



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 3

List View

General Information

Contact

Default Values

Discount

Document Information

Procurement Folder: 738312

SO Doc Code: CRFQ

Procurement Type: Statewide MA (Open End)

SO Dept: 0212

Vendor ID: VS0000021034



SO Doc ID: SWC2000000004

Legal Name: PERMEATE LLC

Published Date: 6/18/20

Alias/DBA:

Close Date: 6/25/20

Total Bid: \$0.00

Close Time: 13:30

Response Date: 06/25/2020



Status: Closed

Response Time: 10:44

Solicitation Description: Addendum_1: SWC - TEMPORARY STAFFING SERVICES



Total of Header Attachments: 3

Total of All Attachments: 3



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

State of West Virginia
Solicitation Response

Proc Folder : 738312

Solicitation Description : Addendum_1: SWC -TEMPORARY STAFFING SERVICES

Proc Type : Statewide MA (Open End)

Date issued	Solicitation Closes	Solicitation Response	Version
	2020-06-25 13:30:00	SR 0212 ESR06252000000007888	1

VENDOR

VS0000021034
PERMEATE LLC

Solicitation Number: CRFQ 0212 SWC2000000004

Total Bid : \$0.00 Response Date: 2020-06-25 Response Time: 10:44:15

Comments:

FOR INFORMATION CONTACT THE BUYER

Mark A Atkins
(304) 558-2307
mark.a.atkins@wv.gov

Signature on File

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	TEMPORARY EMPLOYEE SERVICES	0.00000	JOB	\$0.000000	\$0.00

Comm Code	Manufacturer	Specification	Model #
80111600			

Extended Description :	TEMPORARY EMPLOYEE SERVICES: Note: Vendor shall use Exhibit_A Pricing Page(s) for bid pricing. If vendor is submitting a bid online, Vendor should enter \$0.00 in the Oasis commodity line.
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COMPANY NAME: PERMEATE LLC

CAGE CODE: 8CUA5

POC: SOUNDAR NATARAJAN

DUNS: 117040896

CONTACT: soundar@permeate.llc / 903 390 1882

WEB: www.permeate.llc

BUSINESS TYPE: Certified Disadvantaged Business Enterprise, Certified Minority Owned Business, Small Business

ADDRESS: 2705 MONTAUK RD HOOVER AL 35226

Registered Agents, Inc. 110 James St. Hinton, WV 25951

Solicitation #: CRFQ 0212 SWC2000000004

Solicitation Title: TEMPORARY STAFFING SERVICES

Solicitation Closing Date: 06/01/2020

Executive Summary:

Permeate LLC is a staff augmentation company. We are a Certified DBE and Certified Minority Company. We have extensive experience in temporary staffing, full time staffing, and recruiting services.

Introduction:

Finding qualified candidate could be complicated process, but at Permeate LLC we handle the process quite differently, which makes us to stand out from the crowd. Below are some differentiators.

- For onsite or virtual staffing: “24 / 48 / 72” model
- Superior Service Guarantee for Service Level Quality, Timetables and Budgets
- Customer Value Index (CVI) Survey, Process, and Methodology for Satisfaction, Loyalty, and Advocacy
- All work will be completed in the spirit of The Malcolm Baldrige National Quality Award (MBNQA) standards

Before we provide an offer, we run a number of background check including criminal history, education verification, identity verification, sexual assault, child molestation, driving record check, credit check, healthcare sanctions, license validation, drug screening and E-verify to ensure that the candidates are in good standing. Permeate will advise their employees that the Agency require a smoke free and drug free workplace.

References:

Agency: State Of West Virginia

Contact: Anthony.J.Walizer@wv.gov

Contact Email: Anthony Walizer

Staffing Offered: Accountant Technician II

Agency: State of South Carolina – Health & Human Services

Contact: Rober Malpass

Contact Email: Robert.Malpass@scdhhs.gov

Notes: **Waiting for the task order to be issued. IT staffing contract for a total potential value of \$21M over 3 years**

West Virginia issued Minority Owned Certification



ALLAN L. MCVEY
CABINET SECRETARY

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
2019 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25305-0130

W. MICHAEL SHEETS
DIRECTOR

January 22, 2020

Permeate LLC
2705 Montauk RD
Hoover, AL 35226-6501

Mr. Natarajan:

This is to notify you that your Small, Women-, and Minority-Owned Businesses (SWAM) Certification Application has been approved on the basis of your representations that the vendor named above meets the definition of a Small, Women-, and Minority-Owned Businesses as set forth in the *West Virginia Code of State Rules* 148-22-1 et seq. This certification becomes effective:

1/22/2020

And shall automatically expire without notice two years after the effective date unless revoked by the Purchasing Director or upon expiration pursuant to the *West Virginia Code of State Rules* 148-22-8. The type(s) of Small, Women-, and Minority-Owned Businesses (SWAM) Certification approved for your entity:

Minority Owned Business Small Business

To maintain certification without lapse, a certified business shall apply to renew its certification at least 60 days prior to the end of the two-year certification period. Complete renewal instructions, recertification forms, and a list of all SWAM Certified entities are available online at www.state.wv.us/admin/purchase/VendorReg.html.

If you have questions, please contact the West Virginia Purchasing Division at 304-558-2306.

Sincerely,

Lu Anne Cottrill
Assisting Registration Coordinator

PHONE: (304) 558-2306
FAX: (304) 558-4115

WVPurchasing.gov

E.E.O./AFFIRMATIVE ACTION EMPLOYEE



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

State of West Virginia
Request for Quotation
34 — Service - Prof

Proc Folder: 738312

Doc Description: Addendum_1: SWC -TEMPORARY STAFFING SERVICES

Proc Type: Statewide MA (Open End)

Date Issued	Solicitation Closes	Solicitation No	Version
2020-06-18	2020-06-25 13:30:00	CRFQ 0212 SWC2000000004	2

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:

PERMEATE LLC
2705 MONTAUK RD
HOOVER AL 35226
903 390 1882

FOR INFORMATION CONTACT THE BUYER

Mark A Atkins
(304) 558-2307
mark.a.atkins@wv.gov

Signature X

FEIN # 82-3120084

DATE 06/22/2020

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

West Virginia Ethics Commission
Disclosure of Interested Parties to Contracts

(Required by W. Va. Code § 6D-1-2)

Name of Contracting Business Entity: PERMEATELLC Address: 2705 MONTAUK RD

HOVEL AL 35226

Name of Authorized Agent: SOUNAR NATARAJAN Address: 2705 MONTAUK RD HOVEL

Contract Number: CRFQ 0212 SWC20*04 Contract Description: Temp21 - Temporary Staffing Services

Governmental agency awarding contract: WV Purchasing Division

☐ Check here if this is a Supplemental Disclosure

List the Names of Interested Parties to the contract which are known or reasonably anticipated by the contracting business entity for each category below (attach additional pages if necessary):

1. Subcontractors or other entities performing work or service under the Contract

☐ Check here if none, otherwise list entity/individual names below.

2. Any person or entity who owns 25% or more of contracting entity (not applicable to publicly traded entities)

☐ Check here if none, otherwise list entity/individual names below.

3. Any person or entity that facilitated, or negotiated the terms of, the applicable contract (excluding legal services related to the negotiation or drafting of the applicable contract)

☐ Check here if none, otherwise list entity/individual names below.

Signature: [Signature] Date Signed: 06/24/2020

Notary Verification

State of Alabama, County of Stelby:

I, Riaz Ahmed Sr., the authorized agent of the contracting business entity listed above, being duly sworn, acknowledge that the Disclosure herein is being made under oath and under the penalty of perjury.

Taken, sworn to and subscribed before me this 24th day of June, 2020.

[Signature]
Notary Public's Signature

To be completed by State Agency:

Date Received by State Agency: _____

Date submitted to Ethics Commission: _____

Governmental agency submitting Disclosure: _____

Revised June 8, 2018

STATE OF WEST VIRGINIA
Purchasing Division
PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: 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 exceeds 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: (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, 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: PERMEATE LLC

Authorized Signature: N. L. Date: 06/24/2020

State of Alabama

County of Shelby, to-wit:

Taken, subscribed, and sworn to before me this 24th day of June, 2020.

My Commission expires 07-24-23, 20 .

AFFIX SEAL HERE

NOTARY PUBLIC

Ricky Ahmad Jr.

Purchasing Affidavit (Revised 01/19/2018)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ 0212 SWC2000000004

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

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

Addendum Numbers Received:


(Check the box next to each addendum received)

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

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that 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.

PERMEATE LLC

Company

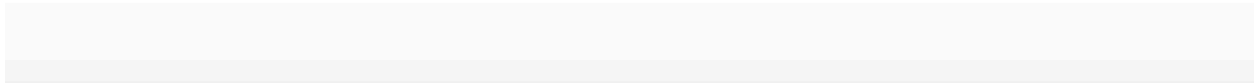


Authorized Signature

06/22/2020

Date

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



**Statewide Contract
CRFQ 0212 SWC2000000004
TEMPORARY STAFFING SERVICES
(TEMP21)**

NOTE: These reports are mandatory; failure to adhere to this may result in the cancellation of the Contract. Such reports must be sent electronically (excel document) to each agency utilizing this Contract and to the buyer responsible for this Contract at the Purchasing Division. These reports will be provided in Excel format and sent via email on a quarterly basis to Mark.A.Atkins@wv.gov as follows:

<u>PERIOD END</u>	<u>REPORT DUE</u>
December 31	February 28
March 31	May 31
June 30	August 31
September 30	November 30

4.1.14 Exception labor Sources:

4.1.14.1 There are certain labor services available to the State Agencies outside of the temporary services contracts, and the issuance of the temporary service contracts shall not alter or interfere with the existing laws, policies, and/or procedures for the use of these exceptional labor sources. Some example of these sources include:

- Division of Personnel's temporary personnel registers.
- Other State Agencies.
- The CNA.
- Prison labor.
- Students from institutions of higher learning.
- Volunteers.

4.1.15 Agency Ordering Procedures:

4.1.15.1 When the Contract(s) are issued, the State Agencies will receive a spreadsheet to identify the lowest cost supplier for each classification, according to regions. In instances where the CNA bids on a Temporary Employee classification, the CNA may receive a priority contract even though it is not the lowest cost supplier for that classification.

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4.1.15.2 If the CNA bids and is awarded a Contract, the CNA will have first priority for providing that Temporary Employee classification even if the CNA is not the lowest cost supplier and State Agencies shall first contact the CNA using TSCS Form (Temporary Services Contract Sheet) or TSCN Form (Temporary Services Change Notice) to fill a position in the Temporary Employee classification awarded to the CNA. CNA shall reply to the State Agency within forty-eight (48) hours. A reply from the CNA indicating an unwillingness or inability to supply a Temporary Employee shall operate as a waiver from the CNA and must be retained by the State Agency. When the CNA is unable to supply the Temporary Employee or does not respond to the Agency within forty-eight (48) hours, the awarded Vendor with the lowest hourly rate for that position in the region in question shall be contacted. If the Temporary Employee sent by the CNA is unable or unwilling to perform the job duties, the State Agency may request a waiver from the CNA and contact the next Vendor if a waiver is granted.

Delivery Orders in excess of \$25,000.00 shall require processing as Centralized Delivery Orders through the WV State Purchasing Division. Order of \$25,000.00 or under will be processed as Agency Delivery Orders. Signed, dated vendor quote shall be included with each Delivery Order (i.e., scanned and electronically attached in WVOasis).

4.1.15.3 A Vendor providing services for this Contract shall respond to any request for a Temporary Employee within forty-eight (48) hours of receiving the request unless the request is identified by the Agency as an emergency. When a Temporary Employee is required on an emergency basis, the State Agency may require an expedited response from the CNA or a Vendor providing the Temporary Employee under this Contract.

4.1.15.4 State Agencies must send a Delivery Order to the Vendor to initiate the procurement of temporary services. The Delivery Order shall contain a description of the services required, job location within the relevant region, job classification, hourly

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(TEMP21)**

billing rate and number of hours required, and start and end dates of the assignment. All Delivery Orders shall be completed by the ordering State Agency. Waivers from the CNA must be attached to all invoices processed through the West Virginia State Auditor's office.

4.1.15.5 At the discretion of each West Virginia State Agency, the form attached as **Exhibit_B Temporary Worker Request Form** may be required prior to accepting a Temporary Employee offered by any Vendor. If this form is used, it shall detail the job description, acceptable dress code, overtime requirements, and any other pertinent information the State Agency finds relevant. This will ensure that all Temporary Employees arriving at a West Virginia State Agency will have a full understanding of all that is required of them for the temporary position. If requested by the State Agency, this form must be signed by the Vendor and the Temporary Employee, indicating that both the worker and the Vendor understand and accept the restriction and requirements for the temporary position. The State Agency may also use this form to list any prohibited activities by the Temporary Employee (discussion of pay, cell phone use, internet privileges, tobacco use, etc.).

4.1.15.6 If CNA or any Vendor has indicated they can fill the position and the temporary worker does not report for the temporary position without a reasonably acceptable explanation (in the opinion of the West Virginia State Agency), the State Agency may then go to the next low bidder to fill the temporary position.

4.1.16 Absent Temporary Workers:

4.1.16.1 All Vendors (including CNA) must notify the West Virginia State Agency immediately upon learning that a Temporary Employee will be tardy or will be absent from work. The Vendor must instruct its employees that they must report absences to the Vendor and Vendor will communicate the absence to the State Agency. Failure to notify the State Agency of an absent employee is

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grounds to move on to the next bidder to fill the position. Information for Temporary Employees supplied through the CNA should be reported to the CNA and the CNA will report the absence to the State Agency.

Note: It is strongly recommended to the Vendors that they check with each temporary worker one day prior to the beginning of the assignment to verify the start date. Vendors with a high percentage of “no shows” or a history of sending unacceptable temporary workers may be removed from the contract.

4.1.17 Removing a Temporary Worker:

4.1.17.1 Whenever a Temporary Employee is to be relieved of duties, the West Virginia State Agency shall notify the Vendor. Whenever this removal is due to behavior and/or other unacceptable problem, the Vendor shall assist the State Agency in retrieving the electronic pass card whenever one has been issued.

4.1.18 Solicitation for Temporary Employee's:

4.1.18.1 Vendor shall not solicit work from the West Virginia State Agencies. When the need arises for a Temporary Employee, the State Agency shall make the necessary contact. Solicitation for work for temporary workers is strictly prohibited.

4.1.19 Hiring of Temporary Workers/Credit Applications:

4.1.19.1 There shall be no fee incurred by the State of West Virginia if an Agency decides to hire a Temporary Employee into a permanent position.

4.1.19.2 Vendor shall not require a credit application to be completed by any State Agency.

4.1.19.3 Vendor shall not request nor require any additional forms, policy statements, etc. to be signed by any State Agency.

4.1.19.4 No additional terms and conditions shall be requested or required by Vendors to any State Agency for any position filled through this contract.

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4.1.20 Temporary Worker's Job Classifications (job description and requirements will be provided as Attachment_1).

- 4.1.20.1** Accounting Technician 2
- 4.1.20.2** Administrative Services Assistant 1
- 4.1.20.3** Administrative Services Assistant 2
- 4.1.20.4** Cook
- 4.1.20.5** Custodian
- 4.1.20.6** Data Entry Operator 2
- 4.1.20.7** Executive Secretary
- 4.1.20.8** Groundskeeper
- 4.1.20.9** Health Service Worker
- 4.1.20.10** Laboratory Assistant 3
- 4.1.20.11** Laborer
- 4.1.20.12** Mail Runner
- 4.1.20.13** Office Assistant 2
- 4.1.20.14** Office Assistant 3
- 4.1.20.15** Paralegal
- 4.1.20.16** Parking Attendant
- 4.1.20.17** Word Processor

5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract award may be limited to the three (3) lowest bidders meeting the specifications in each job classification for each Region including the CNA. Under this scenario, it will be possible for a Vendor to be awarded a contract for only a portion of the temporary positions they bid on.

Statewide Contract
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TEMPORARY STAFFING SERVICES
(TEMP21)

5.2 Pricing Page: The West Virginia Purchasing Division has divided the State into four (4) geographical Regions (see **Exhibit_C**). The Vendor should provide billing information for each job classification for each Region they are bidding in the appropriate pricing page.

Vendor should complete the Pricing Pages (**Exhibit_A**) for each region (1 thru 4) they are interested in supplying temporary workers by providing an hourly rate paid to the Temporary Worker (Worker Pay rate), Withholding, and Overhead rates. Those three (3) items will be added to determine the **Total Rate** amount for each job classification in the region the Vendor is bidding. The **Total Rate** amount will be the rate used in the award evaluation and will be the rate charged to the agency utilizing the vendors contract for the temporary worker requested for each job classification.

Vendor should complete the Pricing Pages for each job classification they intend to provide temporary workers. Failure to complete the Pricing Page(s) in its entirety for each job classification in each Region bid by the vendor may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Pages to prevent errors in the evaluation. The pricing pages have been formatted to automatically calculate the Total Rate amount when the Temporary Worker (Worker Pay rate), Withholding, and Overhead rates are entered. Notwithstanding the foregoing, the Purchasing Division may correct errors as it deems appropriate.

- 6. PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. This Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.
- 7. PAYMENT:** Agency shall pay hourly rate as shown on the Pricing Pages **Total Rate** amount, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.
- 8. TRAVEL:** Vendor will only be paid for Temporary Employee's travel in instances where the State Agency specifically provides written authorization for the Temporary Employee to travel. Vendor shall only bill for time that Temporary Employees are working at a designated temporary employment location or on approved travel. Vendor shall not bill for travel from the Temporary Employee's home to the designated temporary employment

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location. The Vendor shall be reimbursed for a Temporary Employees travel expenses in accordance with the State of West Virginia travel regulations.

9. FACILITIES ACCESS: Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:

- 9.1.** Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
- 9.2.** Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
- 9.3.** Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
- 9.4.** Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
- 9.5.** Vendor shall inform all staff of Agency's security protocol and procedures.

10. VENDOR DEFAULT:

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

- 10.1.1.** Failure to perform Contract Services in accordance with the requirements contained herein.
- 10.1.2.** Failure to comply with other specifications and requirements contained herein.
- 10.1.3.** Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

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10.1.4. Failure to remedy deficient performance upon request.

10.2. The following remedies shall be available to Agency upon default.

10.2.1. Immediate cancellation of the Contract.

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

10.2.3. Any other remedies available in law or equity.

11. MISCELLANEOUS:

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

Contract Manager: BEN HOFFMAN
Telephone Number: 646 389 6232
Fax Number: 833 946 0451
Email Address: SOUNDAR@PERMEATE.LLC

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid 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: This Contract becomes effective on
upon award _____ and extends for a period of one (1) year(s).

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 maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

☐ **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.

☐ **Other:** See attached.

4. NOTICE TO PROCEED: Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

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 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.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

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

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

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

☐☐☐☐

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

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy 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 or not that insurance requirement is listed in this section.

Vendor must maintain:

- ☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.
- ☐ **Automobile Liability Insurance** in at least an amount of: _____ per occurrence.
- ☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.
- ☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: _____ per occurrence.
- ☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.
- ☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.
- ☐ **Pollution Insurance** in an amount of: _____ per occurrence.
- ☐ **Aircraft Liability** in an amount of: _____ per occurrence.
- ☐
- ☐
- ☐
- ☐

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

9. WORKERS' COMPENSATION INSURANCE: The apparent successful 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. [Reserved]

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

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: Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

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 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.

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 with regard to 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 <http://www.state.wv.us/admin/purchase/privacy/default.html>.

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 CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) 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; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall 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. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

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. PURCHASING AFFIDAVIT: 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, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE: This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

39. 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.

40. 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.requisitions@wv.gov.

41. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. 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.

Revised 01/09/2020

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. 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 hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. 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
- d. 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.

43. 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.

44. 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 supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award 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.

45. 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.

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.

BEN HOFFMAN - ACCOUNT EXECUTIVE

(Name, Title)

BEN HOFFMAN

(Printed Name and Title)

2705 MONTAUK RD HOOVER AL 35226

(Address)

646 389 6232 / 833 946 0451

(Phone Number) / (Fax Number)

BEN.HOFFMAN@PERMEATE.LLC

(email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that 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.

PERMEATE LLC

(Company)



(Authorized Signature) (Representative Name, Title)

Soundar Natarajan - PRESIDENT & CEO

(Printed Name and Title of Authorized Representative)

06/22/2020

(Date)

903 390 1882 / 833 946 0451

(Phone Number) (Fax Number)

REGION 1:

**NOTE: If you do not cover entire region, enter XX
below the counties where you do supply temporaries.**

REQUEST FOR QUOTATION
CRFQ SWC2000000004
TEMP21

Temporary Staffing Services

EXHIBIT A

Hancock	Brooke	Ohio	Marshall	Wetzel	Monongalia	Marion	Harrison	Dodridge	Gilmer	Pleasants	Calhoun	Wirt	Wood	Tyler	Ritchie				
Classification				Worker Pay Rate		Withholding Rate		Overhead Rate		Total Rate*									
Accounting Technician 2				\$	17.00	\$	0.51	\$	5.10	\$	22.61								
Administrative Services Assistant 1				\$	18.00	\$	0.54	\$	5.40	\$	23.94								
Administrative Services Assistant 2				\$	20.00	\$	0.60	\$	6.00	\$	26.60								
Cook				\$	-	\$	-	\$	-	\$	-								
Custodian				\$	-	\$	-	\$	-	\$	-								
Data Entry Operator2				\$	13.00	\$	0.39	\$	3.90	\$	17.29								
Executive Secretary				\$	15.00	\$	0.45	\$	4.50	\$	19.95								
Groundskeeper				\$	-	\$	-	\$	-	\$	-								
Health Service Worker				\$	21.00	\$	0.63	\$	8.40	\$	30.03								
Laboratroy Assistant 3				\$	28.00	\$	0.84	\$	11.20	\$	40.04								
Laborer				\$	-	\$	-	\$	-	\$	-								
Mail Runner				\$	15.00	\$	0.45	\$	4.50	\$	19.95								
Office Assistant 2				\$	16.00	\$	0.48	\$	4.80	\$	21.28								
Office Assistant 3				\$	18.00	\$	0.54	\$	5.40	\$	23.94								
Paralegal				\$	17.00	\$	0.51	\$	5.10	\$	22.61								
Parking Attendant				\$	-	\$	-	\$	-	\$	-								
Word Processor				\$	14.00	\$	0.42	\$	4.20	\$	18.62								
<p>* Vendor should enter their Worker Rate + Withholding Rate + Overhead Rate and the Total Rate box will automatically calculate.</p>																			
<p>-----</p>																			
Vendor Name:				PERMEATE LLC															
Contact Person:				SOUNDAR NATARAJAN															
Phone #:				903 390 1882															
Fax #:				833 946 0451															
Email:				SOUNDAR@PERMEATE.LLC															
Signature:				GSN				Date:				6/22/2020							

REGION 2:

**NOTE: If you do not cover entire region, enter XX
below the counties where you do supply temporaries.**

REQUEST FOR QUOTATION
CRFQ SWC2000000004
TEMP21

Temporary Staffing Services

EXHIBIT A

Mason	Cabell	Wayne	Mingo	Logan	Boone	Lincoln	Kanawha	Putnam	Roane	Jackson							
Classification				Worker Pay Rate		Withholding Rate		Overhead Rate		Total Rate*							
Accounting Technician 2				\$	17.00	\$	0.51	\$	5.95	\$	23.46						
Administrative Services Assistant 1				\$	18.00	\$	0.54	\$	6.30	\$	24.84						
Administrative Services Assistant 2				\$	20.00	\$	0.60	\$	7.00	\$	27.60						
Cook				\$	-	\$	-	\$	-	\$	-						
Custodian				\$	-	\$	-	\$	-	\$	-						
Data Entry Operator2				\$	13.00	\$	0.39	\$	4.55	\$	17.94						
Executive Secretary				\$	15.00	\$	0.45	\$	5.25	\$	20.70						
Groundskeeper				\$	-	\$	-	\$	-	\$	-						
Health Service Worker				\$	21.00	\$	0.63	\$	8.40	\$	30.03						
Laboratroy Assistant 3				\$	28.00	\$	0.84	\$	11.20	\$	40.04						
Laborer				\$	-	\$	-	\$	-	\$	-						
Mail Runner				\$	15.00	\$	0.45	\$	5.25	\$	20.70						
Office Assistant 2				\$	16.00	\$	0.48	\$	5.60	\$	22.08						
Office Assistant 3				\$	18.00	\$	0.54	\$	6.30	\$	24.84						
Paralegal				\$	17.00	\$	0.51	\$	5.95	\$	23.46						
Parking Attendant				\$	-	\$	-	\$	-	\$	-						
Word Processor				\$	14.00	\$	0.42	\$	4.90	\$	19.32						
<p>* Vendor should enter their Worker Rate + Withholding Rate + Overhead Rate and the Total Rate box will automatically calculate.</p>																	
<p>-----</p> <p> Vendor Name: PERMEATE LLC Contact Person: SOUNDAR NATARAJAN Phone #: 903 390 1882 Fax #: 833 946 0451 Email: SOUNDAR@PERMEATE.LLC </p> <p> Signature: GSN Date: 6/22/2020 </p>																	

REGION 3:

**NOTE: If you do not cover entire region, enter XX
below the counties where you do supply temporaries.**

REQUEST FOR QUOTATION
CRFQ SWC2000000004
TEMP21

Temporary Staffing Services

EXHIBIT A

Lewis	Upshur	Randolph	Pendelton	Hardy	Grant	Hampshire	Mineral	Morgan	Berkeley	Jefferson	Tucker	Barbour	Taylor	Preston					
Classification				Worker Pay Rate		Withholding Rate		Overhead Rate		Total Rate*									
Accounting Technician 2				\$	17.00	\$	0.51	\$	5.10	\$	22.61								
Administrative Services Assistant 1				\$	18.00	\$	0.54	\$	5.40	\$	23.94								
Administrative Services Assistant 2				\$	20.00	\$	0.60	\$	6.00	\$	26.60								
Cook				\$	-	\$	-	\$	-	\$	-								
Custodian				\$	-	\$	-	\$	-	\$	-								
Data Entry Operator2				\$	13.00	\$	0.39	\$	3.90	\$	17.29								
Executive Secretary				\$	15.00	\$	0.45	\$	4.50	\$	19.95								
Groundskeeper				\$	-	\$	-	\$	-	\$	-								
Health Service Worker				\$	21.00	\$	0.63	\$	8.40	\$	30.03								
Laboratroy Assistant 3				\$	28.00	\$	0.84	\$	11.20	\$	40.04								
Laborer				\$	-	\$	-	\$	-	\$	-								
Mail Runner				\$	15.00	\$	0.45	\$	4.50	\$	19.95								
Office Assistant 2				\$	16.00	\$	0.48	\$	4.80	\$	21.28								
Office Assistant 3				\$	18.00	\$	0.54	\$	5.40	\$	23.94								
Paralegal				\$	17.00	\$	0.51	\$	5.10	\$	22.61								
Parking Attendant				\$	-	\$	-	\$	-	\$	-								
Word Processor				\$	14.00	\$	0.42	\$	4.20	\$	18.62								
<p>* Vendor should enter their Worker Rate + Withholding Rate + Overhead Rate and the Total Rate box will automatically calculate.</p>																			
<hr/> <p> Vendor Name: PERMEATE LLC Contact Person: SOUNDAR NATARAJAN Phone #: 903 390 1882 Fax #: 833 946 0451 Email: SOUNDAR@PERMEATE.LLC </p> <p> Signature: GSN Date: 6/22/2020 </p>																			

REGION 4:

**NOTE: If you do not cover entire region, enter XX
below the counties where you do supply temporaries.**

REQUEST FOR QUOTATION
CRFQ SWC2000000004
TEMP21

Temporary Staffing Services

EXHIBIT A

Braxton	Clay	Nicholas	Fayette	Raleigh	Wyoming	McDowell	Mercer	Summers	Greenbrier	Pocahontas	Webster	Monroe							
Classification				Worker Pay Rate		Withholding Rate		Overhead Rate		Total Rate*									
Accounting Technician 2				\$	17.00	\$	0.51	\$	5.10	\$	22.61								
Administrative Services Assistant 1				\$	18.00	\$	0.54	\$	5.40	\$	23.94								
Administrative Services Assistant 2				\$	20.00	\$	0.60	\$	6.00	\$	26.60								
Cook				\$	-	\$	-	\$	-	\$	-								
Custodian				\$	-	\$	-	\$	-	\$	-								
Data Entry Operator2				\$	13.00	\$	0.39	\$	3.90	\$	17.29								
Executive Secretary				\$	15.00	\$	0.45	\$	4.50	\$	19.95								
Groundskeeper				\$	-	\$	-	\$	-	\$	-								
Health Service Worker				\$	21.00	\$	0.63	\$	8.40	\$	30.03								
Laboratroy Assistant 3				\$	28.00	\$	0.84	\$	11.20	\$	40.04								
Laborer				\$	-	\$	-	\$	-	\$	-								
Mail Runner				\$	15.00	\$	0.45	\$	4.50	\$	19.95								
Office Assistant 2				\$	16.00	\$	0.48	\$	4.80	\$	21.28								
Office Assistant 3				\$	18.00	\$	0.54	\$	5.40	\$	23.94								
Paralegal				\$	17.00	\$	0.51	\$	5.10	\$	22.61								
Parking Attendant				\$	-	\$	-	\$	-	\$	-								
Word Processor				\$	14.00	\$	0.42	\$	4.20	\$	18.62								
* Vendor should enter their Worker Rate + Withholding Rate + Overhead Rate and the Total Rate box will automatically calculate.																			
<hr/> <div> <div> Vendor Name: PERMEATE LLC Contact Person: SOUNDAR NATARAJAN Phone #: 903 390 1882 Fax #: 833 946 0451 Email: SOUNDAR@PERMEATE.LLC </div> <div> Signature: _____ GSN </div> <div> Date: 6/22/2020 </div> </div>																			

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. 111th Congress (2009).

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

2. Permitted Uses and Disclosures.

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

3. Obligations of Associate.

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

f. **Support of Individual Rights.**

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

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

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

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

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

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

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

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

4. Addendum Administration.

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

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

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

5. General Provisions/Ownership of PHI.

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

AGREED:

State of West Virginia
Name of Agency: WV Purchasing Division

Signature: _____

Title: _____

Date: _____

PERMEATE LLC
Name of Associate: _____

Signature: [Signature]

Title: PRESIDENT & CEO

Date: 06/22/2020

Form - WVBAA-012004
Amended 06.26.2013

APPROVED AS TO FORM THIS 26th
DAY OF Jun 20 13
[Signature]
Patrick Morrissey
Attorney General
BY _____

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: State of West Virginia, WV Purchasing Division

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

Included but not limited to the following:

Personal Health Information
Personal Identifiable Information
Social Security Number
Addresses
Tax Identification Information
Personal Phone Numbers
All Correspondence marked Confidential
Financial Information
Financial Account number
Credit Card Numbers
Debit Card Numbers,
Driver's License Numbers,
State ID Numbers
Marital Status
Home Address