



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

State of West Virginia
Contract

Order Date: 01-12-2023

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

Order Number:	CCT 0622 0622 PRS2300000001 2	Procurement Folder:	1089421
Document Name:	My Mobile Witness, Inc.	Reason for Modification:	Change Order No. 1 to add End User License Agreement (EULA).
Document Description:	See Something Send Something Program		
Procurement Type:	Central Emergency Purchase		
Buyer Name:	David H Pauline		
Telephone:	304-558-0067		
Email:	david.h.pauline@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2022-08-12
Free on Board:		Effective End Date:	2023-08-11

VENDOR		DEPARTMENT CONTACT	
Vendor Customer Code:	VS0000040830	Requestor Name:	Larry D McDonnell
MY MOBILE WITNESS INC		Requestor Phone:	304-414-3422
2009 MACKENZIE WAY STE 100		Requestor Email:	LARRY.MCDONNELL@WV.GOV
CRANBERRY TWP	PA 16066		
US			
Vendor Contact Phone:	4124804440		
Extension:			
Discount Details:			
	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	Not Entered		
#3	Not Entered		
#4	Not Entered		

23
 FILE LOCATION _____

INVOICE TO	SHIP TO
PROTECTIVE SERVICES DIVISION OF BLDG 1, RM 152-A 1900 KANAWHA BLVD E CHARLESTON WV 25305 US	PROTECTIVE SERVICES BLDG 1 RM 152-A 1900 KANAWHA BLVD E CHARLESTON WV 25305 US

Total Order Amount: \$600,000.00

Jan 13 2023

Purchasing Division's File C-

ENTERED

DHP 1/12/23

PURCHASING DIVISION AUTHORIZATION <i>Tanya H 1/13/2023</i> DATE: _____ ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM <i>John S. Gray</i> DATE: _____ ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION <i>[Signature]</i> DATE: _____ ELECTRONIC SIGNATURE ON FILE
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1/19/2023

Extended Description:

Change Order No. 01 is issued for administrative purposes only and is intended to add End User License Agreement (EULA). It was the intent of the parties to include it in the original contract and it was inadvertently omitted. The original contract according to all terms, conditions, prices and specifications contained in the original contract remain in effect.

Effective Date of change 01/01/23

Renewal Years Remaining: Three (3)
No other changes.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	43230000	1.00000	EA	300000.000000	\$300,000.00
Service From	Service To	Manufacturer		Model No	
2022-08-12	2023-08-11				

Commodity Line Description: Year 1 - Build out and Maintenance

Extended Description:

See attached quote

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	81112200	1.00000	EA	100000.000000	\$100,000.00
Service From	Service To	Manufacturer		Model No	

Commodity Line Description: Year 2 - Maintenance & Support

Extended Description:

See attached quote

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
3	81112200	1.00000	EA	100000.000000	\$100,000.00
Service From	Service To	Manufacturer		Model No	

Commodity Line Description: Year 3 - Maintenance & Support

Extended Description:

See attached quote

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
4	81112200	1.00000	EA	100000.000000	\$100,000.00
Service From	Service To	Manufacturer		Model No	

Commodity Line Description: Year 4 - Maintenance & Support

Extended Description:

See attached quote



State of West Virginia
Department of Homeland Security
Division of Administrative Services
1124 Smith Street, Suite 2100
Charleston, WV 25301
(304) 558-2350



JEFF S. SANDY, CFE, CAMS
CABINET SECRETARY

MICHAEL V. COLEMAN
DIRECTOR

To: David Pauline, Senior Buyer

From: Tina Desmond, Assistant Director – Purchasing Section

Date: December 27, 2022

RE: CCT PRS2300000001 – My Mobile Witness, Inc.

On behalf of the Division of Protective Services (DPS), I'm requesting that the End User License Agreement (EULA) sent to you on December 22, 2022, be added to the above-referenced contract by Change Order. While this office only became aware of the EULA recently, it was the intent of the parties to include it in the original contract and it was inadvertently omitted.

We greatly appreciate your assistance. If you need anything further from me, please do not hesitate to email or call me.

END USER LICENSE AGREEMENT

By downloading, installing or using this application or any portion thereof (“Application”), you agree to the following terms and conditions (the “Terms and Conditions”) with the proprietor of the Application (the “Company”).

1. USE OF APPLICATION

a. The Company grants you the non-exclusive, non-transferable, limited right and license to install and use this Application solely and exclusively for your personal use.

b. You may not use the Application in any manner that interferes with, disrupts, damages, disables, overburdens, impairs, or access in an unauthorized manner the Application (or servers or networks connected to the Application), nor may you use the Application in any manner that could interfere with any other party’s use and enjoyment of the Application (or servers or networks connected to the Application).

c. You agree that you are solely responsible for (and that the Company has no responsibility to you or to any third party for) your use of the Application, any breach of your obligations under the Terms and Conditions, and for the consequences (including any loss or damage which the Company may suffer) of any such breach.

2. PROPRIETARY RIGHTS

You acknowledge that (a) the Application contains proprietary and confidential information that is protected by applicable intellectual property and other laws, and (b) Company and/or third parties own all right, title and interest in and to the Application and content, that may be presented or accessed through the Application, including without limitation all Intellectual Property Rights therein and thereto. Any information, including photographs, notes or tips (“Forwarded Information”) that is forwarded by user to Company will be forwarded to the applicable fusion center or other law enforcement threat intelligence sharing agency (collectively “Fusion Center”). For the avoidance of doubt, the Application will only remove those photographs taken through the Application itself. Any pre-existing photographs in your mobile device will not be removed and only a copy will be forwarded. Once forwarded, user will be deemed, and does hereby, assign to the applicable Fusion Center all right, title and interest in and to such Forwarded Information, including all Intellectual Property Rights. “Intellectual Property

Rights” means any and all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, unfair competition law, and any and all other proprietary rights, and any and all applications, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. You agree that you will not, and will not allow any third party to, (i) copy, sell, license, distribute, transfer, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Application or content that may be presented or accessed through the Application for any purpose, unless otherwise permitted, (ii) take any action to circumvent or defeat the security or content usage rules provided, deployed or enforced by any functionality (including without limitation digital rights management functionality) contained in the Application, (iii) use the Application to access, copy, transfer, transcode or retransmit content in violation of any law or third party rights, or (iv) remove, obscure, or alter the Company’s or any third party’s copyright notices, trademarks, or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Application.

3. THE COMPANY’S PRIVACY POLICY

Information We Collect and How We Use Your Information:

The only personal information that the Company will ask you to provide is your name and phone number (“Personal Information”), both of which are stored on the sign-up portion of the Application. If you send a picture tip or note (“Tip”) using the Application, the Company will route your Personal Information and IP address to the applicable Fusion Center. At the Fusion Center, an analyst will analyze your Tip and forward it on to the appropriate law enforcement agency. After delivery of your Tip, your Personal Information, IP address and geolocation related to the location of your submission shall be stored on the Company’s server. The Company shall use your geolocation and IP address to send you alerts related to your Tip. The Company will not disclose your Personal Information with advertisers or any third parties for marketing or commercial purposes.

The Company does not knowingly collect any Personal Information from children under 13 that can be used to specifically identify them and Company does not permit persons under the age of 13 to use the

Application. The Application is a general audience service not geared toward children.

For Residents of Certain States: If permissible in your state, you will have the option to send your Tip anonymously. If you choose to send an anonymous Tip, the Company will not disclose your Personal Information to the Fusion Center. However, the Company reserves the right to de-anonymize your Personal Information upon a request from the Fusion Center or law enforcement based on the risk of imminent harm and/or exigent circumstance under applicable state law.

Information We May Disclose:

The Company may disclose information about the Application's users (including Personal Information) if required to do so by law or in the good faith belief that such disclosure is reasonably necessary to:

- Law enforcement or other governmental officials, in response to a verified request relating to a criminal investigation or alleged illegal or unlawful activity. In such events, Company will disclose information relevant to the investigation, including without limitation, name, telephone number, IP address and geolocation.
- Law enforcement as agreed to by you in these Terms and Conditions.
- Respond to a legal process (e.g., subpoenas, court orders)
- Respond to claims that any content provided by a user violates the rights of third parties
- Enforce these Terms and Conditions
- Protect the rights, property or personal safety of Company, its users or the general public
- Service providers under contract who help with our business operations and help detect and prevent potentially illegal acts and provide relevant information

You consent to the Company's collection of user and device data. The Company shall not broaden or change the scope of its collection of user and device data without obtaining your prior consent for such expanded or otherwise changed data collection.

In the event your data is compromised, the Company shall provide you with notice in accordance with applicable law.

How You Can Update Or Change Your Information:

You can update Personal Information and modify permissions you have previously given us by accessing your account through the Application. If

you have any questions about our Privacy Policy, do not hesitate to contact using the contact information listed in Section 11.

4. U.S. GOVERNMENT RESTRICTED RIGHTS

This Application, related materials and documentation have been developed entirely with private funds. If the user of the Application is an agency, department, employee, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Application, including technical data or manuals, is restricted by the terms, conditions and covenants contained in these Terms and Conditions. In accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies, use of the Application is further restricted by these Terms and Conditions.

5. EXPORT RESTRICTIONS

The Application may be subject to United States and other jurisdictions export control and sanctions laws and regulations. You agree to comply with all export control and sanctions laws and regulations that apply to your use of the Application, including but not limited to (a) the Export Administration Regulations maintained by the Department of Commerce, (b) trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control, and (c) the International Traffic in Arms Regulations maintained by the U.S. Department of State. These laws include restrictions on destinations, end users, and end use.

6. TERMINATION

These Terms and Conditions will continue to apply until terminated by either you or the Company as set forth below. You may terminate these Terms and Conditions at any time by permanently deleting the Application from your mobile device in its entirety. Your rights automatically and immediately terminate without notice from the Company or any third party if you fail to comply with any provision of these Terms and Conditions. In such event, you must immediately delete the Application.

7. INDEMNITY

To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless the Company, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and

expenses (including reasonable attorneys' fees) arising out of or accruing from your use of the Application, including your downloading, installation, or use of the Application, or your violation of these Terms and Conditions.

8. DISCLAIMER OF WARRANTIES

a. YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE APPLICATION IS AT YOUR SOLE DISCRETION AND RISK AND THAT THE APPLICATION IS PROVIDED AS IS AND AS AVAILABLE WITHOUT WARRANTY OF ANY KIND.

b. YOUR USE OF THE APPLICATION AND ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE APPLICATION IS AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM, MOBILE DEVICE, OR OTHER DEVICE, OR LOSS OF DATA THAT RESULTS FROM SUCH USE.

c. THE COMPANY FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, WITH RESPECT TO THE APPLICATION.

d. THE APPLICATION IS NOT INTENDED FOR USE AS AN EMERGENCY COMMUNICATION SYSTEM OR ANY OTHER ACTIVITIES IN WHICH THE FAILURE OF THE APPLICATION COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, SUCH AS "911". IN THE EVENT OF AN EMERGENCY, CONTACT 911 DIRECTLY.

9. LIMITATION OF LIABILITY TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU UNDERSTAND AND EXPRESSLY AGREE THAT THE COMPANY, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS ARE NOT LIABLE TO YOU UNDER ANY THEORY OF LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR

EXEMPLARY DAMAGES THAT MAY BE INCURRED BY YOU THROUGH YOUR USE OF THE APPLICATION, INCLUDING ANY LOSS OF DATA OR DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE, WHETHER OR NOT THE COMPANY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING. SOME JURISDICTIONS DO NOT ALLOW EXCLUDING OR LIMITING IMPLIED WARRANTIES OR LIMITING LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND SOME JURISDICTIONS HAVE SPECIAL STATUTORY CONSUMER PROTECTION PROVISIONS, WHICH MAY SUPERSEDE THESE LIMITATIONS. AS A RESULT, THIS LIMITATION OF LIABILITY MAY NOT APPLY TO YOU IF PROHIBITED BY LAW.

10. RESTRICTIONS

You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

11. MISCELLANEOUS

a. These Terms and Conditions constitute the entire agreement between you and the Company relating to the Application and govern your use of the Application, and completely replace any prior or contemporaneous agreements between you and the Company regarding the Application.

b. The failure of the Company to exercise or enforce any right or provision of these Terms and Conditions does not constitute a waiver of such right or provision, which will still be available to the Company.

c. If any court of law, having the jurisdiction to decide on this matter, rules that any provision of these Terms and Conditions is invalid, then that provision will be removed from the Terms and Conditions without affecting the rest of the Terms and Conditions. The remaining provisions of these Terms and Conditions will continue to be valid and enforceable.

d. The rights granted in these Terms and Conditions may not be assigned or transferred by you without the prior written approval of the Company. You are not permitted to delegate your responsibilities or obligations under these Terms and Conditions without the prior written approval of the Company.

e. These Terms and Conditions and your relationship with the Company under these Terms and Conditions will be governed by the internal substantive laws of the Commonwealth of Pennsylvania, without regard to its conflict of laws provisions.

f. You and the Company agree to submit to the exclusive jurisdiction of the courts, state and Federal, located in Pittsburgh, Pennsylvania, United States of America to resolve any legal matter arising from these Terms and Conditions. Notwithstanding this, you agree that the Company will still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

g. Any questions, complaints or claims with respect to the Application should be directed to the Company: My Mobile Witness, Inc., 2009 Mackenzie Way, Suite 100, Cranberry Twp., PA 16066; E-mail: contact@mymobilewitness.net. The Company shall respond to customer support inquiries within 3 business day, and within 24 hours to any support concerns stated to be urgent by Google.

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

State Agency, Board, or Commission (the "State"): Division of Protective Services

Vendor: My Mobile Witness, Inc.

Contract/Lease Number ("Contract"): CCT PRS2300000001

Commodity/Service: Mobile Application

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

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**
2. **PAYMENT** – Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.
3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.
4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.
5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.


Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.
6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.


- 12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
- 13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State’s prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
- 14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
- 15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor’s benefit is deleted.
- 16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
- 17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
- 18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act (“FOIA”) (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State’s sole discretion.

Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.

- 19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software’s terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
- 20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

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

State: West Virginia
By: 
Printed Name: Kevin J. Foreman
Title: Director
Date: 01/11/2023

Vendor: My Mobile Witness, Inc
By: 
Printed Name: Marcus Anthony
Title: COO
Date: 1/10/23