



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 @ 1

List View

General Information | [Contact](#) | [Default Values](#) | [Discount](#) | [Document Information](#)

Procurement Folder: 259647

SO Doc Code: CRFQ

Procurement Type: Central Master Agreement

SO Dept: 0506

Vendor ID: VS0000013418

SO Doc ID: MCH1800000001

Legal Name: DATAKEEPER TECHNOLOGIES LLC

Published Date: 7/13/17

Alias/DBA:

Close Date: 7/21/17

Total Bid: \$101,250.00

Close Time: 13:30

Response Date: 07/20/2017

Status: Closed

Response Time: 14:43

Solicitation Description: Addendum #1 - Web Based Home Visitation System

Total of Header Attachments: 1

Total of All Attachments: 1



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

State of West Virginia
 Solicitation Response

Proc Folder : 259647

Solicitation Description : Addendum #1 - Web Based Home Visitation System

Proc Type : Central Master Agreement

Date issued	Solicitation Closes	Solicitation Response	Version
	2017-07-21 13:30:00	SR 0506 ESR07201700000000198	1

VENDOR
VS0000013418 DATAKEEPER TECHNOLOGIES LLC

Solicitation Number: CRFQ 0506 MCH1800000001

Total Bid : \$101,250.00 Response Date: 2017-07-20 Response Time: 14:43:28

Comments:

FOR INFORMATION CONTACT THE BUYER
 April Battle
 (304) 558-0067
 april.e.battle@wv.gov

Signature on File	FEIN #	DATE
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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	Web Based Data Collections System				\$32,250.00

Comm Code	Manufacturer	Specification	Model #
81161501			

Extended Description :	Section 4.1.1 - Web Based Data Collections System
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Comments: Annual subscription price for 350 Users and 1 Data/Reporting Account

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
2	Training and Support month 1-6				\$39,000.00

Comm Code	Manufacturer	Specification	Model #
81161501			

Extended Description :	Section 4.1.2 - Training and support months 1-6
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Comments: Includes Data Import, training & webinar development and 10 days of Form 2 Customizations if needed/desired.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
3	Training and Support Year 2				\$10,000.00

Comm Code	Manufacturer	Specification	Model #
81161501			

Extended Description :	Section 4.1.3 - Training and support Year 2
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Comments: Previous webinars updated & hosted at no charge. Includes 10 days of Form 2 Customizations if needed/desired.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
4	Training and Support Year 3				\$10,000.00

Comm Code	Manufacturer	Specification	Model #
81161501			

Extended Description : Section 4.1.4 - Training and support Year 3

Comments: Previous webinars updated & hosted at no charge. Includes 10 days of Form 2 Customizations if needed/desired.

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
5	Training and Support Year 4				\$10,000.00

Comm Code	Manufacturer	Specification	Model #
81161501			

Extended Description : Section 4.1.5 - Training and support Year 4

Comments: Previous webinars updated & hosted at no charge. Includes 10 days of Form 2 Customizations if needed/desired.

July 20, 2017

To Whom It May Concern,

Thank you very much for the opportunity to submit a quote for CRFQ 0506 MCH1800000001.

An open, self-guided demonstration of VisitTrackerWeb is available at <https://visittrackerweb.com/Demo>. If you'd like a hosted/guided demonstration so you get a complete picture of VISitTrackerWeb, please contact us to schedule a hosted demonstration.

We do have some responses to your requirements that didn't fit in your RFQ template and are included here.

MIECH History

DataKeeper has been building, enhancing and customizing our VisitTracker software since 2002 and for state-level MIECHV needs since 2013. We currently support 6 states (IL, TX, CO, ND, NV, WA) with ongoing customizations, detailed & consolidated reports, additional data access for analytics and new features for additional data collection, reporting and analysis.

DataKeeper specializes in software for data collection & reporting for Early Childhood Education across numerous ECE curriculums – nothing else. As such, we have experience, collaboration, insights and partnerships specific to MIECHV and ECE, that are not available from other vendors.

Lastly, we are a small company headquartered in Austin, TX. As a small company, we're staffed by experienced, ECE experts and our customers and clients are treated to direct, individual support that solves their problems and answers their questions quickly.

Notes on #3 – Qualifications

3.2 – VisitTracker does not currently have any functionality *specific* to MIHOW or RFTS. We're always excited about adding new Curriculums! We believe we have (nearly) everything needed and will build out the additional data collection & reporting to meet the needs of those ECE Curriculums within a reasonable timeline that meets your requirements at no additional charge.

It is worth noting that Parents as Teachers has notified us that all PAT Affiliates will be required to use software that is Licensed with PAT Intellectual Property starting in 2018. DataKeeper will complete it's licensing with PAT on or before July 31, 2017.

This licensing requirement by PAT may limit either the future qualifications of vendors or impair a PAT Affiliate's ability to be Certified by PAT if unlicensed software is used for PAT Affiliate programs.

Notes on #4 – Mandatory Requirements

4.1.1.5 – VisitTracker will need to add a data field to collect employee travel distance. We will build out the additional data collection & reporting to meet those needs within a reasonable timeline that meets your requirements at no additional charge.

4.1.1.9 – VisitTracker will need to finish our functionality to upload and store documents. We will build out the additional functionality to meet those needs within a reasonable timeline that meets your requirements at no additional charge.

4.1.1.10 – VisitTracker will need to modify some existing functionality to provide the ability for electronic storage and tracking/reporting for collaborative meetings. We will build out the additional functionality to meet those needs within a reasonable timeline that meets your requirements at no additional charge.

4.1.1.13 – VisitTracker will need to add a data field to collect post partum birth control information. We will build out the additional data collection & reporting to meet those needs within a reasonable timeline that meets your requirements at no additional charge.

4.1.1.20 – VisitTracker will need to complete & launch our functionality for Full access from the State Office. We will build out the additional functionality to meet those needs within a reasonable timeline that meets your requirements at no additional charge.

Notes on Pricing

The configuration and Retail Pricing for VisitTracker is based on individual Programs and the number of Users for that specific Program. Please see <https://data-keeper.com/pricing/> for our Retail prices. We have used an average of \$75/user and your specified 350 users to calculate our bid of \$26,250 for VisitTrackerWeb User Licenses. We will happily honor this “bid” price structure if so desired. It is likely, however, that you can pay a lower overall application subscription cost by using the actual number of Programs and associated Users/Program. We were unable to calculate the number and size of Programs and have submitted our bid specifically as you requested. However, if you’d like to use the potentially lower cost by calculating based on actual Programs and Users/Program, we’ll be happy to honor this price as well.

Notes on Custom Reports / Data Subscription

Our Custom Reports/Data Subscription offering provides either A) up to 50 custom developed reports each year or B) a replica of the VisitTrackerWeb database with YOUR INFORMATION ONLY exported and available to you each month for your own data reporting and analysis.

Notes on Data Import

We have experience importing ETO data into VisitTrackerWeb. We will provide a full data matching & import process to eliminate the need for manual data entry.

Notes on Form 2 Customizations

Your RFQ leads us to believe that you probably do not want to make any future changes in your state’s Form 2 report. Our work over the past 5 years with six other MIECHV State programs informs us that most states do desire some changes to their Form 2 each year. These are typically subtle changes in how the data elements for a Measure’s numerator or denominator are selected & counted. Typically, we complete these changes for them for less than \$10,000/year. In the interest of fairness and full disclosure, we have added a budget line item for Form 2 (or other) customizations for Year 1, 2, 3 & 4. If your Form 2 will not need any customizations and you do not foresee needing any Customizations to VisitTrackerWeb, you can remove that line item from our bid.

Sincerely,



Jeffrey C. Hotz
President

Exhibit A – Pricing Page

Contract items	Unit	Price	Total Cost
<u>4.1.1</u>	EA		
Web Based Home Data Collection System (includes annual live support, maintenance and upgrades and licensures for up to 350 users)	350	\$75	\$26,250
	1	\$6,000	\$6,000
<u>4.1.2</u>	EA	\$25,000	
Training and Support Months 1-6	4	\$1,000	\$29,000
	10	\$1,000	
<u>4.1.3</u>	EA		
Training and Support Year 2	10	\$1,000	\$10,000
<u>4.1.4</u>	EA		
Training and Support Year 3	10	\$1,000	\$10,000
<u>4.1.5</u>	EA		
Training and Support Year 4	10	\$1,000	\$10,000
<u>Grand Total Cost</u>			\$91,250

The contract will be awarded to the Vendor that can provide all mandatory requirements meeting the required specifications for the lowest overall Grand Total Cost.

Vendor Name:	DataKeeper Technologies, LLC
Physical Address:	3445 Eecutive Center Drive, Suite 117, Austin, TX 78731-1618
Remit to Address:	PO Box 1322, Del Valle, TX 78617
Telephone:	800 532 7148
Fax:	512 201 4015

Email: jchotz@data-keeper.com

Authorized Vendor Representative (print name):
Jeffrey C. Hotz, President

Signature: 

Date: 7/20/17

DataKeeper Technologies, LLC

Pricing Page Details

	Item	Unit	Price	Total Cost
4.1.1	VisitTrackerWeb User Licenses	350	\$75 annually	\$26,250
	Custom Reports or Data Subscription	1	\$6,000 annually	\$6,000
4.1.2	Data Import from ETO to VisitTrackerWeb	1	\$25,000	\$25,000
	Basic User Training Guide	1	\$1,000	\$1,000
	Basic User Webinar	1	\$1,000	\$1,000
	Advanced User Training Guide	1	\$1,000	\$1,000
	Advanced User Webinar	1	\$1,000	\$1,000
	Form 2 Customizations if needed @ \$1000/day	10	\$1,000	\$10,000
4.1.3	Basic User Webinar	1	\$0	\$0
	Advanced User Webinar	1	\$0	\$0
	Form 2 Customizations if needed @ \$1000/day	10	\$1,000	\$10,000
4.1.4	Basic User Webinar	1	\$0	\$0
	Advanced User Webinar	1	\$0	\$0
	Form 2 Customizations if needed @ \$1000/day	10	\$1,000	\$10,000
4.1.5	Basic User Webinar	1	\$0	\$0
	Advanced User Webinar	1	\$0	\$0
	Form 2 Customizations if needed @ \$1000/day	10	\$1,000	\$10,000
				\$91,250

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.

Jeffrey C. Hotz

(Name, Title)

Jeffrey C Hotz, President

(Printed Name and Title)

3445 Executive Ctr Dr, Ste 117, Austin, TX 78731

(Address)

800 532 7148 / 512 201 4010

(Phone Number) / (Fax Number)

jchotz@data-keeper.com

(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.

DataKeeper Technologies, LLC

(Company)



President

(Authorized Signature) (Representative Name, Title)

Jeffrey C Hotz, President

(Printed Name and Title of Authorized Representative)

7/20/17

(Date)

800 532 7148 / 512 201 4015

(Phone Number) (Fax Number)

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ 0506 MCH180000001

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

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

Addendum Numbers Received:
(Check the box next to each addendum received)

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

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

DataKeeper Technologies, LLC

Company



Authorized Signature

7/20/17

Date

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

REQUEST FOR QUOTATION
Web Based Home Visitation Data Collection System
CRFQ 0506 MCH180000001

11. MISCELLANEOUS:

- a. **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: David Tisdale
Telephone Number: 800 532 7148
Fax Number: 512 201 4015
Email Address: dtisdale@data-keeper.com

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

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

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

DEFINITIONS:

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

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

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

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

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: DataKeeper Technologies, LLC

Authorized Signature:  Date: 7.20.17

State of Texas

County of Travis, to-wit:

Taken, subscribed, and sworn to before me this 20 day of July, 2017

My Commission expires 11-25, 2017.

AFFIX SEAL HERE

NOTARY PUBLIC 

Purchasing Affidavit (Revised 08/01/2015)



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.

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

AGREED:

Name of Agency:

Signature: _____

Title: _____

Date: _____

Name of Associate: DataKeeper Technologies,
LLC

Signature:  _____

Title: President _____

Date: 7/20/17 _____

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: WV DHHR /

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

Personal Identifiable Information-Any and all personally identifiable information including but not limited to patient name, address, date of birth, social security number, telephone number, and insurance information.