



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

State of West Virginia
Contract

Order Date: 05-29-2025

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 0511 2849 BBH2500000001 1	Procurement Folder:	1672574
Document Name:	WEB-BASED DATA COLLECTION SYSTEM	Reason for Modification:	
Document Description:	WEB-BASED DATA COLLECTION SYSTEM		
Procurement Type:	Central Sole Source		
Buyer Name:	Crystal G Hustead		
Telephone:	(304) 558-2402		
Email:	crystal.g.hustead@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2025-05-08
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2026-05-07

VENDOR			
Vendor Customer Code: VS0000008715			
FEI COM INC			
9755 PATUXENT WOODS DR STE 300			
COLUMBIA		MD	21046
US			
Vendor Contact Phone: 443.270.5148		Extension:	
Discount Details:			
	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	Not Entered		
#3	Not Entered		
#4	Not Entered		

DEPARTMENT CONTACT	
Requestor Name:	Melissa D Mullins
Requestor Phone:	304-352-5608
Requestor Email:	MELISSA.D.MULLINS@WV.GOV
2025	
FILE LOCATION _____	

INVOICE TO	SHIP TO
PURCHASING AGENT - 304-356-4802 HEALTH AND HUMAN RESOURCES BBH/HF 350 CAPITOL ST, RM 350 CHARLESTON WV 25301-3702 US	PURCHASING AGENT - 304-356-4802 HEALTH AND HUMAN RESOURCES BBH/HF 350 CAPITOL ST, RM 350 CHARLESTON WV 25301-3702 US

CR 6-18-25

Total Order Amount: \$354,201.72

Purchasing Division's File Copy

PURCHASING DIVISION AUTHORIZATION DATE: <i>Tarah 6/18/25</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: <i>[Signature]</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION DATE: <i>6-25-25</i> ELECTRONIC SIGNATURE ON FILE
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Extended Description:

THE VENDOR, FEI COM INC, DBA FEI SYSTEMS, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF HEALTH SERVICES, INTO A CONTRACT FOR WEB-BASED DATA COLLECTION SYSTEM PER THE TERMS AND CONDITIONS AND THE VENDOR'S QUOTE DATED 05/29/2025, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	43231500	0.00000		0.000000	\$354,201.72
Service From	Service To	Manufacturer		Model No	
2025-05-08	2026-05-07				

Commodity Line Description: Business function specific software

Extended Description:

Web-Based Data Collection System Software with capability to collect all SAMHSA required GPRA data and submit data to SPARS nightly.

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

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

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

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

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

☐ the contract will continue for _____ years;

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

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

☐ **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.

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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 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: \$10,000,000 per occurrence.

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

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

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

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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) Matthew Curley, Contracts Manager

(Address) 9755 Patuxent Woods Drive, Suite 300, Columbia, MD 20146

(Phone Number) / (Fax Number) (443) 380-4696

(email address) matthew.curley@feisystems.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.

FEI.com, Inc. dba FEI Systems

(Company) DocuSigned by:

Martina Wood

0E1F6E71EC344F8...

(Signature of Authorized Representative)

Martina Wood Chief Operating Officer

04/11/2025

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

(443) 380-4714

(Phone Number) (Fax Number)

mwood.coo@feisystems.com

(Email Address)



WITS Master License Agreement

This WITS MASTER LICENSE AGREEMENT (this “Agreement”) is entered into by and between **FEI.COM, Inc., a Maryland corporation d/b/a FEI Systems having its principal offices at 9755 Patuxent Woods Drive, Suite 300, Columbia, Maryland 21046** (hereinafter referred to as “Licensor”) and [COMPANY NAME], a governmental agency with its principal offices at [STREET ADDRESS] (hereinafter referred to as “Licensee”).

WHEREAS, Licensor is, among other things, a software developer with expertise in developing computer software and systems to be used by various governmental agencies and entities for purposes of interfacing with the U.S. federal government’s treatment services system.

WHEREAS, Licensee is desirous of licensing and using Licensor’s software to be used in connection with Licensee’s treatment services system.

THEREFORE, pursuant to the terms and conditions contained herein and any attachments hereto, and for consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties, intending to be legally bound, hereby covenant and agree as follows:

1. Definitions.

- 1.1. The term “Core Software” shall mean the proprietary software co-authored, co-developed, and co-owned by Licensor and the University of Maryland Bureau of Governmental Research (“BGR”) prior to the Effective Date which provides “core” functionality to and is integral in the use and operation of the Licensed Software.
- 1.2. The term “Developed Module(s)” shall mean one or more pieces of software created by Licensor at the request of one or more third parties (including but not limited to Licensor and BGR) which, when used with the Core Software, add functionality and utility to the Licensed Software. The Developed Modules in existence as of the Effective Date are listed on Schedule A, attached. For purposes of clarity, “Developed Module(s)” includes the Custom Developed Modules and Future Developed Modules.
- 1.3. The term “Licensed Software” shall mean the executable software application known as the Web Infrastructure for Treatment Services Systems (“WITS”), consisting of the Core Software, FEI Software Modules, Developed Modules, and other modifications to the Licensed Software from time to time made by Licensor, but specifically excluding such modifications related to the addition of enhancements to the software which are not necessary to the basic functions of the software, and which are not related to the repair of bugs or errors in, the software.



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- 1.4. The term "Scope of Work" shall mean that certain document entitled "Scope of Work" entered into by and between the parties separate from this Agreement, which sets forth the commercial terms relating to services (including but not limited to design, development, programming, implementation, and support services) associated with the Licensed Software. The Scope of Work may make reference to but will not be made a part of this Agreement.
- 1.5. The term "Custom Developed Module(s)" shall mean one or more Developed Modules created by Licensor for Licensee pursuant to the Scope of Work.
- 1.6. The term "Future Developed Module(s)" shall mean Developed Module(s) not in existence as of the Effective Date but which come into existence at some future date.
- 1.7. The term "Effective Date" shall mean the date this Agreement is signed by both parties, or at a later date specified in the Agreement once that date has arrived or passed.
- 1.8. The term "FEI Software Module(s)" shall mean one or more pieces of software created by Licensor, independently and/or using its own funds, and offered by Licensor, at its sole discretion, as a part of the Licensed Software, including without limitation, derivative works of Custom Developed Modules and Developed Modules created by Licensor, independently and/or using its own funds.

2. Grant of License.

- 2.1. In consideration of the certain license back from Licensee and other consideration hereunder, Licensor grants to Licensee a non-exclusive, perpetual, royalty free, fully paid license to use the Licensed Software in executable form, together with any and all related documentation, manuals, or instructions, either in hard copy or electronic form, subject to and in accordance with the terms and conditions of this Agreement, such software to be used for solely for the purposes of operations of Licensee's organization in connection with Licensee's treatment services and/or transfer of data relating to such treatment services.
- 2.2. Licensee shall have the right to permit its agency, departments, staff within Licensee's organization and Licensee's third party treatment services system providers to use the Licensed Software solely for the purposes of operations of the Licensee's organization in connection with Licensee's treatment services, consistent with the terms of this Agreement.
- 2.3. It is understood by the parties that Licensee may choose to use as many or as few of the Developed Modules as it may desire, and Licensee may add or eliminate



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Developed Modules from its implementation of the Licensed Software at any time.

- 2.4. During the term of this Agreement, the Licensee shall be entitled to receive from Licensor, at no additional charge to Licensee, all upgrades and revisions to the Licensed Software as determined by Licensor to be necessary for the repair of errors or omissions, including but not limited to software bugs.
- 2.5. Upon Licensee's written request to Licensor, Licensee shall be entitled to have access to and use of the source code for the Licensed Software (but specifically excluding the FEI Software Modules) for maintenance, upkeep, and continued private development purposes only. Upon termination of this Agreement, so long as Licensee is not in breach of its confidentiality and intellectual property obligations hereunder, Licensee shall have use of the source code of the Licensed Software (but specifically excluding the FEI Software Modules) which was available up to the time of termination in perpetuity. Notwithstanding any other provision in this Agreement, so long as the Licensee is in possession of any such source code related to the Licensed Software, Licensee agrees to take reasonable efforts to protect the secrecy and confidentiality of the source code and shall not disclose the source code to anyone without the prior written consent of Licensor, at its sole discretion. In the event that Licensee desires to access and use the source code for the FEI Software Modules, such access and use shall be subject to the terms and conditions and fees in accordance with Licensor's then-current license agreement for the source code for the FEI Software Modules.

3. License Back

- 3.1. Licensee grants to Licensor an exclusive license to use, install, modify, make derivative works of, offer for sublicense, and sublicense any Custom Developed Module(s) created by Licensor for Licensee, together with any and all related documentation, manuals, or instructions, either in hard copy or electronic form at no cost/fee. Subject to the terms and conditions hereunder, Licensor agrees to take reasonable efforts to protect the secrecy and confidentiality of the Licensee's source code to the Custom Developed Module(s).
- 3.2. Licensor shall not be required to provide an accounting for or pay royalties to Licensee for any licenses, sublicenses, or other uses of the Custom Developed Module(s) or modifications, improvements or derivative works thereof which are provided to Licensor's licensees.
- 3.3. For purposes of clarity, Licensor shall have the right, among other things, to use and modify the source code to the Custom Developed Module(s) for purposes of enabling the Custom Developed Module(s) to be used by third-party licensees or



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sublicensees of Licensor in connection with past or future licenses of the Licensed Software, subject to the obligations of confidentiality contained hereunder.

3.4. The obligations under this Section shall survive the termination of this Agreement.

4. Option to License Future Developed Modules.

- 4.1. From time to time during the term of this Agreement, Licensor may, at its sole discretion, inform Licensee of the existence of Future Developed Modules not in existence as of the Effective Date. Licensee shall have, at its sole discretion, the option to license such Future Developed Modules in accordance with the terms contained herein.
- 4.2. If Licensee shall desire to incorporate such Future Developed Modules into the Licensed Software, Licensee shall advise Licensor in accordance with the notice provisions hereunder, and those Future Developed Modules shall thereafter be made available to Licensee for installation and incorporation into the Licensed Software, and the identity of such Future Developed Modules shall be added to Schedule A by written amendment executed by both parties, thereby becoming part of the Licensed Software as of the date of such written amendment.
- 4.3. If Licensee elects to incorporate Future Developed Modules into the Licensed Software, there shall be no additional charge for such modules. Licensee and Licensor may separately negotiate a cost for any software configuration, customization, or installation services which may be required or requested.

5. Use of the Licensed Software.

- 5.1. Licensee agrees to take all reasonable steps to ensure that all of its employees, contractors, officers, and agents using the Licensed Software are familiar with and abide by the terms and conditions of this Agreement.
- 5.2. Licensee shall, at Licensee's sole cost and expense, purchase and provide the necessary operating system software, computer hardware, and computer-machine interface hardware required, specifications for such hardware and software requirements to be provided by Licensor.
- 5.3. Licensee agrees that it shall not attempt to reverse engineer, reverse compile, or disassemble the computer code (or any trade secrets or algorithms embodied therein) of the Licensed Software.



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6. Maintenance and Support.

- 6.1. Licensor shall not be obligated to provide any maintenance or support services to Licensee under this Agreement. Any maintenance and support services relating to the Licensed Software shall be set forth and governed by either the Scope of Work or a services agreement to be separately entered into by and between the parties.

7. Documentation and Manuals.

- 7.1. Licensor may, but shall not be obligated to, produce documentation and written instructions reasonably calculated to instruct and enable Licensee to use and take advantage of the full functionality of the Licensed Software (the "Maintenance Manual"). The Maintenance Manual may be supplied to Licensee by Licensor in a form accessible to Licensee (electronic or hard copy form). The Maintenance Manual may be updated periodically by Licensor, at no additional cost to Licensee, as upgrades, revisions, or other material changes or modifications are made to the Licensed Software, such updates also to be provided in electronic or hard copy formats.

8. Term and Termination.

- 8.1. This Agreement shall commence on the Effective Date and shall continue in effect thereafter until and unless terminated in accordance with this Section.
- 8.2. Licensee may terminate this Agreement upon thirty (30) days' prior written notice to Licensor if Licensor fails to comply with any of the material terms and conditions contained herein and if such failure to comply is not corrected within such thirty (30) days from the date of Licensee's written notice of termination to Licensor ("Termination For Cause by Licensee"). In the event of Termination For Cause by Licensee, all rights, duties, and obligations of Licensor and Licensee under this Agreement shall cease except as otherwise expressly provided hereunder.
- 8.3. Licensor may terminate this Agreement upon thirty (30) days' prior written notice to Licensee if Licensee fails to comply with any of the material terms and conditions contained herein and if such failure to comply is not corrected within such thirty (30) days from the date of Licensor's written notice of termination to Licensee ("Termination For Cause by Licensor"). In the event of Termination For Cause by Licensor, all rights, duties, and obligations of Licensor and Licensee under this Agreement shall expressly cease except as otherwise provided hereunder.



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- 8.4. Either the Licensee or Licensor may cancel this Agreement at any time, with or without cause, upon thirty (30) days' prior written notice to the other party specifying the date of termination.

9. Ownership and Derivative Works.

- 9.1. Licensor represents and warrants that it has the full right and authority to license the Core Software and the FEI Software Modules for use by Licensee in connection with the Licensed Software. Licensor represents and warrants that it has the full right and authority to license any Custom Developed Modules and Future Developed Modules for use by Licensee in connection with the Licensed Software.
- 9.2. The Core Software and all related documentation, manuals, and instructions are protected by applicable copyright, patent, trademark, or trade secret laws. Licensee acknowledges that Licensor and the co-creator of the Core Software own all right, title and interest in and to the Core Software. Licensee agrees to take any reasonable steps necessary to protect the proprietary rights of Licensor and to avoid the infringement, direct or indirect, of such rights.
- 9.3. The FEI Software Modules and all related documentation, manuals, and instructions are protected by applicable copyright, patent, trademark, or trade secret laws. Licensee acknowledges that Licensor owns all right, title and interest in and to the FEI Software Modules. Licensee agrees to take any reasonable steps necessary to protect the proprietary rights of Licensor and to avoid the infringement, direct or indirect, of such rights.
- 9.4. The Custom Developed Modules and all related documentation, manuals, and instructions are protected by applicable copyright, patent, trademark, or trade secret laws. Licensor acknowledges that Licensee owns all right, title and interest in and to the Custom Developed Module(s). Licensor shall have the right to use the Custom Developed Module(s) as provided herein. Licensor agrees to take any reasonable steps necessary to protect the proprietary rights of Licensee and to avoid the infringement, direct or indirect, of such rights.
- 9.5. The obligations under this Section shall survive the termination of this Agreement.

10. Confidentiality.

- 10.1. Except as prohibited by law or in contravention of applicable law or regulation, the parties to this Agreement agree to maintain all of the terms of this Agreement, any Exhibits, and any attached Addenda, as well as the substance of any discussions, negotiations, and correspondence related to this Agreement in strict confidence, and to keep same from any and all third parties, except such

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disclosures that are otherwise required by law. In the event of such disclosures, the disclosing party agrees to provide the other party advance notice of its intention to provide such disclosures, including with such notice the name and contact address and telephone number of the entity to whom such disclosures shall be made.

10.2. Except as prohibited by law or in contravention of applicable law or regulation, the parties to this Agreement shall make reasonable efforts and use reasonable care to protect the secrecy of all trade secrets and confidential and proprietary information and documents related to the other party, including without limitation, the Licensed Software and its source code (“Confidential Information”). Notwithstanding the foregoing, Confidential Information does not include information which: (i) was publicly known or generally known within the trade at the time of disclosure, (ii) becomes public knowledge or generally known within the trade without breach of this Agreement by either party or any of its directors, officers or employees, (iii) was information already known by the receiving party at the time of disclosure, or information independently developed by the receiving party’s personnel who did not have access to the information disclosed by the disclosing party, (iv) is required to be disclosed by law, or (v) is obtained by the receiving party, its officers or employees from third parties who are under no obligation of confidentiality with respect to the information. If the receiving party is required to disclose any Confidential Information by a court order or other specific governmental action, the receiving party may comply with such disclosure requirement, unless the disclosing party, at its own expense, is successful in having the effect of such requirement stayed pending an appeal or further review thereof, or revised, rescinded or otherwise nullified. In all events, the receiving party agrees to notify the disclosing party promptly if at any time a request or demand of any kind is made to the receiving party to disclose any of the Confidential Information. The disclosing party shall have the right, at its cost, to intervene in any proceeding in which the receiving party is being asked to disclose any of the Confidential Information.

10.3. The obligations of secrecy and confidentiality contained in this Section shall be in effect during the term of this Agreement and shall survive termination and remain in effect for a period of five (5) years after termination of this Agreement.

11. Infringement.

11.1. Licensor represents and warrants that Licensor has all right to furnish the Licensed Software in accordance with the terms and conditions of this Agreement and that the Licensed Software and Licensee’s use thereof do not and shall not directly or indirectly violate or infringe upon any copyright, patent, trademark, trade secret, or other proprietary or intellectual property right of any third-party. Licensor shall indemnify and hold Licensee and its successors, officers, directors, employees,

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and agents harmless from and against any and all actions, claims, losses, damages, liabilities, awards, costs, and expenses (including reasonable attorneys' fees and costs) resulting from or arising out of any breach or claimed breach of the foregoing warranty of non-infringement and Licensor shall defend and settle, at its sole expense, all suits or proceedings arising therefrom.

- 11.2. Licensee shall immediately inform Licensor of any suit or proceeding against Licensee for which indemnity is claimed under the foregoing warranty of non-infringement. Licensee shall have the right to participate in the defense of any such suit or proceeding, at its own expense and through counsel of Licensee's choosing, but may not impede or hamper Licensor's defense of or efforts to settle any such suit or proceeding. Licensor shall have the sole right to conduct the defense of any such suit or proceeding and all negotiations for its settlement or compromise, unless otherwise mutually agreed to in writing between the parties hereto. Licensor shall notify Licensee of any actions, claims, or suits against Licensor based on an alleged infringement of any party's intellectual property rights in and to the Licensed Software.
- 11.3. Licensor shall have no obligation in any respect for any claim based on (A) Licensee's unauthorized or permitted modification of the Licensed Software, as delivered by Licensor, or its combination, operation, or use with any product, data, or apparatus not specified or provided by Licensor, provided that such claim solely and necessarily is based on such combination, operation, or use and such claim would be avoided by combination, operation, or use with products, data, or apparatus specified by Licensor, or (B) use of any releases other than a current release or one (1) prior release of the Licensed Software if such claim would have been avoided by use of a current release or prior release.
- 11.4. The obligations under this Section shall survive the termination of this Agreement.
- 11.5. THIS SECTION STATES LICENSOR'S ENTIRE OBLIGATION TO LICENSEE WITH RESPECT TO ANY CLAIM OF INFRINGEMENT. ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF NON-INFRINGEMENT ARE EXPRESSLY AND SPECIFICALLY DISCLAIMED.

12. Limited Warranties.

- 12.1. Licensor warrants that, for a period of ninety (90) days following delivery, the Licensed Software will operate in all material aspects in accordance with the Scope of Work and any documentation, instruction, directions, or manuals provided by Licensor to Licensee when the Licensed Software is used in accordance with the uses described in the Scope of Work and any documentation, instructions, directions, or manuals.



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- 12.2. Licensor warrants that, at the time the Licensed Software is provided to Licensee, no portion of the Licensed Software shall contain any “time bomb,” “Trojan horse,” “worm,” “drop dead device,” “virus,” or other routine, device, or undisclosed feature designed to (i) disable, damage, or erase the Licensed Software or any portion thereof or any other data, or (ii) perform any similar actions that would preclude full use of and access to the Licensed Software by the Licensee.
- 12.3. Licensor warrants that it has the right to grant a license for the use of the Licensed Software.
- 12.4. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, IN CONNECTION WITH THE LICENSED SOFTWARE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR ANY EXPRESS WARRANTIES STATED IN THIS AGREEMENT, IF ANY, THE LICENSED SOFTWARE IS PROVIDED WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH THE LICENSEE.
- 12.5. LICENSOR EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN LICENSEE WITH RESPECT TO THE LICENSED SOFTWARE OR ANY PART OF IT. THIS AGREEMENT IS NOT INTENDED TO CONFER ANY RIGHTS TO ANY THIRD PARTY BENEFICIARY, AND ONLY LICENSOR AND LICENSEE HAVE THE RIGHT TO ENFORCE ANY OF THE TERMS HEREIN. ANY AND ALL EXPRESS OR IMPLIED WARRANTIES ARE EXPRESSLY AND SPECIFICALLY DISCLAIMED BY LICENSOR AND WAIVED BY LICENSEE.
13. Limitation of Liability.
- 13.1. For purposes of clarity, Licensor has no obligation in respect to any claim arising out of Licensee's unauthorized or permitted modifications to the Licensed Software or its combination, operation, or use with any product, data, or apparatus not specified or provided by Licensor at the time of delivery.
- 13.2. IN NO EVENT SHALL EITHER PARTY BE LIABLE, ONE TO THE OTHER, FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, REVENUE, DATA, OR GOODWILL, BUSINESS INTERRUPTION, OR FOR LIABILITY TO THIRD PARTIES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE FURNISHING, PERFORMANCE, OR USE OF THE



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LICENSED SOFTWARE (OR ANY PART THEREOF) PROVIDED FOR IN THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

14. Relationship of the Parties.

- 14.1. This Agreement is not intended to constitute, create, give effect to, or otherwise recognize a joint venture, partnership, or formal business entity of any kind, and the rights and obligations of the parties shall be limited to those expressly set forth herein. Nothing herein shall be construed as an obligation or be deemed to obligate the parties to enter into any future agreement with respect to the matters set forth in this Agreement or as providing for the sharing of profits or losses arising out of the efforts of either or both parties. Each party shall act as an independent contractor to the other and not as an agent of the other for any purpose whatsoever and neither party shall have any authority to bind the other or enter into any agreement on behalf of the other.

15. Construction.

- 15.1. The parties each warrant and acknowledge that they have each had equal opportunity to negotiate the terms and conditions and participate in the drafting of this Agreement. Accordingly, this Agreement shall not be construed against any one party as the drafter but shall be construed according to its terms equally as to each party. Any rule of construction against the drafter is hereby waived by each of the parties as to this Agreement.

16. Disputes.

- 16.1. Except for any suit seeking injunctive relief to enforce the proprietary rights or protect the confidential information of either party, the parties will attempt in good faith to resolve promptly through negotiation any claim or controversy arising out of or relating to this Agreement. If a claim or controversy should arise, representatives of the parties shall meet at least once and will attempt in good faith to resolve the dispute. For such purpose, either party may request the other to meet within fifteen (15) days at a mutually agreed upon time and place. If the parties are not able to conduct a meeting within the fifteen (15) day period or to resolve the dispute within thirty (30) days after their first negotiating meeting (or such longer period of time as may be mutually agreed upon), either party may refer the claim or controversy to non-binding mediation by sending a written mediation request to the other party. In the event that such a request is made, the parties agree to participate in the mediation process. The parties further agree that their participation in mediation is a condition precedent to any party pursuing any other available remedy in relation to the dispute.

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- 16.2. The parties must jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator within seven (7) days after a party has given notice of a desire to mediate the dispute, any party may apply to the American Arbitration Association, or such other organization or person agreed to by the parties in writing, for appointment of a mediator.
- 16.3. The parties and the mediator may join in the mediation any other party necessary for a mutually acceptable resolution of the dispute. Should the mediator at any time be unable or unwilling to serve, the parties shall select a successor mediator. The mediation procedure shall be determined by the mediator in consultation with the parties.
- 16.4. If the dispute or claim is resolved successfully through the mediation, the resolution will be documented by a written agreement executed by all parties. If the mediation does not successfully resolve the dispute or claim, the mediator shall provide written notice to the parties reflecting the same, and the parties may then proceed to seek an alternative form of resolution of the dispute or claim, in accordance with the remaining terms of this agreement and other rights and remedies afforded to them by law.
- 16.5. The parties further acknowledge and agree that mediation proceedings are settlement negotiations, and that, to the extent allowed by applicable law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents shall be confidential and inadmissible in any arbitration or other legal proceeding involving the parties; provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
- 16.6. The parties further agree to share equally the costs of the mediation; such costs will not include costs incurred by a party for representation by counsel at the mediation.

17. Excusable Delay.

- 17.1. In no event shall either party be liable one to the other for any delay or failure to perform hereunder, the delay or failure to perform due to causes beyond the control of said party, including, but not limited to, acts of God, acts of the public enemy, terrorism, civil disturbance, acts of any government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather conditions.



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18. Notices.

- 18.1. All notices, orders, directives, requests, or other written communications required or permitted to be given or sent pursuant to this Agreement shall be deemed given (or issued) if sent by overnight courier or first-class mail addressed as follows:

In the case of Licensor to:

FEI.COM, Inc. dba FEI Systems
9755 Patuxent Wood Drive, Suite 300
Columbia, Maryland 21046

In the case of Licensee to:

[COMPANY NAME]
[COMPANY ADDRESS]

- 18.2. Either party may, by written notice given in accordance with the foregoing, change its address or designated recipient for notices. Any notice given as aforesaid shall be deemed to have been received on the day after the date of the overnight mail receipt or three (3) working days after deposit in the mail (first-class, postage prepaid), whichever is applicable.

19. Assignment.

- 19.1. This Agreement is personal to Licensor and Licensee, and the rights, duties and obligations of Licensee under this Agreement may not be assigned by Licensee in whole or in part by operation of law or otherwise without the prior express written consent of Licensor, at its sole discretion, and any attempted assignment of any rights, duties or obligations hereunder without such consent shall be null and void. This Agreement shall then be binding on the parties and their permitted assigns.

20. Miscellaneous

- 20.1. Survival. Any provisions of this Agreement which by their nature or as drafted extend beyond its termination, including without limitation the provisions relating to the obligations of confidentiality of the parties hereunder, and any provisions which survive by action of statute, shall survive the completion, rescission, or termination of this Agreement.
- 20.2. Severability. In the event that any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal, or unenforceable provisions shall be replaced by a mutually acceptable provision, which being valid, legal, and enforceable, comes closest to the intention of the parties underlying the invalid, illegal, or unenforceable provision.



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- 20.3. Governing Law. The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties shall be governed by the laws of the State of Maryland, without regard to its conflict of laws principles and without regard to Maryland Uniform Computer Information Transactions Act
- 20.4. Entire Agreement. This Agreement and any Addenda thereto represent the entire agreement between Licensor and Licensee with respect to the subject matter herein, and Licensor and Licensee agree that all other agreements, purchase orders, proposals, order forms, representations, and other understandings dated prior to this agreement, whether written or oral, concerning the Licensed Software, are superseded in their entirety by this Agreement.
- 20.5. Modification, Amendment, Supplement, and Waiver. No alteration, modification, attachment, supplement, or exhibit to this Agreement shall be valid unless made in writing and signed by Licensor and Licensee. A failure or delay by either party to this Agreement to enforce, at any time, any of the provisions of this Agreement, to exercise any option which is herein provided, or to require at any time performance of any of the provisions hereof shall in no way be construed to be a waiver of any provision of this Agreement.
21. Headings.
- 21.1. The headings of this Agreement are for reference purposes only and shall not in any way limit or affect the meaning or interpretation of any of the terms.

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE TO FOLLOW.**



WITS Master License Agreement

LICENSOR AND LICENSEE, HAVING READ AND UNDERSTOOD THIS AGREEMENT AND ANY EXHIBITS, ATTACHMENTS, AND ADDENDA CONSTITUTING A PART HEREOF, AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE.

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

LICENSOR:
FEL.COM. Inc.

BY: _____

TITLE: _____

DATE: _____

LICENSEE:
[COMPANY NAME]

BY: _____

TITLE: _____

DATE: _____



ATTACHMENT A STATEMENT OF WORK

1 INTRODUCTION

The original implementation of the WV Web Infrastructure for Treatment Services (WITS) was completed in 2020, since then FEI has provided a system and support to the state of West Virginia with the following modules: State Waitlist, Grant Management (currently for SOR 4 grant), SUD Prevention, SSRS Reporting and CO-Triage and CONTINUUM ASAM Integration. The start date for this Statement of Work will be upon FEI's receipt of a Contract Award from West Virginia.

OPERATION AND MAINTENANCE FOR WV WITS

1.1 Statewide Waitlist

WITS State Waitlist allows agencies to place clients on a waitlist, allow agencies to use the waitlist to identify clients for open slots, and allow the state to track block-grant related data as well as capacity and timely access to care. The tracking is dependent upon agencies entering client discharge dates on a consistent basis, so that slots and beds become available on the waitlist.

1.2 Grant Management Module (Currently SOR 4)

The Grant Management module has a basic workflow. There are no additional business rules in the WV WITS. The workflow includes capture of a client's intake and enrollment into the SOR program. Once a client is enrolled in a SOR 4 program, GPRA records can be entered (Intake, 6-month, and discharge) GPRA records. The GPRA Follow up due screen and alerts allow the end user to manage the compliance rate with GPRA follow up requirements and to plan follow ups with clients in a timely fashion. Nightly automated batches of GPRA records are pulled and sent to SPARS.

1.3 Prevention Module

The WITS prevention module follows the SPF model, allowing the State to establish prevention plans, then have coalitions and other providers implement against the plan. WITS captures data to be submitted for the block grant. WITS provides Block Grant reports to meet the State's needs. WITS prevention includes the delivery of community-based services and can also include services delivered to individuals. Tracking of all funding (planned as well as expended) for community or individually based services is available.

The prevention module allows prevention staff at the State to manage their own set of provider/coalition agencies, and all data is separate from the treatment agencies in the system. WV WITS implemented the standard version of prevention in WITS.

1.4 SSRS Ad-Hoc Reporting

SQL Server Reporting Services (SSRS) is a server-based report generating software system from Microsoft. It is part of the Microsoft SQL Server services suite and is used for preparing and delivering a variety of interactive and printed reports. SSRS allows users to create reports using a variety of data sources. SSRS provides tools for managing and deploying reports, including scheduling and delivering reports via email or other means. SSRS offers robust security features to control access to reports and data.



FEI will support and maintain the WV-WITS SSRS Ad Hoc Reporting System which will include hosting and will include upgrading and maintaining all hardware and system software required. FEI provides support and maintenance, including assisting end users developing Ad Hoc Report requests. FEI will update the data views whenever there are new data elements added to the WITS Production database.

2 CO-TRIAGE AND CONTINUUM ASAM ANNUAL SUBSCRIPTION

West Virginia can purchase annual subscriptions from FEI (as the vendor). FEI provides these at the base price of \$504/user/year (CONTINUUM) and \$144/user/year (Co-Triage). While CONTINUUM subscriptions are for use by a specific user upon issuance, the state can transfer a subscription to other staff if necessary. The state may purchase as many subscriptions as needed; and may expand the number of subscriptions later if needed. Additional subscriptions will be prorated such that all subscriptions are coterminous.

Subscription #	Volume Discount
1 to 50	0%
51 - 150	5%
150 -250	10%
251 - 500	15%
500+	20%

3 HOSTING

FEI provides hosting on the AWS (Amazon Web-Services) cloud for West Virginia User Acceptance Testing, Training and Production environments. We are an Amazon Web Services (AWS) Accelerate independent software vendor (ISV) partner with a strong, collaborative relationship with the vendor. This has proven to be very beneficial to our client partners as we continue to migrate legacy solutions to the AWS cloud. Over the last six months, we have worked diligently and efficiently to migrate many of our current client partners using our solutions to the AWS public cloud. While our on-prem solutions have helped provide essential tools for program and data management, we know migration to the cloud brings many additional benefits to our client partners, including more efficient operations and reduced operating costs. We successfully migrated our WITS platforms in January 2025. This migration has supported increased system performance and improved processing speeds for larger files.



ATTACHMENT B--PAYMENT SCHEDULE

1 FEE SCHEDULE

Operations and Maintenance are priced annually and invoiced monthly with equal recurring charges. Additional details are captured below.

Description	Details	Annual Cost
O&M: Hosting, Support, and Maintenance	<p>Includes professional services to support all necessary database and server maintenance for West Virginia WITS.</p> <p>Includes database server and processing server of FEI secure, hosting environment.</p> <p>Troubleshooting issues with WITS as reported by West Virginia WITS Administrator</p> <p>Helpdesk support generating files GPRA batch files</p> <p>Monthly maintenance and support cost covering SRSS hosting and ongoing support for report building</p> <p>Includes maintenance and support for Client, Waitlist Prevention and Grant management modules.</p> <p>Issue, resolution and defect fixes per the contract.</p>	<p>FY 25 \$354,201.72</p> <p>Option Years</p> <p>FY 26 \$371,911.81</p> <p>FY 27 \$390,507.40</p> <p>FY 28 \$410,032.77</p>
Training	Refreshers Trainings	Not included in current cost will negotiate if trainings are desired
CO-TRIAGE AND CONTINUUM ASAM Annual Subscriptions	Waiting for WV to decide on the number of annual licenses needed	Not included in current cost will negotiate if subscriptions are desired



2. Invoicing

The project will be invoiced according to the following invoice schedule.

Month	Amount
May 2025	\$29,516.81
June 2025	\$29,516.81
July 2025	\$29,516.81
August 2025	\$29,516.81
September 2025	\$29,516.81
October 2025	\$29,516.81
November 2025	\$29,516.81
December 2025	\$29,516.81
January 2026	\$29,516.81
February 2026	\$29,516.81
March 2026	\$29,516.81
April 2026	\$29,516.81

DocuSigned by:

6A79EC8109FE48A...

Name: Craig Steffen

Title: CEO

Date: 5/29/2025

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1/1/2019

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

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

Vendor: FELcom, Inc. dba FEI Systems

Contract/Lease Number ("Contract"): CCT BBH2500000001

Commodity/Service: Web-Based Data Collection System

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.

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

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

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

State: West Virginia
By: Melissa Mullins
Printed Name: Melissa Mullins
Title: CFO
Date: 4/8/2025

Vendor: FEI.com, Inc. dba FEI Systems
By: Martina Wood
Printed Name: Martina Wood
Title: Chief Operating Officer
Date: 4/8/2025

FEDERAL FUNDS ADDENDUM
2 C.F.R. §§ 200.317 – 200.327

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

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

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

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

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

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

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

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

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

FEDERAL FUNDS ADDENDUM

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

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

1. MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS:
(2 C.F.R. § 200.321)

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

2. DOMESTIC PREFERENCES:
(2 C.F.R. § 200.322)

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

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

- b. Vendor confirms that will include the requirements of this Section 2. Domestic Preference in all subawards including all contracts and purchase orders for work or products under this award.

- c. Definitions: For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

3. BREACH OF CONTRACT REMEDIES AND PENALTIES:

(2 C.F.R. § 200.327 and Appendix II)

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

4. TERMINATION FOR CAUSE AND CONVENIENCE:

(2 C.F.R. § 200.327 and Appendix II)

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

5. EQUAL EMPLOYMENT OPPORTUNITY:

(2 C.F.R. § 200.327 and Appendix II)

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

6. DAVIS-BACON WAGE RATES:
(2 C.F.R. § 200.327 and Appendix II)

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

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

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

7. ANTI-KICKBACK ACT:
(2 C.F.R. § 200.327 and Appendix II)

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

8. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
(2 C.F.R. § 200.327 and Appendix II)

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

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

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

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

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

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

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

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

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

13. PROCUREMENT OF RECOVERED MATERIALS

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

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

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

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

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

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

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

State of West Virginia

OSA

By: Althea Greenhowe

Printed Name: Althea Greenhowe

Title: Procurement Specialist, Sr

Date: 4/24/2025

Vendor Name: FEI.com, Inc. dba FEI
Systems

By: DocuSigned by:
Martina Wood
DE1F8E71EC344E8

Printed Name: Martina Wood

Title: COO

Date: 4/8/2025

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

W. Va. CSR § 148-1-5

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

W. Va. Code St. R. § 148-1-5
§ 148-1-5. Remedies.
Currentness

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

5.2. Contract Cancellation.

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

5.2.1.a. The vendor agrees to the cancellation;

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

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

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

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

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

5.2.1.g. The contract was awarded in error.

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

the vendor with 30 days' notice of the cancellation.

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

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

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

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

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

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

5.4. Suspension.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.6. Damages.

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

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

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

Credits

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

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

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

End of Document

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

Prevailing Wage Determination

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