



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

State of West Virginia Master Agreement

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

Order Date: 07-02-2024

Order Number:	CMA 0323 9612 WWV240000009 1	Procurement Folder:	1432458
Document Name:	Transcription Services, Legal and Medical	Reason for Modification:	Award for CRFQ WWV24*10
Document Description:	Transcription Services, Legal and Medical		
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	Effective Start Date:	2024-07-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2025-06-30

VENDOR				DEPARTMENT CONTACT	
Vendor Customer Code:	VS0000016208			Requestor Name:	Tina L Lesavich
DATAGAIN INC 1 CREEKSIDE CT				Requestor Phone:	304-558-2631
SECAUCUS NJ 07094				Requestor Email:	tina.l.lesavich@wv.gov
US				<div style="font-size: 48px; font-weight: bold;">25</div> FILE LOCATION _____	
Vendor Contact Phone:	2015981767	Extension:			
Discount Details:					
	Discount Allowed	Discount Percentage	Discount Days		
#1	No	0.0000	0		
#2	No				
#3	No				
#4	No				

INVOICE TO	SHIP TO
FISCAL AND ADMINISTRATIVE MANAGEMENT - 5301 WORKFORCE WEST VIRGINIA 1900 KANAWHA BLVD, EAST BLDG 3, 3RD FLOOR, SUITE 300 CHARLESTON WV 25305 US	OFFICE OF ADMIN SUPPORT - 5302 WORKFORCE WEST VIRGINIA 1900 KANAWHA BLVD E BLDG 3, 8TH FLOOR CHARLESTON WV 25305 US

7-3-24 bc

Purchasing Division's File Copy

Total Order Amount:	Open End
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[Signature] 7/2/2024

PURCHASING DIVISION AUTHORIZATION
 DATE: *[Signature]* - 7/2/2024
 ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM
 DATE: *[Signature]*
 ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION
 DATE: *[Signature]*
 ELECTRONIC SIGNATURE ON FILE

7/9/2024

Extended Description:

The Vendor, DATAGAIN INC, agrees to enter with the agency, WorkForce West Virginia into an open-end contract for the purchase of Transcription Services, Legal and Medical per the Specifications, Terms and Conditions, Bid Requirements, Addendum 1 dated 06/07/2024, and the vendor's bid dated 06/11/2024 , incorporated herein by reference and made a part of hereof.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	82111603			PAGE	0.900000
	Service From	Service To		Service Contract Amount	
				0.00	

Commodity Line Description: Transcription Services, Legal and Medical

Extended Description:

Estimated quantity of 2,000 is per month based on usage. Please enter price per page based on estimated quantity

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.

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 of breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One-Time Purchase contract.

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

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

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below 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: \$1,000,000.00 per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

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

Cyber Liability Insurance in an amount of: _____ 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.

(Printed Name and Title) RISHI DARIRA (PRESIDENT)

(Address) 1 Creekside Court, Secaucus, New Jersey, 07094

(Phone Number) / (Fax Number) (201) 598-1769

(email address) proposals@datagainservices.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation/Contract for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that 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; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

Datagain Inc.

(Company)



(Signature of Authorized Representative)

Rishi Darira (President)

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

(201) 598-1767

(Phone Number) (Fax Number)

proposals@datagainservices.com

(Email Address)

REQUEST FOR QUOTATION
Transcription Services

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of the Unemployment Compensation Board of Review to establish a contract for transcription services.

2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **“Contract Services”** means the list of items identified in Section 4.1 below as more fully described in these specifications.

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

3. **QUALIFICATIONS:** Vendor, or Vendor’s staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications:
 - 3.1. Five (5) years of transcription services.

 - 3.2. Confirmation of experience will be required prior to award.

4. **MANDATORY REQUIREMENTS:**
 - 4.1 **Mandatory Contract Services Requirements and Deliverables:** Contract Services must meet or exceed the mandatory requirements listed below.
 - 4.1.1 **Hearing Transcriptions**
 - 4.1.1.1 Vendors will transcribe hearings from digital recordings.

 - 4.1.1.2 Transcripts shall be electronically mailed to the Board of Review in a format compatible with the Board of Review software, such as Microsoft Office Word 2016 or equal.

REQUEST FOR QUOTATION
Transcription Services

4.1.1.3 Typed transcripts shall be electronically mailed to the Board of Review for printing within four working days of receiving the dictation. For example, a hearing sent for dictating at 4:30 p.m. on Monday must be transcribed and returned to the Board of Review no later than 4:30 p.m. on Friday. The agency must be notified in writing if transcripts are delayed for any reason.

4.1.1.4 Transcripts electronically mailed shall be transferred via a secure Virtual Private Network (VPN) or by email as an encrypted document.

4.1.2 Hearing Transcriptions Format Requirements (Exhibit A)

4.1.2.1 The first page of the transcript shall have 1" margins.

4.1.2.2 All subsequent pages of the transcripts shall have header on line 5 leaving 5/8" margin at top. All pages of the transcript shall have 1" margin on the right side.

4.1.2.3 Transcripts shall include single spacing Questions and Answer format.

4.1.2.4 Transcripts shall include Arial 12-point Font type and size.

4.1.2.5 Hearing transcripts shall include the style of the case and appearances on page one.

4.1.2.6 Hearing transcripts shall include an Index of Direct, Cross, Redirect, Recross, etc. and exhibits on the second page.

4.1.2.7 Certification shall be included on last page of transcript and not included in the billing of pages. Certification must include the transcriber's name, signature, and the date of certification.

4.1.2.8 Hearing transcripts shall include a header with the claimant's name and case number in Arial 12-point font type bold capital letters/numbers.

4.1.2.9 The first typing line on all transcripts shall be on line 8 on all pages after first and end on line 59 leaving 51 typing lines per page.

4.1.2.10 Hearing transcripts shall include an index of key words at the end of the transcript.

REQUEST FOR QUOTATION
Transcription Services

4.1.2.11 The completed transcripts shall be printed on 8" by 11 ", 20#, White Bond as "mini pages" using four-to-a-page formatting compatible with Microsoft Office Word 2016 or equal.

5 CONTRACT AWARD:

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

6 PERFORMANCE: Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.

7 PAYMENT: Agency shall pay per page, for all Contract Services performed and accepted under this Contract. The vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

8 TRAVEL: Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.

9 VENDOR DEFAULT:

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

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

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

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

REQUEST FOR QUOTATION
Transcription Services

9.1.4 Failure to remedy deficient performance upon request.

9.2 The following remedies shall be available to the Agency upon default.

9.2.1 Immediate cancellation of the Contract.

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

9.2.3 Any other remedies available in law or equity.

10 MISCELLANEOUS:

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

Contract Manager: Rishi Dariza
Telephone Number: (201) 598-1767
Fax Number: (201) 598 - 1767
Email Address: proposals@datagainservices.com

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

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

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

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

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

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

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

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

2. Permitted Uses and Disclosures.

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

3. Obligations of Associate.

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

f. **Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR §164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

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

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

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

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

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

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

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

4. Addendum Administration.

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

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

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

5. General Provisions/Ownership of PHI.

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

AGREED:

Name of Agency: Work Force W

Signature: Scott Ad

Title: Acting Commissioner

Date: 05-10-24

Name of Associate: Rishi Darira

Signature: Rishi Darira

Title: President

Date: June 11, 2024

Form - WVBA-012004
Amended 08.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jun 20 24
BY Patrick Morrisey
Attorney General

Appendix A

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

Name of Associate: Datagain INC

Name of Agency: Work Force WV

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

Exhibit A

Hearing Transcript

IN THE MATTER OF:)

[REDACTED])

) CASE NO. [REDACTED]

EMPLOYER:)

[REDACTED])

[REDACTED])

)

AT: CHARLESTON, WEST VIRGINIA

DATE: [REDACTED]

BEFORE: [REDACTED]

ADMINISTRATIVE LAW JUDGE

BOARD OF REVIEW

WORKFORCE West Virginia

APPEARANCES:

[REDACTED]
[REDACTED] Y
[REDACTED]

TRANSCRIBED BY: [REDACTED]
[REDACTED]

[REDACTED]

TESTIMONY

WITNESS	EXAMINED BY	PAGE
[REDACTED]	JUDGE [REDACTED]	12

EXHIBITS

ALJ EXHIBIT 1	6
ALJ EXHIBIT 2	6
EMPLOYER EXHIBIT 1	20

* ALL EXHIBITS LOCATED AT END OF TRANSCRIPT*

[REDACTED]

JUDGE: Good morning. This hearing will be recorded. We're on the record. Today is [REDACTED] the [REDACTED]. This hearing is being conducted telephonically.

My name is [REDACTED]. I'm the Administrative Law Judge assigned to hear this case and write a decision in regard to whether the Claimant will receive unemployment compensation benefits.

This is Claim Number [REDACTED]. The Claimant is [REDACTED] who is not present. This hearing was scheduled to begin at 11:00 a.m. It's not 11:06 a.m. The Claimant was advised by the Notice of Hearing to contact the Board of Review and provide a contact telephone number in order to participate in this hearing. He's failed to do so. We; therefore, will proceed without the Claimant being present.

The Employer is [REDACTED]
[REDACTED]

[REDACTED] who appears by phone. The Employer Representative is [REDACTED].

[REDACTED], any other witnesses or representation on behalf of the Employer today?

MS. [REDACTED] No, Sir.

JUDGE: Does the Employer continue to receive its mail in regard to these matters [REDACTED].

MS. [REDACTED] Yes, Sir, that's correct.

JUDGE: Thank you. There's no appearance by WorkForce West Virginia or the Local Office.

This involves the Employer's appeal from the Deputy's Decision of [REDACTED] finding that the Claimant was discharged but not for misconduct and was not disqualified from receiving benefits.

The purpose of today's hearing is to provide the parties with an impartial,
[REDACTED]

full and fair hearing on the appeal taken from the Deputy's benefit determination and Decision and to review the legal correctness of that determination and Decision.

[redacted], you're the only one present. Please raise your right hand and be sworn. Do you solemnly swear or affirm that in the matter now in hearing you will speak the truth, the whole truth and nothing but the truth?

MS. [redacted]: Yes, Sir.

JUDGE: Ms. [redacted] responded in the affirmative. Ma'am, at this point I have marked two documents. There are a number of other documents in my file which we'll deal with during the course of the hearing. At this point; however, we're dealing with only two, the first of which is the Deputy's Decision. It's marked as ALJ Exhibit Number 1. The second document, which I've marked as ALJ Exhibit Number 2 is a fact-finding

[redacted]

report. This document appears to bear the Claimant's signature in the lower left hand corner. It's dated [redacted]

Have you had an opportunity to review these two documents, Ms. [redacted]

MS. [redacted]: Yes, Sir.

JUDGE: Do you have an objection to the admission of either one into the record?

MS. [redacted]: No.

JUDGE: There being no objection, ALJ Exhibits 1 and 2 are admitted.

(WHEREUPON, the documents referred to were marked as ALJ Exhibits 1 and 2 and received as evidence.)

JUDGE: Based upon these documents, it appears there may be some issue or controversy regarding the basis for the Claimant's separation from employment.

[redacted], I'm going to advise you

[redacted]

of two separate issues then that may arise during the course of this hearing and the law relating to each one.

MS. [redacted]: Okay.

JUDGE: If the Claimant was discharged, the issue to be decided is whether the Claimant was discharged for misconduct and if so, whether the misconduct which resulted in the Claimant's discharge was simple or gross misconduct.

If the Claimant was discharged but not for misconduct, he's not disqualified from receiving benefits.

If the Claimant was discharged for simple misconduct, he's disqualified from receiving benefits for the week in which he was discharged and a six week period thereafter.

If the Claimant was discharged for gross misconduct, he's disqualified from receiving benefits until he returns to covered employment and has been employed therein at least 30

[redacted]

working days.

In such a case, the Employer has the burden of proving misconduct and would present evidence first followed by the Claimant if the Claimant were present. The Employer will be the only party to introduce evidence today should it chose to do so because the Employer is the only party present.

If, however, the Claimant quit his employment, the issue to be decided is whether the Claimant quit his employment for reasons involving fault on the part of the Employer or whether the Claimant quit his employment for cause which is good cause for quitting his employment.

If the Claimant quit his employment for cause involving fault on the part of the Employer, he's not disqualified from receiving benefits.

If the Claimant quit his employment for personal reasons not involving fault on the part of the Employer, he

[redacted]

is disqualified from receiving those benefits.

In such a case, the Employer has the- I'm sorry. The Claimant has the burden of proof and would introduce evidence first followed by the Employer if the Claimant were present.

Regardless of the basis for the Claimant's separation from employment, during the course of this hearing, each party has a right to introduce sworn testimony, to call witnesses and question those witnesses and to introduce relevant written documentation.

Each party, in the appropriate case, which will not occur today because the Employer is the only party present, would have a right to cross examine the adverse party and any witnesses called on behalf of the adverse party.

You'll be allowed to testify, Ms. Allen, but would not have been able to question witnesses or the Claimant on

[REDACTED]

cross examination directly. You could have asked those questions through me. Otherwise, that would have constituted the unauthorized practice of law.

MS. [REDACTED] Okay.

JUDGE: At the conclusion of this hearing, each party will receive a written decision within approximately three weeks.

Ms. [REDACTED], do you now have any questions regarding the issue or issues I am to decide or procedure we will follow today?

MS. [REDACTED] No, Your Honor.

JUDGE: Alright, ma'am, was the Claimant employed by the Employer as a Caregiver at the time of his separation from employment?

MS. [REDACTED] Yes, Sir.

JUDGE: Had he been in-

MS. [REDACTED] The title was Direct Support Professional.

JUDGE: Okay, and had he been employed by the Employer from

[REDACTED]

[REDACTED] February the [REDACTED] 2011 to February [REDACTED] or on or about that date?

MS. [REDACTED] Yes, Sir.

JUDGE: Was he earning [REDACTED] at the time of his separation from employment?

MS. [REDACTED] Yes, Sir.

JUDGE: And approximately how many hours a week was he working?

MS. [REDACTED] He was 35- about 35 hours a week.

JUDGE: And what is the Employer's business?

MS. [REDACTED] We provide managed care services and home services to individuals with special needs under the Title 19 Waiver Program for the state.

JUDGE: Was the Claimant discharged or did he quit?

MS. [REDACTED] He was actually not discharged until we got the notification that he definitely wasn't coming back. He had sat in the system-

[REDACTED]

JUDGE: Okay, hold on just a moment.

MS. [REDACTED]: -until-

JUDGE: Hold on just a moment. Ma'am, I just need to- I just- Initially, I just need to know what happened.

WHEREUPON,

[REDACTED], called as a witness, being first duly sworn to tell the truth, testified as follows:

EXAMINATION

BY JUDGE:

Q Why don't you just give me the facts that led to his separation from employment?

A Okay, he was a no-call no-show. He had been a no-call no-show for his shift and the Supervisor-

Q When? When? When? When? When?

A That was on- Wait a second till I find it. That was on [REDACTED] was the start shift was.

Q [REDACTED]

[REDACTED]

A Yes.

Q Okay, then what happened?

A So his Supervisor tried to contact him at that point. There was no returned call for [REDACTED]. He, of course, the shifts were covered at that point. He did contact the Supervisor back I think like a month later and he wanted to go back to shift.

His Supervisor told him he was going to have to come in for a disciplinary action for the no-call no-show and scheduled a meeting for him to come in in March. He did not appear for the meeting. There were-

Q What day in March was the meeting set for, ma'am?

A It- Let me look here. I'm sorry, Your Honor. I don't know the exact date of that meeting. I'm working from the Supervisor's notes.

Q Alright.

A And he just says March.

[REDACTED]

Q Alright, then, you got a meeting set for sometime in [REDACTED] and then what happened?

A [REDACTED] did not show up for that meeting. He was then contacted again on- and I believe the Supervisor submitted those documents- We contacted him for months afterwards throughout the year. There's a-

Q You did what, ma'am? I'm sorry. I didn't understand what you said.

A Okay, there were contacts made again all the way into June when they were pursuing a job abandonment status for him because he had still not been in contact and was in the system.

Q Well, okay, ma'am-

A There was a-

Q Ma'am, just a moment. You said contacts were made. Who contacted who?

A Our Supervisor, [REDACTED] with a witness [REDACTED]. They're both Supervisors over that caseload that he was working on. One of- [REDACTED] is

[REDACTED]

Program Director and [REDACTED] is Program Coordinator.

Q And what did they do and when did they do it, ma'am?

A They submitted records of contact where they had contacted him on 6/6 and left a message and asked for a call back to- They had other shifts available at that time even though they had filled his shift. Before they took him out of the system, we tried-

Q Well, ma'am, did he come back- Did he come back to work?

A No, he just never came back at all.

Q So, let me make sure I understand what you're telling me.

A Okay,

Q And then we'll go on. The Claimant didn't appear for work on [REDACTED]. He didn't call. He didn't ever show up. He didn't make any contact with the Employer or any Supervisor for a month. You set an

[REDACTED]

appointment up in March for him to come in. He doesn't come in. You then continued to contact him through June.

I guess my question is if he didn't show up in March, why did you continue to try to contact him?

A It's a good question. We have a job abandonment process and then in order to actually remove somebody from the system, we have to go through a level of H.R. processes. Immediately, if somebody doesn't show up to work, we cannot assume a job abandonment just in case they were in the hospital or in some kind of an emergency situation where they were unable to contact us, so there's usually a period of time there that we have to wait regardless to try to get in contact with them. It's usually three weeks to a month before we can even start that job abandonment process.

In that time, [REDACTED] did contact them, like I said, about a month later

[REDACTED]

and wanted to go back to his shift and that's when he was told that his last issue was a no-call no-show. He had no good reason for it so he was going to have to come in for a disciplinary action final warning, so forth for that issue and then again, he never came in for that.

So the job abandonment was never processed until they started back up in June. He was still seen in the system and in order to remove him from the system, they had to contact him and try to make three consecutive attempts to contact him and show, again, that he was not contacting anybody back.

Q Okay, is that the Employer's policy that after three attempts to contact someone to have them come in, that that's considered job abandonment and then they quit?

A Yes, it is approved by- It is our policy and our business practice and it's typically done quicker than that

far down the road, but he was still in the system. We had had some turnover and he was still in the system so they were trying to still again in June to contact him.

Q And then what happened?

A He never returned the calls. Never came back in. There was a change in our H.R.- our Human Resource position. He was- with job abandonment, so several of the- did not get processed. The information was there but it didn't actually get processed for the system so when we got the notification from Unemployment that he had gone to Unemployment, we were- and it wasn't until February 16th that we actually processed him of coming out of the system because-

Q Was he actually discharged then, ma'am, or was he just removed from the system?

A He was just removed from the system. He was still in the system

until [REDACTED] and had he returned our calls or made any efforts to follow-up with our disciplinary action for the initial no-call no-show, he would not have had to go back through the hiring process and he would have still been able to return to a shift.

JUDGE: Alright, just a moment. Alright, I have a number of documents, ma'am. Listen carefully. I'd like to mark these documents collectively.

MS. [REDACTED]: Okay.

JUDGE: The first one is an [REDACTED] Record of Discussion Form relating to he took \$6 from a participant for use in gas. The next document is a Corrective Action Plan of- it looks like [REDACTED] failed to complete documentation. The next document is a [REDACTED] Corrective Action Plan no call in to Supervisor for multiple times being late. The next document is a timecard from

[REDACTED] to [REDACTED] and one- another timecard [REDACTED] to [REDACTED] and [REDACTED] to [REDACTED]. There's a [REDACTED] Corrective Action Form to attendance and punctuality. I don't know what this relates to. The next documents are three records of contact all from a- someone- last name [REDACTED] a one [REDACTED], one [REDACTED], one [REDACTED] and Employment Action Form, which is the last document.

Do you wish to introduce all these documents, ma'am?

MS. [REDACTED]: Yes.

JUDGE: Okay, they consist of one, two, three, four, five, six, seven, eight, nine, ten, eleven pages. I'm going to mark them as Employer's Exhibit Number 1 and admit them as eleven pages.

(WHEREUPON, the document referred to was marked as Employer's Exhibit 1 and received as evidence.)

BY JUDGE:

Q Was there work available for the Claimant during this period of time, ma'am?

A Yes, Sir.

Q Okay, and the last- What was the last day he worked?

A The last day he actually worked was [REDACTED]

Q And that's when he was a- Okay, he was a no-call no-show from [REDACTED] Right?

A Yes.

Q Okay, and the three attempts to call the Claimant were [REDACTED], [REDACTED] and [REDACTED], and that would-

A Yes.

Q That would be for the Employer's Job Abandonment Policy.

A Yes, that's correct.

Q Alright, anything else you'd like to tell me? Anything else, ma'am?

A And there is a good possibility- I want to make sure I didn't miss say [REDACTED]

this. Our policy is during nonconsecutive business days- and so there's a good- where we had a change in H.R. C and B develop or three consecutive business days. That's probably the reason the job abandonment did not go through at that time. They're back to back days.

Q Yeah, okay. Anything else?

A Only that this notification came through also with three other employees that were relatives- a family relationship of some sort and they all came and filed the same day. I don't know how relevant that is but just knowing the employees, they all came down the same day and filed the-

Q Okay, alright, anything further, ma'am?

A No, Sir, I believe that's all.

JUDGE: Alright, that being the case, that will conclude this hearing. Each party will receive a written decision in approximately three [REDACTED]

weeks. Thank you for attending today, [REDACTED] Have a nice day.

MS. [REDACTED] Thank you. You too, Sir.

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, TO-WIT:

I hereby certify that the foregoing testimony was taken from a recorded tape and transcribed into the English language to the best of my skill and ability.

This the [REDACTED] of [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ WWV24*10

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Datagain Inc.

Company



Authorized Signature

June 11, 2024

Date

NOTE: This addendum acknowledgement should be submitted with the bid to expedite document processing.

Revised 6/8/2012