




# West Virginia Purchasing Division

2019 Washington Street, East  
Charleston, WV 25305  
Telephone: 304-558-2306  
General Fax: 304-558-6026  
Bid Fax: 304-558-3970

The following documentation is an electronically-submitted vendor response to an advertised solicitation from the *West Virginia Purchasing Bulletin* within the Vendor Self-Service portal at ***wvOASIS.gov***. As part of the State of West Virginia's procurement process, and to maintain the transparency of the bid-opening process, this documentation submitted online is publicly posted by the West Virginia Purchasing Division at ***WVPurchasing.gov*** with any other vendor responses to this solicitation submitted to the Purchasing Division in hard copy format.

## Header

 List View

## General Information

Contact


Default Values

Discount

Document Information

Procurement Folder: 61039

Procurement Type: Central Master Agreement

Vendor ID: VS0000004304 

Legal Name: IMEDX INC

Alias/DBA:

Total Bid: \$0.08

Response Date: 03/24/2015 

Response Time: 14:07

SO Doc Code: CRFQ

SO Dept: 0932



SO Doc ID: DRS1500000005

Published Date: 3/23/15

Close Date: 4/2/15

Close Time: 13:30

Status: Closed

Solicitation Description: ADDENDUM NO. 2. -  
TRANSCRIPTION SERVICES FOR   


Total of Header Attachments: 0

Total of All Attachments: 0



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

**State Of West Virginia  
 Solicitation Response**

**Proc Folder :** 61039

**Solicitation Description :** ADDENDUM NO. 2. -TRANSCRIPTION SERVICES FOR THE WVDRS

**Proc Type :** Central Master Agreement

Date issued	Solicitation Closes	Solicitation No	Version
	2015-04-02 13:30:00	SR 0932 ESR02261500000002249	1

VENDOR
VS0000004304  IMEDX INC

**FOR INFORMATION CONTACT THE BUYER**  
 Evelyn Melton  
 (304) 558-7023  
 evelyn.p.melton@wv.gov

Signature X FEIN # DATE

All offers subject to all terms and conditions contained in this solicitation

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	TRANSCRIPTION SERVICES PER LINE PRICE	1.00000	LINE	\$0.08	

Comm Code	Manufacturer	Specification	Model #
41105803			

**Extended Description :** ALL-INCLUSIVE TRANSCRIPTION SERVICES PER LINE.  
  
ADDENDUM NO. 2 IS ISSUED:

**SOLICITATION NUMBER:** CRFQ\_DRS1500000005  
**Addendum Number:** 2

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The purpose of this addendum is to modify the solicitation identified as ("Solicitation") to reflect the change(s) identified and described below.

**Applicable Addendum Category:**

- Modify bid opening date and time
- Modify specifications of product or service being sought
- Attachment of vendor questions and responses
- Attachment of pre-bid sign-in sheet
- Correction of error
- Other

**Description of Modification to Solicitation:**

1. TO PROVIDE RESPONSES TO VENDORS QUESTIONS REGARDING THE ABOVE SOLICITATION.
2. TO PROVIDE ADDENDUM ACKNOWLEDGEMENT.

**Additional Documentation:** Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

**Terms and Conditions:**

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

# ATTACHMENT A

**ADDENDUM # 02****RFQ\_DRS1500000005 – Transcription Services**

1. Standard turnaround time is specified as 24 hours. Will there be a need for STAT turnaround? If so, what is the desired STAT timeframe and what percentage of work would STAT jobs compose?

Yes, STAT turnaround may be required. Timeframe would be same day as request. However, this would be rare.

2. In section 4, subsection 4.1.1.13 on page 23, the RFQ gives requirements for statements of confidentiality. Will vendor need to submit any statements of confidentiality with the proposal or are all statements required post-award?

Post award.

3. In section 4, subsection 4.1.1.19.2; it states that "some CE sources may prefer to dictate into a tape and forward these to the vendor for completion". Does the DDS have an estimate as to how many tapes or what percentage of work this may compose?

Typically, the recording will not be mailed but played back over a voice transmission line. Those who use this technique record in a digital format. We currently only have one vendor using this technique at present.

4. In section 4, subsection 4.1.1.9; it states that the vendor must provide secure storage of the reports and any related documentation for a minimum of 60 months from the date of completion. All dictations and associated documentation are held for 90 days and then permanently archived thereafter on Vendor's current platform. Would the DDS be okay with a request based document retrieval system for documents older than 90 days?

Yes. That would serve our purpose.

5. In section 4, subsection 4.1.1.3; it states that the Social Security Administration's regulations prohibit the subcontracting of the functions in this contract due to confidentiality of materials, information, and data, without prior written consent of the state agency. Vendor's operational model *does* rely on subcontracted employees who complete the work remotely. However, Vendor's platform is HIPAA compliant and all vendors have undergone HIPAA compliance training. At this time would the DDS be open to an operational model such as this?

SSA policy in regards to your question would permit a subcontractor if you guarantee the work is being completed in a secure facility and have the ability to supervise and monitor the work being completed.

6. I note however that the work cannot be done offshore. I know however that the same work is done in India by the State of Maine which does not have that restriction and have been doing the work with a vendor in India for many years. We were a bidder on their RFP, had the lowest price, but lost because they stayed with the present vendor in India. Can you waive the restriction in your bid?

Yes, we can waive this requirement as long as the work is completed in a secure facility and closely supervised by the winning bidder's employees.

The last sentence of section 4.1.1.3 is deleted and replaced with the following:

In the event that the Vendor desires to subcontract some part of the work specified herein, the Vendor shall furnish the purchasing agency with the names, qualifications, and experience of their proposed subcontractors. However, the Vendor shall remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure compliance with all requirements of this contract. The subcontractor must adhere to the same facility requirements as the Vendor. Additionally, any subcontracts formed must also contain the information specified herein.

7. Also, the documentation I read does not give an estimated volume of lines, the document types required to be transcribed nor an estimate on the number of dictators that will be dictating. Can you elaborate on these issues?

Per the original RFQ, Specifications, Section 1., last year's line volume was approximately 2.3 million lines. The document types are medical and psychological reports for the determination of Federal Social Security Disability. There are up to 150 separate dictators.

8. Can you send me a sample format of the transcription services that will be provided?

Yes. Please see the attached.

9. I was wondering who the incumbent company was and the current price per line.

The current vendor is Imedx. The current rate is \$.079 per line.

10. Whether companies from outside USA can apply for this?

Yes.



11. Whether we need to come over there for meetings?

We would require at least one meeting at our Charleston, WV location at the startup of the contract.

12. Can we perform tasks related to RFP outside USA?

Yes.

13. Can we submit our proposals via email?

No but bid through fax is acceptable as it was mentioned on the Instructions to Bidders.

SAMPLE

Story Consulting Services, Inc.  
P.O. Box 1817  
Frankfort, KY 40602

CLAIMANT:  
SSN:

DISABILITY EXAMINER:

CONSULTANT:

DATE OF EXAMINATION:

PLACE OF EXAMINATION:

LOUISA, KENTUCKY

DATE OF BIRTH:

CLAIMANT'S AGE:

26 YEARS

ALLEGATIONS:

- 1. Back pain.

CONSULTATIVE EXAMINATION:

HISTORY OF PRESENT ILLNESS: The claimant is a 26-year-old white female who states she has had low back pain for several years. She says that she began noting worsening of the pain in February of 2006. She claims that she followed up with her primary care physician and had x-rays performed that she says revealed mild scoliosis along with a T8 deformity. She says that she underwent physical therapy and followed up with a chiropractor. However, she continues to have pain that persists through today. She describes the pain that she experiences as more of a sharp pain exacerbated with bending, twisting, turning, prolonged sitting and standing, stooping, and squatting. She does get some relief with rest, the use of ice and over-the-counter medications. She has no medical follow up at this time but states that she does follow up with her chiropractor.

PHYSICAL EXAMINATION:

GENERAL: The claimant is 26 years old.

VITAL SIGNS: Height of 61 inches. Weight 127 pounds. Blood pressure 104/72. Pulse of 80. Respirations of 16. Visual acuity - 20/20 right, 20/20 left, 20/20 bilaterally with glasses.

CONTINUED ON PAGE 2

# SAMPLE

PAGE 2

**HEENT:** Normocephalic, atraumatic. Pupils are equal, round and reactive to light. Extraocular eye movements are intact. No other abnormalities noted on the fundoscopic exam.

**NOSE AND THROAT:** The oropharynx is clear. The claimant has normal dentition. No oral mucosa lesions noted.

**NECK:** Supple without JVD. No adenopathy or bruits. The claimant has normal range of motion.

**CHEST AND LUNGS:** The claimant has bilateral expansion. No tenderness appreciated. No scars are noted.

**BREATH SOUNDS:** The claimant bilateral breath sounds. There is no evidence of rales, rhonchi or wheezes noted.

**HEART:** Regular rate without murmurs, gallops, clicks or rubs. S<sub>1</sub> and S<sub>2</sub> are noted. Point of maximum impulse is the left midclavicular line.

**ABDOMEN:** Soft, nontender. Bowel sounds were appreciated. There are no masses, hepatosplenomegaly, ascites, bruits, or hernias noted.

**EXTREMITIES:** No clubbing, cyanosis, or edema noted. Pulses were present in all extremities. There is no evidence of varicosities or ulcers noted. No deformities, redness or tenderness appreciated. The claimant had normal muscle bulk and tone.

**SKIN:** Warm and dry without evidence of lesions or rash.

**MENTAL STATUS:** The claimant was alert and oriented x 3. The claimant had normal mood, affect, memory, and ability to relate.

**NEUROLOGICAL:** The claimant had normal gait and station. Cranial nerves II-XII were intact. The claimant had normal motor strength, heel, toe, and tandem walking. The claimant was able to perform a knee squat. No evidence of Romberg or Babinski reflexes noted. Deep tendon reflexes were 2+ in the brachial tendons, the triceps tendons, the forearm, the patellar, and Achilles tendons bilaterally.

**JOINTS:** There is no evidence of scoliosis, tenderness, or spasms noted. Straight leg raising was 90 degrees in both the sitting and supine position bilaterally. The claimant does not use a cane or an assistive device for ambulation.

**ORTHOPEDIC:** Please refer to the Range of Motion Value Form that is submitted giving the passive ranges. Please note there were no limitations noted in the upper or lower extremities.

**DIAGNOSTIC STUDIES:** None were requested.

CONTINUED ON PAGE 3

SAMPLE

PAGE 3

SUMMARY: The claimant is a 26-year-old white female with low back pain for several years. She states that the pain became worse since February of this year. She says that she will follow up with her chiropractor although she has no medical follow up at this time.

MEDICAL SOURCE STATEMENT: Based on the medical findings, it would appear that the claimant has the ability to perform activities involving sitting, standing, moving about, lifting, carrying, handling objects, hearing, seeing, speaking, and traveling. Her physical examination was within normal limits. Her orthopedic examination was without limitations.

The claimant denies any symptoms of chest pain. She has normal gait and station without evidence of motor dysfunction, sensory loss, or reflex abnormalities. She does not use a cane or an assistive device for ambulation. She has the ability to hear and understand normal conversational speech. She has normal gross manipulation and grip strength.

INFORMATION SOURCES: None were provided.

[REDACTED], M.D.

License No. [REDACTED]

MVB/rge

**ADDENDUM ACKNOWLEDGEMENT FORM**  
**SOLICITATION NO.: DRS150000005**

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

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

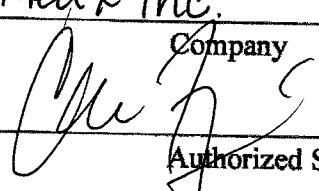
**Addendum Numbers Received:**

(Check the box next to each addendum received)

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

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

iMedX Inc.  
Company

  
Authorized Signature

3.24.15  
Date

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

Revised 6/8/2012



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

State of West Virginia  
 Request for Quotation

Proc Folder: 61039

Doc Description: ADDENDUM NO. 2. -TRANSCRIPTION SERVICES FOR THE WWDRS

Proc Type: Central Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version
2015-03-23	2015-04-02 13:30:00	CRFQ 0932 DRS1500000005	3

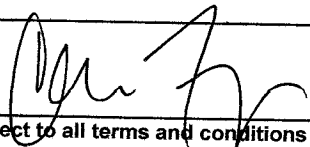
**BID RECEIVING LOCATION**

BID CLERK  
 DEPARTMENT OF ADMINISTRATION  
 PURCHASING DIVISION  
 2019 WASHINGTON ST E  
 CHARLESTON WV 25305  
 US

**VENDOR**

Vendor Name, Address and Telephone Number:  
*1 MedX Inc.*  
*6 Concourse Parkway*  
*Suite 1475*  
*Atlanta, GA 30328*  
*HO4: 418-0096*

FOR INFORMATION CONTACT THE BUYER  
 Evelyn Melton  
 (304) 558-7023  
 evelyn.p.melton@wv.gov

Signature X  FEIN # 205095500 DATE 3.24.15

All offers subject to all terms and conditions contained in this solicitation

INVOICE TO		SHIP TO	
CHARLESTON DISABILITY DETERMINATION DIVISION OF REHABILITATION SERVICES 500 QUARRIER ST STE 500		DIVISION OF REHABILITATION SERVICES DISABILITY DETERMINATION SECTION 500 QUARRIER ST, STE 500	
CHARLESTON	WV25301	CHARLESTON	WV 25301
US		US	

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	TRANSCRIPTION SERVICES PER LINE PRICE	1.00000	LINE		

Comm Code	Manufacturer	Specification	Model #
41105803			

**Extended Description :**  
ALL-INCLUSIVE TRANSCRIPTION SERVICES PER LINE.

ADDENDUM NO. 2 IS ISSUED:  
 - TO PROVIDE RESPONSES TO VENDORS' QUESTIONS REGARDING THE ABOVE SOLICITATION.  
 - TO PROVIDE ADDENDUM ACKNOWLEDGMENT.  
 --- END OF ADDENDUM NO. 2 ---

ADDENDUM NO. 1 IS ISSUED:  
 - TO MOVE THE BID OPENING DATE TO ALLOW FOR THE ISSUANCE OF RESPONSES TO THE QUESTIONS RECEIVED FOR THE ABOVE SOLICITATION:  
 FROM: MARCH 12, 2015 @ 1:30 P.M.  
 TO: APRIL 2, 2015 @ 1:30 P.M.  
 - TO PROVIDE ADDENDUM ACKNOWLEDGMENT  
 --- END OF ADDENDUM NO. 1 ---

<b>DRS1500000005</b>	<b>Document Phase</b> Final	<b>Document Description</b> ADDENDUM NO. 2. -TRANSCRIPTION SERVICES FOR THE WWDRS	<b>Page 3</b> <b>of 3</b>
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**ADDITIONAL TERMS AND CONDITIONS**

See attached document(s) for additional Terms and Conditions



**WEST VIRGINIA DISABILITY DETERMINATION SERVICES  
CONFIDENTIALITY AGREEMENT**

**OVERVIEW**

The purpose of the Confidentiality Agreement is to secure the Disability Determination Services (DDS) most protected asset -information. DDS stores and transmits a great deal of sensitive information. Accordingly, we have concerns about protecting the confidentiality and integrity of this information, in both its paper and electronic forms.

The attached Confidentiality Agreement is being instituted to ensure that all persons with access to protected NPPI, PII, SPII, and PHI information or any other information deemed confidential, fully understand their obligations to limit their use of such information and to protect such information from disclosure. Special attention items, as well as definitions, are highlighted below. If you have any questions about this agreement or fail to understand the contents, please contact personnel for further information.

**Special attention items:**

- Use of protected NPPI, PII, SPII, and PHI information and confidential information is permitted only when the user has a need to know such information;
- Disclosure of protected NPPI, PII, SPII, and PHI information or confidential information is only permitted by SSA policies and procedures, as may be amended from time to time; and
- Protected NPPI, PII, SPII, and PHI information and confidential information is protected in all forms, electronic and paper.

**DEFINITIONS**

**Disclosure** - The release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information.

**Need-to-know** - The necessity for access to, or knowledge or possession of, specific information required to carry out official duties.

**Protected Health Information (PHI)** - With regard to HIPAA covered entities, individually identifiable health information, including demographic information, whether oral or recorded in any form or medium, that relates to the individual's health, health care services and supplies, or

**WEST VIRGINIA DISABILITY DETERMINATION SERVICES  
CONFIDENTIALITY AGREEMENT**

payment for services or supplies, *and* which identifies the individual or could reasonably be used to identify the individual. This includes information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual including but not limited to preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care as well as counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status of an individual or that affects the structure or function of the body; or the past, present or future payment for the provision of health care to an individual; *and* includes identity information, such as social security number or driver's license number, even if the name is not included, such that the health information is linked to the individual. Protected health information does not include the following:

1. Records covered by the Family Educational Rights and Privacy Act.
2. Employment records held by the entity in its role as employer (although use and dissemination of these records may be subject to other federal and state laws such as the Family and Medical Leave Act and those related to West Virginia Workers' Compensation).

**Personally Identifiable Information (PII)** - All information that identifies, or can be used to identify, locate, or contact (or impersonate) a particular individual. Personally identifiable information is contained in public and non-public records. Examples may include but are not limited to a specific individual's: first name (or initial) and last name (current or former); geographical address, electronic address (including an e-mail address); telephone number or fax number dedicated to contacting the individual at their physical place of residence; social security number; credit and debit card account numbers; financial records, including loan accounts and payment history; consumer report information; mother's maiden name; biometric identifiers, including but not limited to, fingerprints; facial recognition and iris scans; driver identification number; full face image; birth date; birth adoption certificate number; physical description; genetic information; medical, disability or employment records, including salary information; computer information, including information collected through an internet cookie; criminal history, etc. When connected with one or more of the items of information specified above, personally identifiable information includes any other information concerning an individual that, if disclosed, identifies or can be used to identify a specific person physically or electronically.

**Sensitive Personally Identifiable Information (SPII)** - Those elements of PII that must receive heightened protection due to legal or policy requirements.

Sensitive PII includes:

- i) Most data elements in State personnel records
- ii) Occupational licensing data

**WEST VIRGINIA DISABILITY DETERMINATION SERVICES  
CONFIDENTIALITY AGREEMENT**

- iii) Driver history records
- iv) State/Federal contacts data
- v) Employment and training program data
- vi) Permits data
- vii) Historical records repository data
- viii) Personnel data

**Very Sensitive includes:**

- i) Social Security numbers
- ii) Credit card numbers
- iii) Food assistance programs data
- iv) Criminal history data
- v) Comprehensive law enforcement data
- vi) Foster care data
- vii) Health and Medical data
- viii) Welfare records/data
- ix) Domestic abuse data
- x) Driver license numbers
- xi) Individual financial account numbers

**Extremely sensitive includes:**

- i) State law enforcement investigative records
- ii) Communications systems
- iii) Child and Adult protective services client data

**Non-Public Personal Information (NPPI)** - Any personally identifiable information collected about an individual, including but not limited to, social security numbers, credit card or bank account numbers, medical or educational records, financial information collected by a financial institution used in connection with providing a financial product or service, or other sensitive, confidential or protected data, unless that information is otherwise publicly available.

\_\_\_\_\_ Initial

This agreement, including the attached overview, is entered into between the Disability Determination Services (DDS) and \_\_\_\_\_, Contractor's Employee (hereinafter the User).

All of the Parties agree as follows:

**WEST VIRGINIA DISABILITY DETERMINATION SERVICES  
CONFIDENTIALITY AGREEMENT**

It is understood between the Parties that during the terms of the User's Employment, that the User will only collect such protected Non-Public Personal Information (NPPI), Personally Identifiable Information (PII), Sensitive Personally Identifiable Information (SPII), and Protected Health Information (PHI) or other confidential information in conformance with DDS policy, procedures and rules.

It is also understood between the Parties that during the terms of the User's Employment, to the extent that the User has a need-to-know such information, the User may have access to protected NPPI, PII, SPII, and PHI or other information deemed confidential, in either paper, electronic or verbal form.

The User agrees not to disclose to anyone, directly or indirectly, any such NPPI, PII, SPII, and PHI or other confidential information, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to SSA policies, procedures, rules, or state or federal law. If information-specific releases, provisions, and restrictions do not exist, then User agrees to disclose confidential information only upon approval of the DDS Privacy Officer or counsel. All the above applies to the release of information in total or fragmented form. Further, the User agrees not to misuse any media, documents, forms or certificates in any manner which might compromise the confidentiality or security, or otherwise be illegal or against Authority's policies, procedures or rules, such as altering a record, using a certificate improperly, etc.

Any document, report, or other written information in whatever format, prepared by the User or information in whatever format that might be given to the User in the course of their Employment is the exclusive property of DDS and shall remain in the possession of DDS except as otherwise specifically permitted by DDS policies and procedures. The User understands that all access to information is subject to monitoring and audit.

The User understands that even when the User no longer has access to records of DDS, the User is still bound by this document and must continue to maintain the confidentiality of information to which access was previously given.

By signing below, the User understands and acknowledges reading and understanding the contents of this document and understands that any improper collection, use or disclosure of NPPI, PII, SPII, and PHI or other information deemed confidential may result in disciplinary action from the Contractor. In addition, DDS reserves the right to seek any remedy available by law or in equity for any violation of this agreement.

Contractor's Employee: \_\_\_\_\_

Date: \_\_\_\_\_

**WV STATE GOVERNMENT**

**HIPAA BUSINESS ASSOCIATE ADDENDUM**

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

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

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

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

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

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

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

## 2. Permitted Uses and Disclosures.

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

### 3. Obligations of Associate.

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

**f. Support of Individual Rights.**

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



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

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

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

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

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

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

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

#### 4. Addendum Administration.

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

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

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

#### 5. General Provisions/Ownership of PHI.

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

AGREED:

Name of Agency: \_\_\_\_\_

Name of Associate: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_


Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Form - WVBA-012004  
Amended 06.26.2013

APPROVED AS TO FORM THIS 26<sup>th</sup>  
DAY OF June 2011  
BY   
Patrick Morrisey  
Attorney General

Appendix A

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

Name of Associate: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

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

STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**MANDATE:** Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

**EXCEPTION:** The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**DEFINITIONS:**

**"Debt"** means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

**"Employer default"** means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

**"Related party"** means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

**AFFIRMATION:** By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code §61-5-3*) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

**WITNESS THE FOLLOWING SIGNATURE:**

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_, to-wit:

Taken, subscribed, and sworn to before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission expires \_\_\_\_\_, 20\_\_.

**AFFIX SEAL HERE**

**NOTARY PUBLIC** \_\_\_\_\_