize new additions to the drug reference file. At a minimum, this report shall display the PDL or PPL category, drug or product name, generic name, NDC or product code, date of FDA approval, date of database entry, and comments. This report shall be provided weekly, by close of business Wednesday.

4.1.20.20 Rebate Dispute Status Report - The Vendor will submit a written report detailing the status of any disputes BMS has requested the Vendor to assist in resolving. At a minimum, this report shall be provided monthly, by the fifteenth of the subsequent month.

4.1.20.21 SMAC Savings Report - This report shall document savings generated from the SMAC pricing program. At a minimum, this report must be provided quarterly, by the last day of the last month in the quarter.

4.1.20.22 PDL and PPL Savings Report - This report shall document savings generated from the PDL and PPL. At a minimum, this report must be provided quarterly, by the last day of the last month in the quarter.

4.1.20.23 SMAC Savings Beyond Aggregate Federal Upper Limit (FUL) Cap - This report will document assurances that multisource drug pricing is in compliance with federal regulations https://www.ssa.gov/OP_Home/comp2/B-CFR-42.html#ft13 (See Section 447.512). At a minimum, this report shall be provided quarterly, by the last day of the last month in the quarter.

4.1.20.24 WV Provider Pricing Support and SMAC Dispute Resolution Report - This report shall log all pricing issues from providers and resolutions reached. This report must detail the dispute and log both approved and resolved issues during the state fiscal year, July 1-June 30, as well as open disputes still being considered. This report shall include, but not be limited to product name, NDC, prescription number, inquiry date, date of service, National Average Drug Acquisition Cost (NADAC), Wholesale Acquisition Cost (WAC), FUL, SMAC, provider acquisition cost, dispensing fee, quantity, reviewer identifier, date of outcome returned, recommendation, final outcome, comments, new SMAC, effective date,

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provider name, and removal of FUL effective date. At a minimum, this report must be provided weekly, by close of business Wednesday.

4.1.20.25 New GSN SMAC Report - Vendor shall provide a report of new products for which a SMAC is recommended. This report shall include, but not be limited to, the Generic Sequence Number (GSN), product name, SMAC, effective date, and comments. This report shall be delivered weekly, by close of business Wednesday.

4.1.20.26 PDL and PPL Changes Report - This report will highlight changes to the PDL and /or PPL approved by the P & T Committee and/or BMS and must be provided no later than fourteen (14) calendar days after each P & T Committee meeting.

4.1.20.27 Supplemental Drug Rebate Contract and Product Rebate Contract Tracking Report - This report will track all supplemental drug rebate and product rebate contracts between BMS and manufacturers in the process of being finalized. This report must include the status of each contract at all points toward completion. The report shall contain, at a minimum: labeler identifier, manufacturer name, labeler number, date contract mailed, date returned from the manufacturer, date sent to state, date sent to manufacturer, contract term, contract end date, contract year. This report shall be provided monthly by the fifteenth of the month and more often if requested, and no later than seventy-two (72) hours after request.

4.1.20.28 Supplemental Drug and Product Rebate Contract Details Report - This report will document all contracts finalized between BMS and manufacturers, and must include contract details such as, but not limited to: product description, NDC, labeler, contracted guaranteed net price (GNP) or contracted percent of price and contract type. This report shall be provided monthly, by the fifteenth of the month.

4.1.20.29 Supplemental Drug Rebate and Product Rebate Pricing Files Quality Assurance Checklists - These reports will track the steps that are taken by the Vendor to ensure that supplemental drug rebate and product rebate pricing files are correct and accurately contain contract data. These

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reports must be provided within fifty (50) calendar days of the end of the quarter.

4.1.20.30 Supplemental Drug Rebate and Product Rebate Contract Files Quality Assurance Checklists - These reports will track the steps that are taken by the Vendor to ensure that supplemental drug rebate and product rebate contract files are correct and accurately contain contract data. These reports must be provided within fifty (50) calendar days of the end of the quarter.

4.1.20.31 Supplemental Drug Rebate and Product Rebate Pricing Files — Additions and Corrections Reports: These reports will track adjustments that are included on the supplemental drug rebate and product rebate pricing files and the reasons for the adjustments. These reports must be provided within fifty (50) calendar days of the end of the quarter.

4.1.20.32 Supplemental Drug Rebate and Product Rebate Contract Files— Additions and Corrections Reports - These reports will track adjustments that are on the supplemental drug rebate and product rebate contract files and the reasons for the adjustments. These reports must be provided within fifty (50) calendar days of the end of the quarter.

4.1.20.33 Supplemental Drug Rebate and Product Rebate Pricing Files Spreadsheets - These reports will contain all the data for each NDC included on the supplemental drug rebate and product rebate pricing files, along with any other pertinent rebate contract or pricing information. These reports must be provided within fifty (50) calendar days of the end of the quarter.

4.1.20.34 Supplemental Drug Rebate and Product Rebate Contract Files Spreadsheets - These reports will contain all the data for each NDC included on the supplemental drug rebate and product rebate contract files, along with any other pertinent rebate contract information. These reports must be provided within fifty (50) calendar days of the end of the quarter.

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4.1.20.35NDC Conversion Factor Report - This report will track the drugs and products that require a unit of measure conversion factor in the rate calculation. These reports must be provided within fifty (50) calendar days of the end of the quarter.

4.1.20.36Ad Hoc Reports - Vendor shall provide, at no additional cost to BMS, responses to ad hoc reporting requests by BMS within five (5) working days of the request throughout the duration of the contract. For cost estimation purposes, assume twenty-five (25) ad hoc reports per year. Ad hoc reports shall include the report methodology and parameters used in developing the reports.

4.1.20.37Business Rules Document - Within two (2) months of contract award, Vendor shall provide a document that details all business rules that apply to the PDL, PPL, HCPADL and SMAC programs, as well as to the supplemental drug and product rebate invoicing, in an electronic format. This document shall contain at a minimum: processes, standard operational procedures, details regarding data file layouts, delivery schedules and maintenance of reports, management of NDCs, prior authorization requirements, contracting deliverables, pricing methodologies, telephone line processes, and all details of other business rules and procedures.

4.1.21 Vendor shall create data files to be shared with BMS and BMS partners relating to the PDL, PPL, HCPADL and SMAC programs.

4.1.22 Vendor shall, at a minimum, create and distribute to BMS or BMS designee the following data files in an electronic format that are compatible with West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace), <https://technology.wv.gov/Pages/default.aspx>. Weekly files are due by close of business on Wednesdays. Quarterly files are due by last day of the last month in the quarter. As needed files are due within seventy-two (72) hours of request. Quarterly files and reports for support of rebate invoicing will be due within fifty (50) calendar days past the end of the quarter.

4.1.22.1 Weekly SMAC update file;

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- 4.1.22.2** Weekly SMAC web list for posting on BMS website, which can be found at:
<https://dhhr.wv.gov/bms/BMS%20Pharmacy/SMAC/Pages/default.aspx>
- 4.1.22.3** Weekly PDL/PPL/SMAC files. These files shall contain all available NDCs regardless of their rebate status;
- 4.1.22.4** Quarterly supplemental rebate rate and contract files; See Attachment C;
- 4.1.22.5** PDL and PPL reconciliation files when needed;
- 4.1.22.6** Complete PDL and PPL files when needed;
- 4.1.22.7** PDL and PPL file updates or complete files to be delivered to BMS, or BMS designees as needed;
- 4.1.22.8** Other data files when identified that support the PDL, PPL, and SMAC programs quarterly
- 4.1.23** Vendor shall develop and create quarterly newsletters containing information relating to changes to the PDL, PPL and other pharmacy program matters in a file format that is compatible with West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace),
<https://technology.wv.gov/Pages/default.aspx> to be displayed on BMS's
<https://dhhr.wv.gov/bms/Pages/default.aspx> website for interested parties. Vendor shall provide the electronic final version that will be displayed on BMS website.
- 4.1.24** Vendor shall assist and fully cooperate with BMS in the implementation of the contract executed from this RFQ upon effective date of the contract.

 - 4.1.24.1** Vendor should submit with their quotation and must be submitted prior to award an Implementation Plan that demonstrates the Vendor's ability to assume the responsibilities for BMS PDL, PPL, and SMAC programs upon award of this contract. There will be a two (2) month implementation period.
 - 4.1.24.2** Vendor's Implementation Plan must describe major task assignments considered to meet PDL, PPL, and SMAC program services, including, but not limited to: project start-up, project status, project updates, and project reassignments.

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- 4.1.24.3** Vendor shall attend a meeting, scheduled by BMS within five (5) working days of contract award, with BMS staff and Vendor's key staff and other support staff to initiate the contract deliverables and services. This meeting shall be conducted either in person or virtually, as agreed upon by Vendor and BMS.
- 4.1.25** Vendor shall assist and fully cooperate with BMS when transitioning to a new Vendor at the end of the contract executed from this RFQ.
- 4.1.25.1** Vendor shall provide a Close-Out and Turnover Plan electronically that identifies the Vendor's approach, tasks, staffing, and schedule for turnover of contract responsibilities.
- 4.1.25.2** Vendor will submit the Close-Out and Turnover Plan to BMS for approval within thirty (30) calendar days of receiving BMS notification to initiate the Close-Out and Turnover Phase of the expiring contract.
- 4.1.25.3** Vendor shall dedicate resources consistent with the approved Close-Out and Turnover Plan.
- 4.1.25.4** Upon request, Vendor shall transfer to BMS ownership all data collected, created, summarized, and/or aggregated, and all deliverables and reports created specifically for BMS during the contract period.
- 4.1.25.4.1** Data, deliverables, and reports shall be transferred in a file format that is compatible with West Virginia Office of Technology's currently supported operating platforms (presently Google Workspace),
<https://technology.wv.gov/Pages/default.aspx>
- 4.1.25.4.2** Data, deliverables, and reports will be transferred in accordance with a schedule and in an electronic format, no longer than thirty (30) calendar days prior to the end of the contract.
- 4.1.25.4.3** Vendor shall provide a Turnover Results Report which documents the completion and results of each task identified in the Turnover Plan.
- 4.1.25.4.4** The Turnover Results Report shall be submitted in a file format that is compatible with West Virginia Office of

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Technology's currently supported operating platforms
(presently Google Workspace),
<https://technology.wv.gov/Pages/default.aspx>

4.1.25.4.5 The Turnover Results Report shall be submitted in accordance with a schedule approved by BMS, no later than thirty (30) calendar days prior to the end of the contract.

4.1.26 Additional Services-Vendor shall provide a pool of hours annually that can be used by BMS for assistance, advice, and consultation for Medicaid pharmacy activities, such as additional clinical consultation, reports related to the PDL, PPL, HCPADL, and SMAC, or pricing of a complex nature, direct contact by telephone or by other agreed upon means to prescribers regarding appropriate drug utilization. Vendor shall provide on the Pricing Page the all-inclusive hourly rate for additional services requested by BMS during each of the possible Contract years. The one hundred (100) hour pool is an estimate only; actual quantities requested by BMS during the life of contract may vary. Vendor shall include in the Pricing Page the cost of additional services. This will be computed by multiplying the all-inclusive hourly rate by one hundred (100) [Estimated] as per section 4.1.26.

4.1.27 Vendor shall agree to be bound by all Service Level Agreements listed in Exhibit B, Service Level Agreements.

5. CONTRACT AWARD:

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

5.2 Pricing Page: Vendor should complete the Pricing Page by submitting pricing for the following items: Startup Costs; Annual Not To Exceed Costs; and Additional Services. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Page through wvOASIS, if available, or as an electronic document. Instructions for completing the pricing page can be found in Exhibit A.

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and
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6. **PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.
7. **PAYMENT:** Agency shall pay monthly in arrears, as shown on the Pricing Page, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.
8. **TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.
9. **FACILITIES ACCESS:** Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:
 - 9.1 Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
 - 9.2 Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
 - 9.3 Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
 - 9.4 Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
 - 9.5 Vendor shall inform all staff of Agency's security protocol and procedures.

**Preferred Drug/Product List/ High-Cost Physician-Administered Drugs List
and
State Maximum Allowable Cost Services**

10 VENDOR DEFAULT:

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

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

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

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

10.1.4 Failure to remedy deficient performance upon request.

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

10.2.1 Immediate cancellation of the Contract.

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

10.2.3 Any other remedies available in law or equity.

11 MISCELLANEOUS:

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

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

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) **Dan Hardin, Senior Vice President and General Manager**

(Printed Name and Title) **Dan Hardin, Senior Vice President and General Manager**

(Address) **45 Commerce Drive, Suite 5, Augusta, ME 04332**

(Phone Number)/ (Fax Number) **207-622-7153/ 207-623-5125**

(Email address) **dhardin@changehealthcare.com**

**Preferred Drug/Product List/ High-Cost Physician-Administered Drugs List
and
State Maximum Allowable Cost Services**

EXHIBIT A

INSTRUCTIONS FOR PRICING PAGE

Commodity Line 1: Provide a lump sum cost for any required Start Up Costs, to be billed only once during the first year of the Contract (two [2] month startup);

Commodity Line 2: Annual Not To Exceed Costs-Year 1. Provide Annual Not to exceed costs for combined program deliverables for the Preferred Drug List, Preferred Product List, High-Cost Physician-Administered Drugs List (HCPADL), and State Maximum Allowable Cost programs for Base Year One (Ten [10] months operations). Billing and payment will be broken up in ten (10) equal installments.

Commodity Line 3: N/A

Commodity Line 4: Additional Services-Enter Hourly rate X 100 Hours.

Commodity Line 5: Provide Annual Not to exceed costs for combined program deliverables for the Preferred Drug List, Preferred Product List, High-Cost Physician-Administered Drugs List (HCPADL), and State Maximum Allowable Cost programs for Year Two (Optional Renewal Year 1) (Twelve [12] months operations). Billing and payment will be broken up in twelve (12) equal installments.

Commodity Line 6: N/A

Commodity Line 7: Additional Services-Enter Hourly rate X 100 Hours.

Commodity Line 8: Provide Annual Not to exceed costs for combined program deliverables for the Preferred Drug List, Preferred Product List, High-Cost Physician-Administered Drugs List (HCPADL), and State Maximum Allowable Cost programs for Year Three (Optional Renewal Year 2) (Twelve [12] months operations). Billing and payment will be broken up in twelve (12) equal installments.

**Preferred Drug/Product List/ High-Cost Physician-Administered Drugs List
and
State Maximum Allowable Cost Services**

Commodity Line 9: N/A

Commodity Line 10: Additional Services-Enter Hourly rate X 100 Hours.

Commodity Line 11: Provide Annual Not to exceed costs for combined program deliverables for the Preferred Drug List, Preferred Product List, High-Cost Physician-Administered Drugs List (HCPADL), and State Maximum Allowable Cost programs for Year Four (Optional Renewal Year 3) (Twelve months operations). Billing and payment will be broken up in twelve equal installments.

Commodity Line 12: N/A

Commodity Line 13: Additional Services-Enter Hourly rate X 100 Hours.

Notes:

- 1.) Annual Not-to-Exceed Cost will be invoiced in arrears in ten (10) equal installments for the base year one and twelve (12) equal monthly installments in Optional Renewal Year One through three (1 – 3).
- 2.) Additional Services will be invoiced in arrears upon receipt of services by the Bureau.
- 3.) Basis for award will be lowest Grand Total Estimated Annual Cost.
- 4.) The Vendors Total Not to Exceed Cost will include all general and administrative staffing (secretarial, clerical, etc.), travel, supplies and other resource costs necessary to perform all services within the scope of this procurement.
- 5.) Vendor will not be eligible to invoice any operational or programmatic costs while invoicing for start-up costs.

**Preferred Drug/Product List/ High-Cost Physician-Administered Drugs List
and
State Maximum Allowable Cost Services**

**Exhibit B:
Service Level Agreements**

Service Level Agreements	Penalty
4.1.13 Vendor shall provide meeting minutes electronically for all P & T Committee meetings. Meeting minutes will follow the current format as found on the BMS website. https://dhhr.wv.gov/bms/BMS%20Pharmacy/PharmTheraComm/Pages/P-and-T-Committee-Meetings.aspx Minutes are due to BMS for review no later than ten (10) working days after each P & T Committee meeting.	\$50.00 per working day
4.1.15.10 Vendor shall provide SURA and NDURA files, and contract files, and any other requested documents, to BMS and/or BMS fiscal agent within fifty (50) calendar days of the end of a quarter.	\$250.00 per calendar day
4.1.15.13 Vendor shall ensure the accuracy of all rebate files delivered to BMS and BMS business partners. If any corrections are requested after the files are sent, the Vendor must send a corrected file within one (1) working day of request.	\$250.00 per working day
4.1.22.1 Weekly SMAC update file.	\$250.00 per working day
4.1.22.3 Weekly PDL/PPL/SMAC files. These files shall contain all available NDCs regardless of their rebate status.	\$250.00 per working day

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
 - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
 - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
 - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
 - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information** or PHI shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the Information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
 - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
 - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
 - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
 - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. Support of Individual Rights.

- i. Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:

 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at www.state.wv.us/admin/purchase/vrc/agencyli.htm and,

unless otherwise directed by the Agency in writing, the Office of Technology at incident@wv.gov or <https://apps.wv.gov/otir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is named as an adverse party.

4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents

and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: DHHC/BMS

Signature: [Signature]

Title: Commissioner

Date: 7-31-22

CHANGE HEALTHCARE PHARMACY
SOLUTIONS INC
Name of Associate: DAN HARDIN

Signature: [Signature]

Title: SVP & GM

Date: 07/20/2022

Form - VAVBAA-012004
Amended 06.28.2013

APPROVED AS TO FORM THIS 26th
DAY OF July 20 22
BY [Signature]
Patrick Morriarty
Attorney General

Appendix A

(To be completed by the Agency's Procurement Officer prior to the execution of the Addendum, and shall be made a part of the Addendum. PHI not identified prior to execution of the Addendum may only be added by amending Appendix A and the Addendum, via Change Order.)

Name of Associate: Change Healthcare Pharmacy Solutions Inc.

Name of Agency: DNHR / BMS

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

Member and Provider claims and profiles

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 complaint. 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

By: Robert Price

Printed Name: Robert Price

Title: Administrative Services Manager II

Date: 07/21/2022

Vendor Name:

By: [Signature]

Printed Name: DAN HARDIN

Title: SVP & GM

Date: 07/20/2022

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

End of Document

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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