

## USE INSTRUCTIONS:

### STATE OF WEST VIRGINIA ORDER OF PRECEDENT AND ADDITIONAL TERMS AGREEMENT

**Purpose:** This form is intended to provide an alternative to the standard Agency Delegated Terms and Conditions on small dollar agency procurements in some circumstances. It is preferred that the agency still get the standard Agency Delegated Terms and Conditions signed where possible.

**Acceptable Use:** This form can be used on no bid procurements where a purchase order is issued, on verbal bid procurements, direct award procurements, and emergency procurements. Please note that this form is not necessary if the agency is completing a no bid procurement without issuing a written purchase order/contract.

This form is not authorized for use on:

- Request for Quotations under delegated written bids (\$20,000 to \$100,000)
- Construction Contracts
- EOI Contracts

**Method of Use:** If the use restrictions above are met, and the agency has decided to use this form, the form would be completed by the agency and presented to vendor as part of a completed and ready to sign contract document. This would occur after the agency has obtained a quote and vendor terms.

**Cautions:** This document can expedite contract consummation, but offers the State less protection and more opportunity for legal dispute than the standard Agency Delegated Terms and Conditions. (i.e. insurance is not addressed, nor is licensure, or liquidated damages). Additionally, the document does not include things like price, quantity/scope, term, renewal term, etc. because the assumption is that they are contained in the vendor documents. The agency will need to make sure all necessary contract terms are present in the vendor documents and are acceptable. Finally, the agency will need to determine if additional documents like the Business Associate Addendum or Cloud Addendum are required.

**STATE OF WEST VIRGINIA**  
**ORDER OF PRECEDENT AND ADDITIONAL TERMS AGREEMENT**

**THIS ORDER OF PRECEDENT AND ADDITIONAL TERMS AGREEMENT**, by and between [ ] (“Vendor”) and the [ ] (“State”) is intended to provide an order of priority for the various documents that comprise the contract resulting from the [ ] solicitation identified as [ ], (the “Contract”) and to add certain required contract terms to the Contract.

The Parties Agree as follows:

- 1. Order of Precedence:** The Contract is comprised of the documents listed in this section. The terms and conditions contained in the various documents shall be interpreted according to the priority given to the Contract document in this section.

**Contract Documents:**

- a. This Addendum - First in priority.
  - b. Additional State Documents (if any) attached hereto as Exhibit A – Second Priority
  - c. Vendor Quote, and Scope of Work (if any), attached hereto as Exhibit B – Third Priority
  - d. Additional Vendor Documents Attached hereto as Exhibit C – Fourth Priority
- 2. Additional Contract Terms.** The following additional terms are added to the Contract.
  - a. **VOID CONTRACT CLAUSES** – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.
  - b. **LATE PAYMENT PENALTIES** – Any language in any document imposing any interest or charges due to late payment is deleted.
  - c. **BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider’s employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.
  - d. **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.

- e. **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>
  
- f. **ISRAEL BOYCOTT:** Vendor understands and agrees that pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.
  
- g. **NO DEBT CERTIFICATION:** In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

The Parties are signing this Agreement on the date stated below the signature.

VENDOR: [ \_\_\_\_\_ ] STATE AGENCY: [ \_\_\_\_\_ ]

Printed Name: \_\_\_\_\_ Printed Name: \_\_\_\_\_

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

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

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

Exhibit A – OTHER STATE DOCUMENTS  
(If none included then there are no other state documents)

Exhibit B – VENDOR QUOTE  
(and scope of work if applicable)

Exhibit C – ADDITIONAL VENDOR DOCUMENTS

Exhibit D –