



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

State of West Virginia
Contract

Order Date: 03-26-2024

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 0702 7801 TAX2400000001 1	Procurement Folder:	1374653
Document Name:	GenTax Tax Processing Application	Reason for Modification:	
Document Description:	GenTax Tax Processing Application		
Procurement Type:	Central Sole Source		
Buyer Name:	Joseph E Hager III		
Telephone:	(304) 558-2306		
Email:	joseph.e.hageriii@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2024-02-22
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2025-02-15

VENDOR		DEPARTMENT CONTACT	
Vendor Customer Code:	000000104476	Requestor Name:	Anthony W Cooper
FAST ENTERPRISES LLC 7229 S ALTON WAY		Requestor Phone:	(304) 558-8614
CENTENNIAL CO 80112-2202 US		Requestor Email:	anthony.w.cooper@wv.gov
Vendor Contact Phone:	208-433-9244		
Extension:			
Discount Details:			
	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	Not Entered		
#3	Not Entered		
#4	Not Entered		

24

FILE LOCATION _____

INVOICE TO	SHIP TO
OPERATIONS DIVISION TAX DIVISION OF PO BOX 11748 CHARLESTON WV 25339-1748 US	INFORMATION TECHNOLOGY DIVISION TAX DIVISION OF 1001 LEE STREET STE M CHARLESTON WV 25301 US

3-27-24 GC

Total Order Amount:	\$3,941,000.00
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Purchasing Division's File Copy

QA 3-24-24

PURCHASING DIVISION AUTHORIZATION <i>[Signature]</i> DATE: 3/26/24 ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM <i>[Signature]</i> DATE: 3/28/2024 ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION <i>[Signature]</i> DATE: 3-24-24 ELECTRONIC SIGNATURE ON FILE
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3/28/2024

Extended Description:

The vendor, Fast Enterprises LLC., agrees to enter into this contract with the agency, The West Virginia Division of Tax, for maintenance and support of the Gen Tax System per the terms and conditions and the vendors quote dated 1/12/2024 all incorporated herein by reference and made apart hereof.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81112200	4.00000	QT	853750.000000	\$3,415,000.00
Service From	Service To	Manufacturer		Model No	

Commodity Line Description: Gentax Maintenance and Support Year 1

Extended Description:

MAINTENANCE AND SUPPORT SERVICES FOR GENTAX SYSTEM.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	81111902	1.00000	LS	526000.000000	\$526,000.00
Service From	Service To	Manufacturer		Model No	

Commodity Line Description: Fraud Service Year 1

Extended Description:

FRAUD SERVICE IMPLEMENTATION

GENERAL TERMS AND CONDITIONS:

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

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

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

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

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

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

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

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

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

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

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

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

Term Contract

Initial Contract Term: The Initial Contract Term will be for a period of One (1) year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to Four (4) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

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

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

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

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

the contract will continue for _____ years;

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

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

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

Other: Contract Term specified in _____

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

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

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

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

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

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

Construction: This Contract is for construction activity more fully defined in the specifications.

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:

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.

Certificate of Insurance

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 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: _____ per occurrence.

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

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

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

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

Pollution Insurance in an amount of: _____ per occurrence.

Aircraft Liability in an amount of: _____ per occurrence.

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. VENUE: 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.

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 www.state.wv.us/admin/purchase/privacy.

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 NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they 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.

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.

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.

JAMES HARRISON
(Printed Name and Title)
1229 S ALTON WAY CENTENNIAL, CO 80112
(Address)
303 770 3700
(Phone Number) / (Fax Number)
legal@fastcare.com
(E-mail address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that 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 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 this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; 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; 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.

FAST ENTERPRISES, LLC
(Company)

(Signature of Authorized Representative)
ERIC A DEFFENBAULT, DIRECTOR
(Printed Name and Title of Authorized Representative)
17-Jan-2024
(Date)
303 770 3700
(Phone Number) (Fax Number)

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

State Agency, Board, or Commission (the "State"): The West Virginia Division of Tax

Vendor: Fast Enterprises LLC.

Contract/Lease Number ("Contract"): CCT 0702 TAX 2400000001

Commodity/Service: GenTax Maintenance and Support

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 ~~strickthrough~~ 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 Tax Dept.

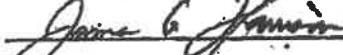
By: 

Printed Name: Anthony J. Cooper

Title: Supervisor

Date: 3-25-24

Vendor: FCS Enterprises

By: 

Printed Name: James G. Harrison

Title: Member

Date: 3-25-2024

GENTAX[®] LICENSING AND SUPPORT AGREEMENT

This Agreement ("Contract") is made by and between FAST Enterprises LLC ("FAST" or "Contractor") and the West Virginia Department of Revenue, Tax Division, (the "Agency"), collectively the "parties", for the licensing and support of GenTax[®]. FAST has its principal office at 7229 S. Alton Way Centennial, CO 80112. The Agency has its principal office at 1001 Lee Street East, Charleston, WV 25301.

In consideration of the mutual agreements and covenants contained in this Agreement, the parties agree as follows:

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings ascribed to them:

- 1.1. "Documentation" means technical data, including computer listings and printouts, in human-readable form that:
 - 1.1.1. Documents the design or details of the Software;
 - 1.1.2. Explains the capabilities of the Software; or
 - 1.1.3. Provides operating instructions for using the Software to obtain desired results from a computer.
- 1.2. "Software" means the GenTax[®] Integrated Tax Processing Software that is the subject of this Agreement.
- 1.3. "Software Updates" includes fixes, enhancements, additions and other modifications to the current version of GenTax[®] in use by the Agency.

2. **LICENSING AND SUPPORT.**

- 2.1. Licensing may include help line support, access to new and revised Documentation, access to Software Updates, access to new versions of GenTax[®] and defect repair of core GenTax[®] modules. Support may include defect repair of site configurations and site code, installation of Software Updates, installation of new versions of GenTax, and other tasks performed by fulltime, on-site FAST resources. Licensing and Support specifications are detailed in Attachment B to this Agreement.
- 2.2. The Agency will also have the option to purchase fraud services from FAST's affiliated entity, Fast Data Services, LLC (FDS) as detailed in Attachment B to this Agreement. In the event the Agency wants to purchase fraud services as described in Attachment B, it will sign a FDS Subscriber Agreement governing the terms of those services attached hereto as Attachment C. FAST does not provide fraud services, and this GenTax[®] Licensing and Support Agreement does not govern the fraud services provided by FDS.
- 2.3. FAST may, at no additional charge, modify Software to improve operation and reliability or to meet legal requirements.

- 2.4. **Relocation of Software is the Agency's responsibility and may result in additional on-site support charges and modified service response times.**
- 2.5. **FAST is not required to maintain or support nonqualified software. "Nonqualified software" is software not supplied or approved by FAST, and software for which the Agency does not allow FAST to incorporate modifications. The Agency is responsible for removing nonqualified software to allow FAST to provide maintenance and support.**
- 2.6. **Licensing does not cover any damage or failure caused by:**
 - 2.6.1. **Media and supplies or use of items not designated for use with Software; or**
 - 2.6.2. **Site conditions that do not conform to FAST's previously established site specifications; or**
 - 2.6.3. **Neglect, improper use, fire or water damage, electrical disturbances, transportation by the Agency, work or modification by people other than FAST's employees, subcontractors, or other authorized parties.**
- 2.7. **The Agency is responsible for the security of its proprietary and confidential information and for maintaining a procedure external to the Software to reconstruct lost or altered files, data or programs. The Agency must notify FAST if the Software is being used in an environment that poses a potential health hazard to FAST's employees or subcontractors.**
- 2.8. **The terms and conditions of the GenTax[®] License Agreement between FAST and the Agency, dated 18 July 2005, remain in effect.**
3. **OWNERSHIP OF SOFTWARE. The Agency acknowledges that the Software and Documentation, and all improvements and modifications made to it by any party, is and remains the sole property of FAST Enterprises, LLC. This Agreement neither expresses nor implies that any interest in the Software is assigned or transferred to the Agency.**
4. **WARRANTIES. FAST warrants the tapes, diskettes or other media provided under this Agreement to be free of defects in materials and workmanship under normal use for ninety (90) days from the delivery date unless otherwise agreed to in writing by the parties. FAST will replace without charge any FAST supplied tapes, diskettes or other media not in good working order if returned to FAST during the warranty period. If FAST is unable to replace the tapes, diskettes or other media, FAST will refund the full amount paid for the use of the Software.**

5. WARRANTY EXCLUSIONS.

- 5.1. EXCEPT AS STATED IN SECTION 5, FAST, ITS PARENT, SUBSIDIARIES AND THEIR AFFILIATES, SUBCONTRACTORS AND SUPPLIERS MAKE NO WARRANTIES, EXPRESSED OR IMPLIED.**
- 5.2. The warranty provided in Section 54 does not cover repair for damages, malfunctions or service failures caused by:**
 - 5.2.1. Unauthorized actions of non-FAST personnel;**
 - 5.2.2. Failure to follow FAST's installation, configuration, operation or maintenance instructions; or**
 - 5.2.3. Attachment to the Software of non-FAST software or failure of software not maintained by FAST unless such installation or use is approved in writing by FAST.**

6. LIMITATION OF LIABILITY.

- 6.1. For purposes of this Section 6, "FAST" shall be deemed to include FAST and its employees, agents, representatives, subcontractors, affiliated entities and suppliers, and "damages" shall be deemed to refer collectively to all injury, damage, loss, liability, expense or cost incurred.**
- 6.2. FAST shall not be liable for indirect, special, collateral, incidental, or consequential damages, or for lost profits, savings or revenues of any kind, whether or not FAST has been advised of the possibility of such damages. In no event will FAST be liable for indirect, special, collateral, incidental, or consequential damages in connection with or arising out of the work products developed, services performed or use of the Software under this Agreement. These excluded damages include, but are not limited to, cost of removal or installation, outside computer time, labor costs, loss of goodwill, loss of profits, loss of savings, loss of revenues, loss of use, loss or corruption of data or interruption of business.**
- 6.3. FAST's entire aggregate liability under this Agreement shall not exceed the annual value of the Contract during the Contract year the cause of action arose.**
- 6.4. In no event will FAST be liable for damages in connection with or arising out of the Agency's negligent or willful misconduct with regard to Agency's use of the Software or Documentation under this Agreement.**

- 7. TERMINATION.** Either party may terminate the Agreement (and/or any order issued pursuant to the Agreement) when the other has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed ninety (90) calendar days, after receipt of such notice.
- 8. FORM OF SOFTWARE.** The Agency agrees that the Software supplied under this Agreement shall be delivered to the Agency in object code form only. FAST Enterprises will maintain the Software source with an escrow agent and list the Agency as an authorized recipient of the source code in the event that FAST has not made suitable alternate arrangements for the continued maintenance of GenTax Software and:

 - 8.1.** A receiver is appointed for FAST or for its property and assets;
 - 8.2.** Proceedings under bankruptcy or insolvency laws are commenced by or against FAST;
 - 8.3.** FAST fails to fulfill its obligations, under this Agreement, to maintain the Software and such failure is not cured within sixty (60) days.
- 9. CONTRACT RELATIONSHIP.** The parties hereby acknowledge and agree that each is an independent contractor, that no party shall be considered to be the agent, representative, master or servant of any other party for any purpose whatsoever, and that no party has any authority to enter into any contract, assume any obligations or to give any warranties or representations on behalf of any other party. Nothing in this Agreement shall be construed to create a relationship of partners, joint venturers, fiduciaries, or any other similar relationship between the parties.
- 10. HOLD HARMLESS.**

 - 10.1.** To the extent allowable by law, the Agency shall indemnify and hold harmless FAST from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorneys' fees (collectively, "claims"), related to or arising from death or bodily injury or property damage where such are caused by or arise from the negligent or wrongful acts or omissions of the Agency, its employees, agents, or subcontractors under this Agreement or that arise out of a failure by the Agency to comply with any state or federal statute, law, regulation or act. The Agency shall have no indemnification obligation under this Section 10 for claims for death, bodily injury or property damage arising out of the negligence or misconduct of FAST.
 - 10.2.** FAST shall indemnify and hold harmless the Agency from any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorneys' fees (collectively, "claims"), related to or arising from death or bodily injury or property damage where such are caused by or arise from the negligent or wrongful acts or omissions of FAST, its employees, agents, or subcontractors under this Agreement or that arise out of a failure by FAST to comply with any state or federal statute, law, regulation or act. FAST shall have no indemnification obligation under this Section 10 for claims for

death, bodily injury or property damage arising out of the negligence or misconduct of the Agency.

11. **FAST RESPONSIBILITY.** FAST shall assume responsibility for production and delivery of all material and services offered as a result of this Agreement except for those offered and provided by FDS, whether or not FAST is the manufacturer or producer of such material or services. Further, except with respect to the FDS annual subscription fee identified on Attachment B which will be paid to FDS, FAST will be the sole point of contact on contractual matters, including payment of charges resulting from this Agreement.
12. **SUBCONTRACTING.** In the course of fulfilling its responsibilities under this Agreement, FAST may, at its discretion, and after providing written notice to and consent from the Agency, enter into subcontracts relating to the performance of this Agreement or any part thereof.
13. **ASSIGNMENTS.** This Agreement cannot be transferred or assigned without the mutual written consent of FAST and the Agency, which consent may not be unreasonably withheld.
14. **CONFIDENTIAL INFORMATION.** Pursuant to this Agreement, FAST and the Agency may disclose to each other information that each may regard as proprietary or confidential and it is hereby agreed as follows:

14.1. **Definitions**

14.1.1. "Confidential Information" will mean any non-public information that the disclosing party (the "Disclosing Party") specifically marks and designates, in writing, as confidential or which, under the circumstances surrounding the disclosure, ought to be treated as confidential. "Confidential Information" includes, but is not limited to, confidential state tax information, data, products, inventions, innovations, program source code, program object code, program executables, data designs, data definitions, programming aids, tools, utilities, drawings, formulae, algorithms, ideas, designs, concepts, know-how, discoveries, techniques, training material, documents, manuals, methodologies, specifications, models, knowledge capital and information relating to the technology, customers, business plans, promotional and marketing activities, pricing policies, finances and other business affairs of the Disclosing Party.

14.1.2. "Confidential Information" will not include any information which the receiving party (the "Receiving Party") can demonstrate: (i) was, at the time of disclosure, generally available to the public, or became generally available to the public after the disclosure, through no fault of the Receiving Party; (ii) was, at the time of disclosure, known to the Receiving Party and not subject to an existing agreement of confidentiality between the parties; (iii) is furnished by the Disclosing Party to third parties without restriction; (iv) is furnished

to the Receiving Party by a third party who legally obtained said information and the right to disclose it; (v) is approved for release by written authorization of the Disclosing Party; or (vi) is developed independently by the Receiving Party where the Receiving Party can document such independent development.

- 14.1.3. **“Confidential Materials” will mean all tangible materials containing Confidential Information, including but not limited to drawings, schematics, written or printed documents, computer disks, tapes, and compact disks, whether machine or user readable.**
- 14.1.4. **“Confidential state tax information” will mean all information restricted from disclosure pursuant to the provisions of W.Va. Code §§ 11-1A-23 and 11-10-5d.**
- 14.1.5. **Any information which falls within the definitions of Confidential Information or Confidential Materials and which was disclosed or provided to the Receiving Party by the Disclosing Party or an agent of the Disclosing Party prior to the Receiving Party’s signing of this Agreement will be deemed to be included in and covered by the terms and conditions of this Agreement.**

14.2. Restrictions

- 14.2.1. **The Receiving Party will hold all Confidential Information and Confidential Materials in confidence, will use the Confidential Information and Confidential Materials only for the purpose for which they are disclosed, will reproduce the Confidential Information and Confidential Materials only to the extent necessary for such purpose, and will not disclose the Confidential Information or Confidential Materials to any third party without the Disclosing Party’s prior written consent.**
- 14.2.2. **The Receiving Party will take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, to keep confidential the Confidential Information and Confidential Materials.**
- 14.2.3. **The Receiving Party may disclose Confidential Information or Confidential Materials only to the Receiving Party’s employees or consultants on a need-to-know basis. The Receiving Party will have executed or will execute appropriate written agreements with its employees and consultants sufficient to enable it to comply with all the provisions of this Agreement.**
- 14.2.4. **If the Receiving Party becomes legally obligated to disclose Confidential Information or Confidential Materials by any governmental entity with jurisdiction over it, the Receiving Party will give the Disclosing Party prompt written notice sufficient to allow the**

Disclosing Party to seek a protective order or other appropriate remedy. The Receiving Party will disclose only such information as is legally required and will use its reasonable best efforts to obtain confidential treatment for any Confidential Information or Confidential Materials that is so discloses.

- 14.2.5. The Receiving Party will segregate all Confidential Materials from the confidential materials of others to prevent commingling.**
- 14.2.6. The Receiving Party will not reverse engineer, decompile or disassemble any of the Confidential Materials without the prior written consent of the Disclosing Party.**
- 14.2.7. At no time, under any circumstance, will any FAST Confidential Materials be removed from Agency property without the prior written consent of FAST.**

14.3. Rights and Remedies

- 14.3.1. The Receiving Party will notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of the Confidential Information or Confidential Materials, or any other breach of this Agreement by the Receiving Party, and will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Confidential Information or Confidential Materials and prevent its further unauthorized use.**
- 14.3.2. All Confidential Information and Confidential Materials will remain the sole and exclusive property of the Disclosing Party. Upon written demand by the Disclosing Party, the Receiving Party will: (i) cease using the Confidential Information and Confidential Materials; (ii) return the Confidential Information and Confidential Materials and all originals, copies, reproductions and summaries of Confidential Information and Confidential Materials to the Disclosing Party within seven (7) days of receipt of demand; and (iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set forth in this paragraph.**

14.4. Miscellaneous

- 14.4.1. Nothing contained in this Agreement will be construed: (i) as requiring the Disclosing Party to disclose to the Receiving Party any particular information; (ii) as granting to the Receiving Party a license, either express or implied, under any patent, copyright, trade secret or other intellectual property right, now or hereafter owned, obtained or licensed by the Disclosing Party; or (iii) as a representation or warranty as to the accuracy, completeness or reliability of the Confidential Information or Confidential Materials.**

- 14.4.2. The Disclosing Party will not be liable for any damages arising out of the use of Confidential Information or Confidential Materials disclosed under this Agreement.**
- 14.4.3. A confidentiality agreement in the form attached hereto in Attachment A, incorporated herein by reference, shall be signed by the Agency's agents, subcontractors, subcontractors' employees, and any other third parties (non-Agency employees) who may be exposed to or gain access to FAST Confidential Information or FAST Confidential Materials.**
- 14.4.4. No provision of this agreement shall be construed as a waiver or abrogation of any provision of West Virginia Code §§ 11-1A-23 and 11-10-5d regarding statutory confidentiality of tax returns or return information. The provisions of West Virginia Code §§ 11-1A-23 and 11-10-5d apply with relation to the possession, handling and disclosure of West Virginia tax returns and return information by FAST, FAST personnel, FAST contractors and FAST representatives, and by the West Virginia Tax Department.**
- 14.4.5. A confidentiality acknowledgement shall be signed by FAST's employees, agents, subcontractors, subcontractors' employees, and any other third parties (non-FAST employees) who may be exposed or gain access to Confidential State Tax Information.**

15. CONFIDENTIAL TAX INFORMATION.

- 15.1. State Tax Information and Federal Tax Information will be treated with equal care to ensure the applicable provisions of state and federal law are met and that confidentiality of tax information is maintained. State and Contractor will comply with the applicable provisions of Internal Revenue Service's Publication 1075. For clarification, the State will perform any required FBI fingerprint background checks on FAST employees necessary for compliance with IRS Publication 1075.**
- 16. USE OF THE JURISDICTION NAME. The Agency agrees that FAST may, prior to, in the course of performance of this Agreement (or any order), or thereafter use the Agency's name in advertising and promotional media as a customer or client of FAST.**
- 17. GOVERNING LAW. This Agreement shall be construed in accordance with, and governed by the laws of the State of West Virginia. Any action to enforce the provisions of this Agreement shall be brought in court in the State of West Virginia.**
- 18. SEVERABILITY. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.**

19. **WAIVER.** None of the provisions of this Agreement will be deemed to have been waived by any act or acquiescence by any party, but only by an instrument in writing signed by an authorized representative of the waiving party. No waiver of any provision of this Agreement will constitute a waiver of any other provision or of the same provision on another occasion. Failure to enforce any provision of this Agreement will not constitute waiver of such provision or any other provisions of this Agreement.
20. **ENTIRE AGREEMENT.** This Agreement represents the entire agreement between the parties regarding its subject matter, superseding any prior oral or written agreements or understandings relating thereto.
21. **PRECEDENCE.** If any term of this Agreement is in contradiction with another agreement on a different subject matter between the parties, the terms of this Agreement shall prevail unless the other agreement explicitly states otherwise.
22. **AMENDMENT.** This Agreement may only be enlarged, altered, voided or modified by a written amendment signed by FAST and the Agency.
23. **HEADINGS.** Descriptive headings and Section/Paragraph numbering in this Agreement are for convenience only and shall not affect the construction or meaning of contractual language.
24. **SURVIVAL OF CERTAIN CONTRACT TERMS.** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits, appendices, and/or attachments hereto which may require continued performance, compliance, or effect beyond the termination or expiration date of the Agreement shall survive such termination or expiration date and shall be enforceable by the parties as provided herein in the event of such failure to perform or to comply by either party.
25. **FORCE MAJEURE.** Neither party shall be liable or deemed to be in default for any Force Majeure delay in performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, government actions (including significant reduction of legislative appropriations), public disturbances, labor disturbances, fires, floods, epidemics, quarantines, restrictions, freight embargoes or unusually severe weather.
26. **NOTICES.** All deliveries, notices, requests, demands or other communications related to this Agreement that either party may be required or may desire to give to the other will be deemed received by the recipient when delivered personally; or by registered or certified mail, return receipt requested; or by overnight carrier; or upon telephone confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Communications should be addressed as follows:

FAST:

Megan Mooney
FAST Enterprises, LLC
7229 S. Alton Way
Centennial CO, 80112
Tel: (208) 433-9244
Fax: (208) 433-9863

Agency:

Kwasi Toombs
1001 Lee St
Charleston, WV 25301
(304) 741-8930

27. AGREEMENT TERM AND RENEWAL OPTIONS.

27.1 The Initial Term of this Agreement will begin on *16 February 2024* and extend through *15 February 2025*. The subsequent Term will begin on *16 February 2025*(the "Term"). This agreement will be renewable on each anniversary of the subsequent Term thereafter (the "Renewal Term").

27.2 Rates and fees for the Renewal Term may be different from the rates and fees established in section 28.

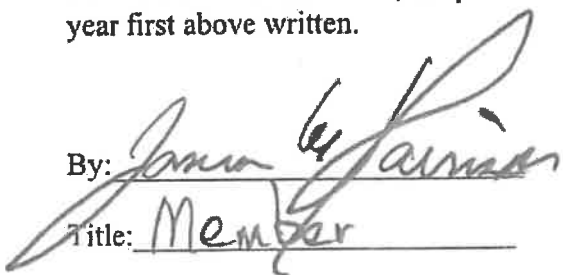
27.3 Costs for annual licensing and support are fixed for each year.

28. COSTS INCLUDED IN THIS AGREEMENT.

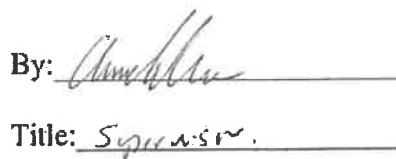
28.1 Costs will be addressed in **Attachment B**

28.2 All costs will be prorated on a quarterly basis and invoiced the first business day of the month following the quarter during which the services were rendered.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

By: 
Title: Member

FAST Enterprises LLC

By: 
Title: Supervisor

Agent for the Agency

ATTACHMENT A**NONDISCLOSURE AGREEMENT**

FAST ENTERPRISES, LLC, a New York Limited Liability Company, ("FAST") is providing the West Virginia Department of Revenue, Tax Division (the "Agency") access to FAST products, tools, inventions, innovations, design concepts, program code, knowledge capital and professional services.

The following articles govern the procedures by which the undersigned ("I", "me", "my") will handle FAST confidential information. Specifically:

- 1. FAST declares that the following are confidential ("Confidential Material"):**
 - a) Any data, products, inventions, innovations, program source code, program object code, program executables, data designs, data definitions, programming aids, tools, utilities, configurations, drawings, formulae, algorithms, ideas, designs, concepts, know-how, discoveries, techniques, training material, documents, manuals, methodologies, specifications, models, and other knowledge capital, electronic or otherwise, owned by FAST whether copyrightable or patentable or not;**
 - b) Information relating to the technology, customers, business plans, promotional and marketing activities, pricing policies, finances and other business affairs of FAST;**
 - c) Any documents or material which are marked "Confidential";**
 - d) Information which, under the circumstances, ought to be treated as confidential.**
- 2. FAST will disclose such Confidential Material to individuals as required for:**
 - a) The implementation, maintenance and support of FAST software for the Agency's use;**
 - b) Use of FAST software by the Agency.**
- 3. I agree to receive any such Confidential Material in confidence and to use such Confidential Material solely for the purpose defined in Section 2 above. I further agree to take either:**
 - a) Such measures as I would take in protecting the confidentiality of my own confidential information or**
 - b) Such measures as a reasonable person would take in protecting the confidentiality of his or her own confidential information,**
whichever represents the higher standard, in protecting the confidentiality of the Confidential Material.
- 4. I agree that any Confidential Material that I receive can only be used for purposes outlined in Section 2 above. Other uses can be made only after obtaining the written permission of FAST.**
- 5. I agree not to remove, from Agency's property, any Confidential Material without first obtaining the written permission of FAST.**

6. I agree that I will not disclose any Confidential Material, directly or indirectly, to any party other than the Agency without first obtaining the written permission of FAST.
7. I agree that all Confidential Material provided under the terms of this Agreement shall remain the property of FAST and shall be returned to FAST upon its request, including any and all copies I might produce.
8. Nothing herein shall be construed as giving me any license or right in connection with the Confidential Material disclosed to me.
9. My obligation to maintain information in confidence shall not extend to such portions of the information that, at the time of disclosure to me, are general knowledge in the public domain.
10. I understand that my obligation to protect the confidentiality of the Confidential Material extends beyond my involvement with the Agency and beyond my involvement with FAST. Furthermore, my obligation to protect the confidentiality of the Confidential Material is not subject to changes in my employment status.
11. I understand that access to the Confidential Material is provided on a need-to-know basis. If, for any reason, such need no longer exists, I agree that I will return all Confidential Material to FAST, including any and all copies I may have produced.
12. I understand that Confidential Material is provided to me as-is and FAST makes no warranties with respect to Confidential Material.
13. This Agreement shall be construed and governed in accordance with the laws of the State of Colorado without giving effect to Colorado's choice of law provisions.
14. If any term of this Agreement should be declared void or unenforceable, such declaration will have no effect on the remaining terms herein.

I HAVE READ THIS AGREEMENT CAREFULLY AND I UNDERSTAND AND ACCEPT THE OBLIGATIONS WHICH IT IMPOSES UPON ME WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME TO INDUCE ME TO SIGN THIS AGREEMENT. I SIGN THIS AGREEMENT VOLUNTARILY AND FREELY.

Anthony Cooper
Print name

[Signature]
Signature

3-25-24
Date

ATTACHMENT B

Fraud, Licensing and Support Services Specification Agency: *West Virginia Department of Revenue*

I. Fraud Services

Fast Enterprises, LLC or its affiliated entity, Fast Data Services, LLC (FDS) will configure the Agency's current implementation of GenTax to implement enhanced fraud services as agreed upon by the parties. After the fraud services are implemented, the Agency will subscribe to the annual FDS subscription which includes unlimited real time access to public data and dedicated support services.

Specifically, FDS services include:

- Advanced fraud scoring (analytics as a service) integrated with the GenTax Fraud Manager allowing the Agency to combine its own fraud rules and analytics with a leading multi-state fraud analytics service.
- Automated and manual public records access, allowing the Agency to integrate this data directly into its business processes and analytics.
- Continued improvement, refining and enhancement of FDS services in order to adapt and mitigate new fraud and identity theft tactics.

The costs associated with the implementation and the subscription fee are included below:

Cost Schedule for Annual FDS Subscription

Year	Start	End	Invoice Date	Amount
Y1	2/16/2024	2/15/2025	At Execution	\$526,000
Y2	2/16/2025	2/15/2026	2/16/2025	\$543,000
Y3	2/16/2026	2/15/2027	2/16/2026	\$560,000
Y4	2/16/2027	2/15/2028	2/16/2027	\$578,000
Y5	2/16/2028	2/15/2029	2/16/2028	\$596,000

II. Enhancement Support Services

Enhancement Support Services ensure that the Agency has immediate access to product experts for the purpose of implementing modifications and enhancements to GenTax. Enhancement Support Services are provided by full time on-site FAST Enterprises representatives. The FAST resources allocated under the Enhancement Support Services work on enhancement projects and assist with new site configurations as assigned by the Agency's Director of Information Technology.

Responsibilities may include but are not limited to:

- On Call Production Support
- Configuration Assistance
- New application development
- Enhancements to existing processes, letters, and reports

- User and developer Training
- Updates due to changes in Legislation

III. GenTax Licensing Package

Under the GenTax Licensing Package, full time, on-site, FAST Enterprises representatives provide support and ensure immediate responses to issues. The number of FAST representatives will vary depending upon the number and complexity of software updates required to keep the agency current. Responsibilities of FAST representatives under the GenTax Licensing Package:

- Defect evaluation and repair including:
 - FAST Enterprises Core Code
 - West Virginia Site Code
 - West Virginia Site Configuration
- Continued GenTax performance tuning
- Analysis and installation of GenTax® Service Packs
- Upgrades to future versions of GenTax

IV. Costs

Package	Y1	Y2	Y3	Y4	Y5
Enhancement Support Services – price per resource per year	\$345,000	\$355,000	\$367,000	\$380,000	\$393,000
GenTax Enhancement Support Services	\$3.415 Million	\$3.535 Million	\$3.659 Million	\$3.788 Million	\$3.921 Million

At the beginning of each year, the Agency shall communicate in writing the number of FAST resources to be engaged under the Enhancement Support Services. Such notice shall include recommendations for competencies and qualifications for the personnel on site. FAST shall provide, to the extent practicable, personnel meeting the competencies and qualifications provided in the request by the Agency. The Agency may choose to withdraw from enhancement support services if the competencies and qualifications of the resource personnel do not meet the Agency's request. The cost for each resource is included in the table above. FAST shall invoice the Agency for Enhancement Support Services quarterly for the services provided in the previous quarter.

Cost Schedule for GenTax Enhancement Support Services

• Y1			
○	2/16/2024 – 5/15/2024	\$853,750	Invoiced on 6/1/2024
○	5/16/2024 – 8/15/2024	\$853,750	Invoiced on 9/1/2024
○	8/16/2024 – 11/15/2024	\$853,750	Invoiced on 12/1/2024
○	11/16/2024 – 2/15/2025	\$853,750	Invoiced on 3/1/2025
• Y2			
○	2/16/2025 – 5/15/2025	\$883,750	Invoiced on 6/1/2025
○	5/16/2025 – 8/15/2025	\$883,750	Invoiced on 9/1/2025
○	8/16/2025 – 11/15/2025	\$883,750	Invoiced on 12/1/2025
○	11/16/2025 – 2/15/2026	\$883,750	Invoiced on 3/1/2026
• Y3			
○	2/16/2026 – 5/15/2026	\$914,750	Invoiced on 6/1/2026
○	5/16/2026 – 8/15/2026	\$914,750	Invoiced on 9/1/2026
○	8/16/2026 – 11/15/2026	\$914,750	Invoiced on 12/1/2026
○	11/16/2026 – 2/15/2027	\$914,750	Invoiced on 3/1/2027
• Y4			
○	2/16/2027 – 5/15/2027	\$947,000	Invoiced on 6/1/2027
○	5/16/2027 – 8/15/2027	\$947,000	Invoiced on 9/1/2027
○	8/16/2027 – 11/15/2027	\$947,000	Invoiced on 12/1/2027
○	11/16/2027 – 2/15/2028	\$947,000	Invoiced on 3/1/2028
• Y5			
○	2/16/2028 – 5/15/2028	\$980,250	Invoiced on 6/1/2028
○	5/16/2028 – 8/15/2028	\$980,250	Invoiced on 9/1/2028
○	8/16/2028 – 11/15/2028	\$980,250	Invoiced on 12/1/2028
○	11/16/2028 – 2/15/2029	\$980,250	Invoiced on 3/1/2029

V. Licensing Specifications

1. Service Packs

Service Packs are a packaged set of repaired defects, enhancements to existing software and occasionally new software components. Each Service Pack is provided with Documentation that identifies affected software components and classifies the Service Pack item as either:

- **Low impact** – software component is backward compatible
- **Medium impact** – software component is backward compatible; configuration or Documentation changes are required
- **High impact** – software component requires either new database structures, data fixes, or recompilation of site-specific components; existing business processes may be impacted

Service Packs are scheduled to be released on a quarterly basis but may be released more or less frequently as required. Service Packs released during the term of this Agreement will be made available to the Agency and implemented by the FAST support staff.

2. Access to new and revised Documentation

New and revised Documentation including help files and configuration documents will be delivered to the Agency with the appropriate Service Packs and new versions.

3. Phone support

On-site FAST support staff will serve as the initial contact point for all GenTax questions and issues. After hours phone support can be provided by the on-site FAST support staff as necessary and as negotiated with the on-site FAST support manager.

4. Upgrades

FAST releases new versions of GenTax every eighteen months to two years. These upgrades are driven by new industry standards, client recommendations, and new functionality derived by the FAST developers. Upgraded versions of GenTax will be provided and implemented by the FAST support staff throughout the duration of the contract.

5. Defect repair to GenTax Core

Defects are submitted to the FAST Solution Center using the Solution Request Form. Solution Request Forms will be completed by the on-site FAST support staff and categorized by FAST as either:

- **Priority A** - the Software is not performing in accordance with FAST specifications and production or mission critical business operations are being impacted. No work around is available.
- **Priority B** - the Software is not performing in accordance with FAST specifications but most business operations can be performed. A known work around is available. The Agency is able to implement the work around without severe interruption of the production process.
- **Priority C** - the Agency requires information or assistance on GenTax[®] capabilities, installation, and configuration or would like to request an enhancement. This includes cosmetic and Documentation issues that have little or no impact on production processes and productivity.

6. Core Response Expectations

The following response expectation table specifies the level of response that will be given to the Agency at each step of the process based on the priority. The table specifies the maximum anticipated amount of time to complete each step.

- **Step 1** – represents the acknowledgement of the defect and the beginning of the information gathering and trouble shooting process.
- **Step 2** – represents the time frame in which a FAST Solution Center will actively address the issue and pursue a resolution thereof.

Priority	Step1	Step2
A	Next business day	<p>Work will be started immediately upon receipt and will continue until resolved. Dedicated resources will be assigned to resolving the defect.</p> <p>Solution will usually be provided as a hot-fix with specific instructions.</p> <p>Solution will be incorporated into the next Service Pack and the hot-fix will no longer be required.</p>
B	One week	<p>Work will be started within two weeks and performed during normal business hours.</p> <p>Solution will be incorporated into the next Service Pack released after the solution has been completed.</p>
C	Two weeks	<p>Work will be started and performed subject to resource availability. Enhancement requests may or may not be adopted. If an enhancement request is not adopted the Agency will be informed.</p> <p>Low impact enhancement requests may be incorporated into the next Service Pack released after the solution has been completed.</p> <p>All other implemented enhancement requests will be incorporated into the next version of GenTax[®] released after the solution has been completed.</p>

Escalation

During the term of this Agreement, the Agency will work with on-site FAST support staff to manage and resolve defects. The Agency, at its discretion, may escalate an issue to the Account or Quality Executive.

Note: If the FAST Solution Center cannot duplicate a defect in-house, then FAST Solution Center staff will need access to appropriate Agency environments.

ATTACHMENT C

Fast Data Services, LLC Subscriber Agreement

EAST DATA SERVICES SUBSCRIBER AGREEMENT

This Subscriber Agreement (“Agreement”) is entered into between the West Virginia Department of Revenue, Tax Division, a government agency (“Subscriber”), and Fast Data Services, LLC (“FDS”), effective on the date of approval of Subscriber’s Application for Services. Subscriber and FDS may be referred to herein as “Party” or “Parties.”

The services provided by FDS may include, but are not limited to, identity and location services, fraud detection, public records searching, audit and collection services, data exchange services for the provision of intelligence, and additional services that FDS develops and integrates into its business from time to time. The services provided by FDS are called “FDS Services.”

The FDS Services may be known by various trade names, including:

- **Fast Identity Verification Services (FIVS)**
- **Fast Audit Services (FAS)**
- **Fast Collection Services (FCS)**
- **Fast Return Services (FRS)**

Under this Agreement, Subscriber elects to participate in the FDS Services identified in Appendix 1. The parties may amend Appendix 1 on mutual agreement.

In the provision of FDS Services, the parties anticipate a two-way exchange of data records between FDS and the Subscriber. These data records may contain public records, personally identifiable information, information regulated under one or more federal laws, the results of proprietary data analyses, and confidential business intelligence.

The Parties agree that the term of this Agreement will continue for one year (the “Initial Term”), unless sooner terminated in accordance with the provisions of this Agreement. This Agreement will automatically renew for an additional one year term (“Renewal Terms”), unless either Party provides at least 60-days’ written notice of non-renewal.

1. Subscriber Rights and Obligations.

As detailed below, the Subscriber will receive a license to use FDS services, subject to certain security and compliance conditions.

1.1 Restricted License. FDS grants to Subscriber a restricted, non-exclusive, non-transferable, non-sublicenseable, revocable license to obtain and use certain public record products and other products and services provided by FDS Services as permitted by this Agreement and all applicable laws, rules, regulations and regulatory directives. Subscriber may obtain and use FDS for Subscriber’s own internal business purposes consistent with this Agreement and for no other purpose. Except for the

limited access and use rights granted in this Agreement, FDS retains all right, title and interest in FDS Services and Subscriber is not granted any ownership rights or title thereto. FDS may immediately terminate this Agreement upon notice to Subscriber if:

- Subscriber has breached its obligations under this Agreement, and the breach (if capable of being remedied) is not remedied to FDS satisfaction within thirty (30) calendar days, or some other mutually agreed upon time frame, of Subscriber's receipt of written notice of the breach; or
- FDS reasonably believes that Subscriber is not in compliance with, or causes FDS or any third party not to be in compliance with, applicable federal or state laws and regulations.

1.2 Audit. Upon reasonable notice and subject to Subscriber's access and security policies and procedures, FDS may audit once per calendar year (but more frequently if the annual audit reveals a compliance issue) Subscriber's use of FDS Services for the purpose of investigating and confirming that Subscriber's use of the FDS Services is in compliance with this Agreement and applicable law. Subscriber will cooperate and provide FDS all documentation reasonably requested relating to Subscriber's account. Violations discovered in any audit may be subject to immediate action including, but not limited to, suspension of the provision of FDS Services and/or termination of the license. If the FDS Services are suspended, they will be reinstated immediately upon satisfactory resolution or remediation of any violations triggering the suspension.

1.3 Security Incident Response. Subscriber will promptly (but in no event later than within twenty-four hours after becoming aware of the occurrence) notify FDS of any breach of security in which an unauthorized person has gained access to the FDS Services.

Subscriber will develop and maintain an Incident Response Plan. Subscriber will be solely responsible for responding to breaches originating from Subscriber's infrastructure, hardware, users, or user accounts or credentials, whether valid, stale, expired, spoofed or otherwise invalid. FDS has no liability for such breaches or the response to them.

1.4 Validation. Where the Subscriber has access to FDS data, Subscriber will be obligated to implement appropriate data validation processes prior to utilizing data in any Subscriber workflows. FDS does not apply data validation processes to FDS data. FDS data is provided "as-is," without any warranty as to accuracy, and Subscriber assumes all risk of implementing FDS data into Subscriber workflows.

2. FDS Rights and Obligations

In addition to providing the license referenced above, FDS has certain rights and obligations under this agreement, as detailed below.

2.1 Provision of Services. FDS shall maintain and use Confidential Information to provide the FDS Services in accordance with this Agreement and for no other purpose. Except for the limited access and use rights granted in this Agreement, Subscriber retains all right, title and interest in its Confidential Information and FDS is not granted any ownership rights or title thereto. Subscriber may immediately terminate this Agreement upon notice to FDS if:

- FDS has breached its obligations under this Agreement, and the breach (if capable of being remedied) is not remedied to Subscriber's satisfaction within thirty (30) days, or some other mutually agreed upon time frame, of FDS's receipt of written notice of the breach; or
- Subscriber reasonably believes that FDS is not in compliance with, or causes Subscriber or any third party not to be in compliance with, applicable federal or state laws and regulations.

2.2 Right to Use Subscriber Data. FDS Services are provided in part by applying analytic tools to the pooled data of all subscribers, associated public records, and other data. FDS personnel may access such data, including Subscriber Confidential Information such as Personal Information, for the purposes of examination, research, comparison, pattern analysis, trend analysis, and the like, in furtherance of FDS Services. FDS may maintain data it receives from Subscriber in the FDS data warehouse, and may only use such data as described herein. Upon written request from Subscriber, FDS will return or destroy all Subscriber data in its possession and retain archival copies in accord with its data retention policies.

2.2.1 FDS Services.

- (i) FDS Services are services whereby subscribers' data, models derived from subscribers' data and/or other data are used to answer a question and/or return an indicator.
- (ii) FDS may use Subscriber data to provide FDS Services to Subscriber and other subscribers. FDS may not provide Confidential Information to other subscribers.

2.2.2 FDS Summary Information.

- (i) (i) De-identified or anonymized data related to Subscriber's usage of FDS Services is "FDS Summary Information." FDS Summary Information will not contain information that can identify a person or agency.
- (ii) FDS may compile, combine, or incorporate such Summary Information with or into FDS Summary Information obtained from other users of FDS services, and may generate, use, reproduce, publicize or otherwise leverage the FDS Summary Information in any manner consistent with FDS's business needs.

Without limiting the above, FDS can use the FDS Summary Information to develop and improve FDS products and services, to create and distribute reports and other materials, to provide additional services to its customers, to advertise the benefits of FDS services, and for additional services that FDS develops and integrates into its business from time to time.

- (iii) FDS Summary Information that identifies the Subscriber will not be distributed, publicized or shared without the consent of the Subscriber.
- (iv) FDS is the owner of all right, title and interest in and to Summary Information. The rights listed in this provision survive expiration and termination of the Subscriber Agreement, and FDS is not required to

return or destroy any Summary Information. This provision should not be read to conflict with any other contract terms in this or any other contract documents; rather, this provision supplements or supersedes, as appropriate, all contract terms related to the same or similar subject matter.

2.3 Security. FDS will not breach or permit the breach of the security of legally protected personally identifiable information (“Personal Information”) which FDS receives under this Agreement. FDS will maintain a security posture substantially compliant with the moderate baseline security controls contained in at least NIST 800-53, Rev.4. FDS agrees to subject its systems to annual third-party assessments, including penetration testing and vulnerability assessments. FDS also agrees to leverage industry leading security software to protect and assess the security of FDS systems, and to leverage native tools to track security and compliance tasks and evidence. FDS is not an owner or licensee of Subscriber’s Confidential Information. FDS will notify Subscriber of any security incident involving Personal Information contained in Subscriber’s Confidential Information immediately after the discovery of a security incident where misuse of the Personal Information occurred or is likely to occur. FDS will cooperate with Subscriber by sharing information relevant to the incident, and in any other way required by law. These security measures are FDS’s only responsibility with respect to the security of Subscriber’s Confidential Information.

2.4 Disclaimer of Warranties. FDS Services are provided “as-is”, with no warranties of any kind, whether express, implied in fact or by operation of law or statute, including without limitation, those as to quality, non-infringement, accuracy, completeness, timeliness, response times, uptimes, application availability or currentness, and those warranties that might be implied from a course of performance or dealing or trade usage and warranties of merchantability and fitness for a particular purpose. FDS and its representatives, including parents, subsidiaries, and affiliates, shall not be liable to Subscriber or other third parties for any claim relating to the “as-is” nature of FDS Services and relating to disclaimed warranties. Further, in the event that Services would violate any applicable law, Contractor may immediately terminate this Agreement with a prorated refund to the Agency which shall be the Subscriber’s sole remedy for such early termination.

2.5 Insurance. FDS will always carry at least as much insurance as it had in place on the Effective Date of the Agreement, as evidenced by the certificate of insurance attached as Exhibit A.

3. Mutual Clauses

3.1 Confidentiality

3.1.1 Services Information. Subscriber shall hold in confidence and shall not disclose, in whole or in part, information relating to FDS’s business, including, without limitation, products, services, systems, processes, data sources, test results, and other FDS technical and financial information, as well as FDS Services and information derived from the FDS Services (“Services Information”), and any analyses, compilations and reports derived from any of the foregoing. Subscriber may not disassemble, decompile, or in any way reverse engineer any information derived from FDS Services.

3.1.2 Confidential Information. The Parties acknowledge that they and their employees or agents may, in the course of performing the Services under this Agreement, be exposed to or acquire information that is confidential to the other Party or the other Party's clients or vendors. Any and all information of any form obtained by a Party or its employees or agents in the performance of this Agreement shall be deemed to be confidential information of the disclosing Party, including Subscriber Data and Personal Information, collectively called "Confidential Information". Any reports or other documents or items (including software) that result from the use of the Confidential Information by the receiving Party shall be treated in the same manner as Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the receiving Party) publicly known; (b) is furnished by the disclosing Party to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (d) is obtained from a source other than the disclosing Party without the obligation of confidentiality, (e) is disclosed with the written consent of the disclosing Party, or; (f) is independently developed by employees, agents, or subcontractors of the receiving Party who can be shown to have had no access to the Confidential Information.

3.1.3 Non-Disclosure. The Parties agree to hold Confidential Information in confidence, using at least the same degree of care that the receiving Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties (other than its subcontractors), or use Confidential Information for any purposes whatsoever other than the provision of Services to Subscriber hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. The Parties will each use commercially reasonable efforts to assist the other Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, the receiving Party will advise the disclosing Party immediately in the event that it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement, and the receiving Party will, at its expense, cooperate with the disclosing Party in seeking injunctive relief or other equitable relief in the name of the disclosing Party or the receiving Party against any such person. The receiving Party agrees that, except as directed by the disclosing Party, it will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at disclosing Party's request, the receiving Party will turn over to the disclosing Party all documents, papers, and other matter in its possession that embody Confidential Information. Notwithstanding the foregoing, the receiving Party may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of performance or receipt of the Services.

3.1.4 Security and Access Policies and Procedures. The Parties each agree to comply with all reasonable requests by the other Party to ensure the confidentiality and non-disclosure of a disclosing Party's Confidential Information, including without limitation (i) obtaining non-disclosure agreements from the receiving Party's employees and agents who are performing or accessing Services and providing copies of such agreements to the disclosing Party; (ii) performing criminal background

checks on each of its employees and agents who are accessing Confidential Information while performing or accessing Services, and maintaining records of those background checks in the Party's files for a period of six years past the contract expiration or termination; (iii) at Subscriber's sole discretion and expense, requiring FDS employees who are physically present in Subscriber's state while performing hereunder to submit to a criminal background check through the state's chief law enforcement agency; and (iv) complying with the security and access policies and procedures related to Federal Tax Information pursuant to IRS Publication 1075.

3.1.5 Access Restrictions. The Parties may only use FDS Services, Services Information, and Confidential Information as permitted under this Agreement. FDS Services may only be accessed from within the United States. Subscriber must not access and/or use the FDS Services via mechanical, programmatic, robotic, scripted or other automated search means, other than through batch or machine-to-machine applications approved by FDS.

Each Party will:

- limit access to FDS Services, Services Information, and Confidential Information to only those employees who have a need to access in connection with the duties and obligations of their employment;
- advise its employees having access to FDS Services, Services Information, or Confidential Information of the proprietary and confidential nature thereof and of the obligations set forth in this Agreement;
- safeguard the Services Information and Confidential Information using reasonable and appropriate administrative, technical, and physical security safeguards at least as strong as those used to protect the Party's own data;
- employ appropriate policies and procedures to control access and security of usernames, passwords, and terminal access for FDS Services and Confidential Information;
- track and monitor its access to FDS Services, Services Information, and Confidential Information and maintain logs evidencing such tracking and monitoring for at least 2 years;
- prevent any use not in conformance with this Agreement; and
- maintain records sufficient to demonstrate compliance with its obligations under this Agreement.

3.1.6 Injunctive Relief. The breach of this Section 3.1, including disclosure of any Confidential Information, will cause irreparable injury to the disclosing Party that is inadequately compensable with monetary damages. Accordingly, a Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Each Party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the other Party and are reasonable in scope and content.

3.2 Compliance with Law. The Parties understand and agree that FDS Services may contain sensitive information that is governed by various state and federal laws. The Parties each certify that each will comply with all applicable federal, state, and local laws. Regulations, policies, and ordinances may be adopted or amended from time to time, including, but not limited to:

3.2.1 Gramm-Leach-Bliley Act Data. The Gramm-Leach-Bliley Act (15 U.S.C. §6801-6809) and its implementing regulations (collectively, "GLBA") is a federal law enacted in the United States to control the ways that financial institutions deal with the private information of individuals. Data provided by FDS Services may include private financial information from Financial Institutions, subject to the GLBA. Subscriber hereby certifies that the specific purpose(s) for which such FDS Services will be requested, obtained and used by Subscriber is one or more of the following permitted uses under the GLBA:

- To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;
- To comply with federal, state, or local laws, rules, and other applicable legal requirements.

3.2.2 Drivers Privacy Protection Act Data. The Driver's Privacy Protection Act (18 U.S.C. §2721, *et seq.*) and related laws (collectively, "DPPA") is a federal law that governs the privacy and disclosure of personal information gathered by State Departments of Motor Vehicles. Data provided by FDS Services may include data subject to DPPA. Subscriber hereby certifies that it will request, obtain, and use such FDS Services only for one of the following permissible uses under the DPPA:

- Use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out that agency's functions.
- Use in connection with any civil, criminal, administrative, or arbitral proceeding, in any federal, state, or local court or agency, or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court.

3.2.3 Death Master File ("DMF") Data. Certain data provided by FDS as part of FDS Services may include information obtained from the Limited Access Death Master File (LADMF) made available by the US Department of Commerce National Technical Information Service (NTIS) and subject to regulations found at 15 CFR Part 1110. All FDS subscribers are required to comply with all applicable laws and, if Subscriber is granted access to LADMF data, Subscriber will be certified compliant with 15 CFR 1110 prior to receiving LADMF data.

3.2.4 Fair Credit Reporting Act. FDS is not a "consumer reporting agency," as defined by the Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*) ("FCRA") and FDS Services do not constitute a "consumer report," as defined by FCRA and shall not be subject to the FCRA requirements relating to disputes, access, accuracy or otherwise. FDS Services may not be used in whole or in part as a factor in determining eligibility for credit, insurance, or employment or for any other purpose contemplated by the FCRA.

3.2.5 Federal Tax Information. Federal Tax Information (FTI) is a term of art defined in IRS Publication 1075, and consists of federal tax returns and return information (and information derived from it) that is in Subscriber's possession or

control. Subscriber retains liability for FTI, and should make every effort to not transmit it for storage by FDS. FDS does not intend to store FTI.

3.3 Limitation of Liability. Each Party's entire aggregate liability, including that of any third parties, to the other Party under this agreement is limited to direct damages not exceeding the fee paid by Subscriber for the FDS Services obtained which give rise to any first such claim during the 12 months before the action arose that gave rise to the first such claim. In no event shall either Party be liable for any consequential, incidental, indirect, special, or punitive damages incurred by the other Party and arising out of the performance of this Agreement, including but not limited to loss of good will and lost profits or revenue, whether or not such loss or damage is based in contract, warranty, tort, negligence, strict liability, indemnity, or otherwise, even if the other Party has been advised of the possibility of such damages. FDS's liability shall be limited to such amounts covered by insurance under Paragraph 2.5 of this Agreement. FDS's liability for any data breach or security breach shall be limited to only such damages required under applicable law.

3.4 Right to Suspend or Terminate Services.

3.4.1 In addition to the termination rights set forth in this Agreement, upon notice to Subscriber (which notice shall be delivered to Subscriber as soon as practicable under the circumstances), FDS may suspend delivery of the FDS Services, in whole or in part: (i) if Subscriber has breached its material obligations, or failed to satisfy the material requirements of, this Agreement, (ii) the requirements of applicable law, rule or regulation have not or will not be met, or (iii) to investigate, respond to and/or remedy a suspected or actual concern on information security, privacy, defamation, criminal activity or legal compliance, until such breach, non-compliance or investigation is remedied to FDS' reasonable satisfaction.

3.4.2 Either Party may terminate this Agreement upon thirty (30) days prior written notice in the event of either Party's failure to perform.

3.4.3 Subscriber may terminate this Agreement upon written notice in the event Subscriber fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Subscriber, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement.

4. General Provisions

4.1 Relationship of the Parties. The parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the parties hereunder shall be deemed to create an agency, partnership, employment, outsourced servicer or joint venture relationship between the parties.

4.2 Severability: Survival. If any provision of this Agreement is or becomes void or unenforceable by law, the other provisions shall remain valid and enforceable. All provisions in this Agreement that relate to disclaimer of warranties, access and use of FDS Services, audit, limitation of liability, confidentiality of FDS information, and payment for FDS Services, shall survive any termination of this Agreement.

4.3 Assignment. This Agreement and the license granted hereunder may not be assigned, transferred, or sublicensed by Subscriber, in whole or in part.

4.4 **Governing Law.** This Agreement is governed by and construed in accordance with the laws of Subscriber's State, without regard for principles of conflicts of laws.

4.5 **Venue and Jurisdiction.** Any claim, action, or suit (collectively, "Proceeding") between the Parties, that arises from or relates to this Agreement must be brought and conducted within the trial courts located in the State and county of Subscriber's main office; provided, however, that if a Proceeding must be brought in a federal forum, then unless otherwise prohibited by law, it will be brought and conducted within the United States District Court for the district in which Subscriber's main office is located. FDS hereby consents to the *in personam* jurisdiction of these courts. Nothing in these provisions shall be construed as a waiver of the sovereignty or governmental immunity Subscriber enjoys as a state agency, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or consent to jurisdiction based thereon.

4.6 **Notices.** All notices required under this Agreement will be in writing and addressed to the Party's authorized representative, as identified below. Mailed notices are deemed received five days after the postmark date when properly addressed and deposited prepaid with the U.S. Postal Service. Faxed notices are deemed received upon electronic confirmation of successful transmission to the designated fax number. E-mail notices are deemed received upon electronic confirmation of receipt. Notices delivered by personal delivery are deemed received when delivered to the address specified for the receiving party's authorized representative. FDS shall send to Subscriber's contact person as identified below copies of all notices that FDS sends to Subscriber.

To FDS:
Fast Data Services, LLC
Attn: Legal
7229 South Alton Way
Centennial, Colorado 80112
Phone: (303) 770-3700
E-mail: legal@fastdataservicesllc.com

To Subscriber:

Attn

Title

Address

Phone

Email

4.7 **Tax Certification.** The undersigned certifies that he/she is authorized to act on behalf of FDS and that FDS is, to the best of the undersigned's knowledge and for a period of no fewer than three calendar years preceding the Effective Date of this Agreement, not in violation of any applicable tax laws including rules, regulations, charter provisions, or ordinances implemented to enforce any of the applicable tax laws.

4.8 Amendments. No amendment to this Agreement is effective unless it is in writing signed by the Parties, and all approvals required by applicable law have been obtained.

4.9 Integration and Merger. This Agreement constitutes the entire agreement between the parties on the subject matter thereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

Effective the 4th day of March, 2024.

For FDS:

James G. Harrison
Signature
James G. Harrison, Member
Name and Title

For Subscriber:

Anthony Connor
Signature
Anthony Connor Procurement Sup.
Name and Title



Cooper, Anthony W <anthony.w.cooper@wv.gov>

Fast Renewal Pricing

2 messages

Browning, Don A <don.a.browning@wv.gov>
To: Anthony W Cooper <anthony.w.cooper@wv.gov>
Cc: Michael Dempsey <michael.dempsey@wv.gov>

Fri, Jan 12, 2024 at 12:39 PM

After many attempts we have gotten our pricing for the renewal contract for Fast.

Below is the price for FDS/FIVS:

(There is a caveat that the property tax assistance be strictly on the return. If it needs to be requested anyway other than return then FIVS will need to build something on their side to handle and the price will likely be increased)

Year	FDS
1	526,000
2	543,000
3	560,000
4	578,000
5	596,000
Total	2,803,000

Below is the pricing for Gentax:

Year	GenTax
1	3,415,000
2	3,535,000
3	3,659,000
4	3,788,000
5	3,921,000
Total	18,318,000

Notes on the new pricing

- This will move us from an old pricing model to Premium Support, which is an FTE-based model
- The prices include maintenance and 7 FTE with >6 months experience, I can break it out more if needed.
- My staff under this model are available to work on agency priorities(not limited to fixes), however, the agency still needs to prioritize system maintenance, service packs, etc. I can give estimations about time percentages for these if you are interested
- Annual FTE cost if you choose to add or subtract is \$345k. After the first year, the price increases by 3.4% per year.

Let me know if you have any further questions.

Thanks,
Don

Dempsey, Michael <michael.dempsey@wv.gov>

Fri, Jan 12, 2024 at 12:55 PM